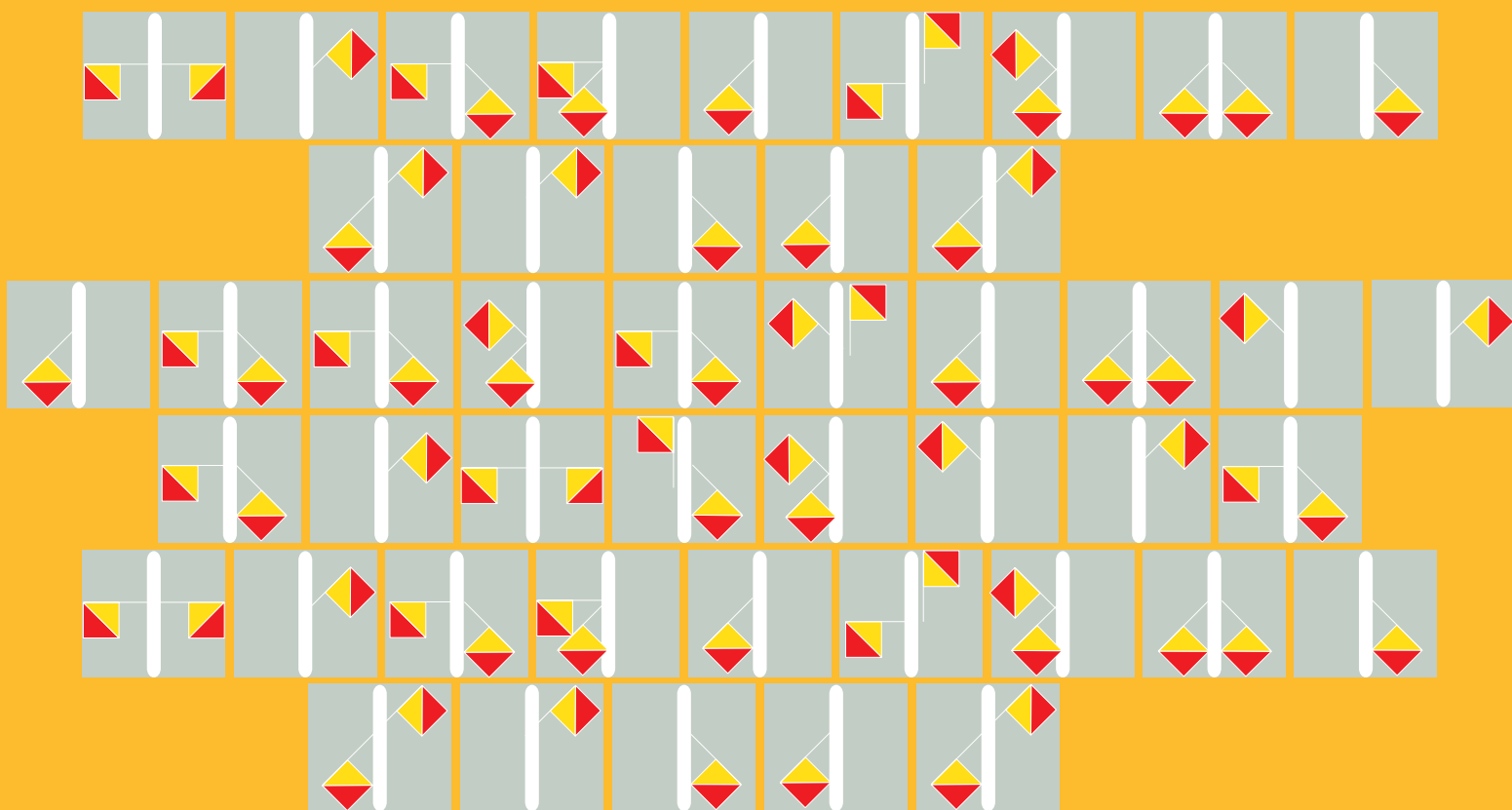


Reshaping legal assistance services: building on the evidence base

A discussion paper



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Reshaping legal assistance services:
building on the evidence base

A discussion paper

Pascoe Pleasence, Christine Coumarelos,
Suzie Forell and Hugh M. McDonald

With a foreword by Geoff Mulherin

Law and Justice Foundation of NSW

April 2014

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Foreword

Over the last decade, the Law and Justice Foundation of New South Wales has been committed to an extensive program of research to identify the legal and access to justice needs of the community. Building on the leading international research into legal need, the Foundation has, for the first time, provided a rigorous picture of legal need for the Australian community, and particularly that of disadvantaged people. For example, the recently published Legal Australia-Wide Survey (LAW Survey), which involved interviewing some 20,716 people across Australia, has provided the most comprehensive assessment of the legal problems people experience, which disadvantaged groups are particularly vulnerable to legal problems, the actions people take to resolve problems, where people seek advice, and the outcomes people achieve with their legal problems.

The research highlights important similarities between Australian jurisdictions, and between Australian and international experience. Apart from suggesting that perhaps local-level political and economic cycles are not so important in terms of the legal needs of the community, the similarities allow us to be confident that the common themes and trends identified through international legal need research are sound.

There still remains much work to do to fully understand the legal needs that affect the community, particularly in relation to substantial problems and hard-to-reach target groups. Further, legal needs inevitably change over time, along with social and legal practice norms and the law. Nevertheless, for service providers, policy makers and researchers, there now exist widely recognised themes or ‘directions for travel’ for reform in the area of meeting the legal needs of the community.

Four themes in particular stand out. Legal assistance services for disadvantaged people should, as far as practicable, be:

- **targeted** to those most in need
- **joined-up** with other services (non-legal and legal) likely to be needed
- **timely** to minimise the impact of problems and maximise utility of the service, and
- **appropriate** to the needs and capabilities of users.

Of course, statements such as these are easy to make. However, they are often difficult to operationalise.

As always, the devil is in the detail, and it is often very difficult to analyse and understand complex problems and models for their solution, while reducing these to provide simplified, accurate communication of the lessons learned. ‘Wicked problems’ are so named because of their complexity and resistance to resolution. These problems are only likely to be resolved with complex thinking and the thoughtful application of relevant principles, research-identified ‘directions for travel’ and best-practice experience, to the particular circumstances of the particular problem.

Nowhere is this theory-to-practice dimension more challenging than in relation to ‘joined up’ services. This discussion paper devotes a chapter to what being ‘joined up’ may mean for legal assistance services, as it does to each of the other three key themes. The chapter concerning joined up services discusses, through a realistic lens, the options for collaborative work with other services, and the costs and challenges involved. While recognising the benefits that can come with the right amount of ‘joining up’, the paper clearly points out the difficulties, including the time and resources needed.

The other key themes — targeted, timely and appropriate services — are considered in similarly realistic analyses in their separate chapters.

The aim of this discussion paper, then, is to assist service providers, policy makers and researchers to undertake their next steps as they seek to meet the legal needs of the community. It does not

attempt to provide a simplistic formula for doing so — no one size fits all. Rather, it begins by critically examining the key themes that are arising from the legal needs research and discusses these in the context of the practical experience and apparent good practice gained in meeting those needs in a range of metropolitan, rural, regional and remote areas. It then provides a framework, based on the available evidence, outlining the questions to be reflected upon and a range of models to be considered as a starting point to assist service providers and policy makers to plan and implement new policies and services. It should also assist researchers to focus their efforts on asking the key questions and filling in the most significant research gaps in relation to knowing what works to address particular legal needs.

Funding, accountability and responsibility

There is one important area, relevant to all, but most importantly to funders and policy makers, that is a crucial enabling factor to facilitate the reshaping of legal assistance services, that we touch upon but do not elaborate on in this paper. That is the issue of the appropriate mechanisms for allocating funding, priorities, responsibilities and accountability for the development and provision of legal assistance services.

Legal assistance services are targeted at disadvantaged people, many of whom are experiencing a range of legal and non-legal problems, and often in the context of quite chaotic lives. The provision of targeted, connected, timely and appropriate services to these people suggests the need for a flexible and nuanced system of delegated authority, funding and accountability. For example, the resolution of legal problems for a particular client may require the simultaneous addressing of a range of social and other problems (e.g. housing, health). The resolution of such legal problems will therefore require a mix of services appropriate to the particular legal needs and capabilities of the individuals concerned, and these must be delivered where and when it is most appropriate. Yet each individual is located in a different geographical place, each with a different mix (or sometimes lack) of legal and non-legal services. Funding and accountability arrangements need to allow for the delivery of services in circumstances of such geographical, problem type and client capability difference.

Yet the existing funding, accountability and responsibility arrangements are not designed for this. For a range of historical, political, jurisdictional and accountability reasons, funding is provided usually on a portfolio basis to achieve portfolio goals. This immediately establishes a complex framework of Commonwealth/State as well as department-to-department stresses on attempts to address the holistic needs of disadvantaged clients. Further, a great number of human services are delivered on behalf of government by the not-for-profit sector. This funding is often directed at specific projects and programs and spread throughout many hundreds of different service providers with different capabilities and approaches. Inevitably, there is a great potential for many related, complementary or even overlapping projects to be delivered by different organisations under quite different contractual, operating and reporting conditions, with differing eligibility criteria. Also in this context, significant gaps in service delivery will usually occur.

The result is, in many cases, a complex, confused and unresponsive system of funding and responsibility for the delivery of services across the community. Many community legal services, for example, have multiple inconsistent funding sources to undertake similar work, but with different delivery and reporting requirements. Some also report difficulties dealing with some clients' holistic legal needs due to their particular Commonwealth/State funding mix. Clients might be told, for example, that 'we can deal with this legal problem, but not that one because we are not funded to do this'. On this point it is worth noting that in 2012 Allen Consulting Group was engaged to review the National Partnership Agreement (NPA) on Legal Assistance Services. While primarily aimed at reviewing the performance of legal aid commissions against the NPA benchmarks and performance indicators, Allens also conducted an evaluation of all four Commonwealth-funded legal assistance service providers. In doing so they only considered Commonwealth-funded and joint State/Commonwealth-funded services, but not legal assistance services solely funded by the states and territories.¹ In the case of community legal centres, only 138 of the 182 member centres of the National Association of Community Legal Centres were included.

Further, sometimes funding and responsibility arrangements appear structurally opposed to matching service provision to changing legal need. For example, the Commonwealth funds Aboriginal and Torres Strait Islander Legal Services (ATSILS) to undertake predominantly criminal work, yet the criminal law concerned is predominantly state-based. ATSILS service provision ideally needs to respond to state-level reforms and even to local and regional policing practices, and it would seem difficult for Commonwealth-level funding to be sufficiently responsive.

Importantly though, current funding arrangements may hinder the flexibility required of legal assistance services and possibly other human services to enable policy makers and service providers to fully consider the relevant factors, options and models – including those highlighted in this discussion paper – and establish, on the best available information, the most appropriate, timely, targeted and joined up services to best meet the legal needs of the particular client or client group.

Of course these observations are neither new nor limited to the legal assistance sector. For example, in their 2010 Research Report into the *Contribution of the Not-for-Profit Sector*, the Productivity Commission observed that:

... the very clear message from the sector is that current government tendering, contracting and reporting requirements impose a significant compliance burden and constrained the efficiency and effectiveness of service delivery. There is a sense of frustration that often these arrangements do not appear to result in improved service delivery outcomes for clients. Further, many in the sector are concerned that current arrangements limit their ability to innovate and respond at a local level to existing and emerging social problems.ⁱⁱ

Further, the Commission argued that:

Conceptually, having too many funding streams can be inefficient to the extent that it involves avoidable costs for both governments and providers. On the face of it, this suggests that governments should consider the appropriateness and feasibility of joining up funding streams within and across levels of government. However, this issue raises complex questions about agency and program based funding allocations and design and inter-governmental funding arrangements that are best considered on a case-by-case basis and which are outside the scope of this study.ⁱⁱⁱ

Options for engagement with government funded services

One of the main challenges to implementing effective mechanisms for funding and allocating responsibility for the provision of legal assistance services is determining appropriate models suitable for a flexible and nuanced client-focused approach.

While not all legal assistance services are provided by the not-for-profit sector, the discussion of funding models contained in the Productivity Commission's *Contribution of the Not-for-Profit Sector* report is instructive. Leaving aside operational grants for specific (and generally limited) purposes, the report discusses three key models for funding not-for-profit services to deliver services to the community.

The **'client-directed model'** generally applies to individual funding for clients to allow them to choose between providers and services. Such a model may be appropriate for many human services in a variety of circumstances, particularly, say, when there is a realistic market of service providers and highly capable or well-supported target recipients of these services. However, in the context of the delivery of legal assistance services, there will be a limited range of legal assistance services available to particular clients in particular locations. Also, when targeting the most disadvantaged who may have less capability and/or support to address their legal problems, this model may not be appropriate in many circumstances.

'Purchase of service contracting', on the other hand, is a model commonly employed in the legal assistance sector and for the funding of the not-for-profit sector to deliver human services more broadly. It involves government agencies contracting with providers to deliver services to eligible clients and to be funded for this. The Productivity Commission^{iv} has argued that the main

benefits of this model occur when providers are able to deliver services more cost effectively and with greater innovation than government, and where they can add value through their broader activities. However:

these benefits can be substantially eroded as governments become more prescriptive about the processes by which outcomes are achieved and impose heavy-handed tendering, contractual and reporting requirements.^v

Further:

purchase of service contracting is most applicable to the delivery of relatively standardised services for which there is a widespread need in the community. As such it is particularly suited to the rollout of large-scale national programs. Conversely, it can be harder for this model to support enhanced client choice as more tailored and differentiated services are more complex and costly for governments to specify adequately in contract, and for contracts to be monitored and enforced.^{vi}

A third model discussed by the Commission was a **joint ventures** model which is a model of increased collaboration more broadly rather than a model of formal joint ventures. Essentially this model is suggested to serve as a mechanism for governments and providers to ‘form a more collaborative working relationship in situations where the delivery of a service is highly dependent on the involvement of both governments and providers and a market-based approach is not feasible nor appropriate.’^{vii}

The Commission argued that the defining feature of such a model of engagement was the degree to which efficient and effective service delivery requires a high level of cooperation and collaboration between government and providers in pursuit of shared goals. Further, the Commission argued that such a model was:

particularly applicable to seeding the development of new and innovative services to address an emerging social problem or a long-standing intractable (or ‘wicked’) problem, in situations where there are benefits from both government and providers being actively engaged in this process...

... The model may also be applicable in situations where there is only one possible service provider who lacks the capacity to deliver the level, quality and/or scope of service required by government. For example, governments may consider using joint-venture arrangements as a way of delivering human services in some rural and remote communities.^{viii}

Importantly, though, the Commission observed that ‘under the joint-venture approach *relatively* more weight is given to achieving outcomes through relational rather than contractual governance’. They argued that relatively high degrees of flexibility and trust were required, as well as a degree of certainty about government funding and agreed processes and protocols for evaluating the joint venture.

However, just as the present report highlights the higher resource commitment often required for the joining up of services, so too did the Productivity Commission note that such collaborative or joint-venture approaches were likely to be resource intensive and ‘therefore less suited to the rollout of large-scale or national programs, and more suited in the context of “niche” problems’.^{ix}

Breaking down funding and responsibility barriers — law’s place

In recent years there have been a range of approaches developed that seek to break down funding and responsibility barriers in order to address intractable ‘wicked’ social problems, often to target communities in particular locations. For example, a range of place-based approaches have been attempted to address complex social issues in a number of human service areas, targeting specific regions or communities, and such approaches to addressing disadvantage were a key element of the previous Australian Government’s Social Inclusion Agenda.^x Similarly, recently the NSW Government’s Independent Local Government Review Panel proposed options that sought to

break down administrative barriers, including through formalising partnerships between different spheres of government to create true ‘whole of government’ approaches, with integrated funding and service delivery models focused on localised priorities.^{xi}

It should be noted, however, that legal services have seldom been the focus of place-based or regional initiatives aimed at bringing multiple human services together to provide a more targeted or holistic approach. This is consistent with the observation made on a number of occasions in this present report: funding for legal assistance services makes up such a small portion of the total expenditure on human services that, in most cases, legal assistance services have less established and substantial infrastructures to draw upon. Therefore they are often better suited to play a specialist role, rather than a central role, in broad human services delivery.

This is not to underplay the role legal services can provide in coordinating legal and related service provision itself, and of coordinating the more effective engagement of the available legal services with broader networks of human services. The Cooperative Legal Service Delivery (CLSD) model in New South Wales is an example of where this is happening.

However, the reality of the lack of infrastructure available within the legal assistance service sector must be recognised in planning.

Move away from market-based service delivery models?

In concluding their discussion of funding and engagement models for the delivery of human services by the not-for-profit sector, the Productivity Commission did not advocate a wholesale move away from market-based service delivery models, at least where markets for such services are genuinely contestable. But it did observe that:

the key defining feature of an intractable or ‘wicked’ problem is not that there is an ongoing need in the community but rather the degree to which the appropriate policy response is largely unknown or requires a degree of flexibility not suited to a standard contracting arrangement.^{xii}

It is beyond the scope here to delve further into the issue of possible funding and responsibility arrangements that allow for the development of targeted, timely and appropriate legal assistance services. It is, however, possible to make some observations relevant to the development of such models.

The first is that the provision of targeted, joined up, timely and appropriate services to priority disadvantaged groups will often imply a level of tailoring at a case-by-case level (and sometimes group-by-group and location-by-location level), rather than the rollout of large standard national delivery programs.

Secondly, the fact that in many areas and for many problems and for many disadvantaged clients there may only be a limited number of legal service provision options available, the planning for delivery of appropriate services must have real local-level input.

Thirdly, collaboration between legal and non-legal services at some level will be essential in meeting the legal needs of many of the target clients of legal assistance services. This collaboration goes beyond that required by the ‘joint-venture’ model between government funders and not-for-profit service providers in delivering a particular service. However, legal service delivery will not often be driving broader human service collaborations to meet the needs of disadvantaged people, not having the required resources or infrastructure. Policy makers and service providers must plan and fund to enable legal services to effectively operate in a range of contexts, including as a constituent part of public human services.

Finally, an appropriate system of funding and responsibility might ideally see the national and jurisdictional levels agree on priorities for target groups, secure the necessary higher-level agreements to support and encourage cross-sectoral collaboration at lower levels, and allocate resources on a needs basis. Such funding allocations and accountability regimes must then provide sufficient flexibility to jurisdictional, regional and local level agencies to plan, collaborate and ultimately deliver services that are targeted, joined up, timely and appropriate to the needs and capabilities of the users, but do so taking into account the particular characteristics of the need to

be addressed and the particular mix of available services.

Going forward

Much more thought needs to be devoted to this issue of appropriate funding and accountability mechanisms for legal assistance services. The comments I have made are generally directed at the issue of ensuring such mechanisms are sufficiently flexible to allow service providers and policy makers to implement services that are most appropriate to meet the needs of the target groups, based on the latest research and practical realities. Of course, other funding principles will always apply. Commonwealth government procurement of services will generally be subject to overarching procurement frameworks and guidelines.^{xiii} Applying these in such a way as to ensure legal assistance service provision can be most ‘fit for the purpose’ of meeting the legal needs of disadvantaged people is the challenge. We hope that the review into the Access to Justice Arrangements by the Productivity Commission presently under-way will address it.

However, not all action from this point relies on the development of new funding and accountability mechanisms. The four key themes emerging from the legal needs research highlight the main directions for reform. We hope that this present discussion paper will assist service providers and policy makers to connect what is known about the legal needs of a target group with the key considerations in developing and implementing policy and services most appropriate to meet the needs of that target group. It should also assist researchers to provide empirical evidence that continues to build the knowledge base regarding what works to address particular legal needs.

Endnotes

- i *Terms of reference: Review of the National Partnership Agreement on Legal Assistance Services*, 30 November 2011 <www.ag.gov.au/legalsystem/legalaidprograms/documents/termsofreferencefinalnovember2011.pdf>
- ii Productivity Commission 2010, *Contribution of the not-for-profit sector*, research report, Canberra, pp. 308-309, <www.pc.gov.au/__data/assets/pdf_file/0003/94548/not-for-profit-report.pdf>.
- iii *ibid.*, p 312.
- iv *ibid.*, pp 323–329.
- v *ibid.*, Canberra, 325.
- vi *ibid.*, Canberra, 325.
- vii *ibid.*, Canberra, 325.
- viii *ibid.*, Canberra, 326.
- ix *ibid.*, Canberra, pp 326, 7.
- x Australian Social Inclusion Board 2011, *Governance models for location based initiatives*, Commonwealth of Australia, Canberra, p 9.
- xi Independent Local Government Review Panel (ILGRP) 2013, *Strengthening NSW remote communities: the options*, April 2013, ILGRP, New South Wales <www.localgovernmentreview.nsw.gov.au/documents/LGR/Strengthening%20NSW%20Remote%20Communities.pdf>.
- xii Productivity Commission 2010, *Contribution of the not-for-profit sector*, research report, Canberra, p. 328, <www.pc.gov.au/__data/assets/pdf_file/0003/94548/not-for-profit-report.pdf>.
- xiii Department of Finance and Deregulation 2008, *Commonwealth procurement guidelines. Financial management guidance no. 1*, December 2008, Canberra; and Department of Finance and Deregulation 2009, *Commonwealth grant guidelines. Policies and principles for grants administration*, July 2009, Canberra.

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We also acknowledge the significant contribution of Foundation staff: Jane Kenny for coordinating fieldwork, Stephanie Ramsey for data analysis, Sarah Williams for transcription and research support, and Maria Leonardis for the production of the report.

Shortened forms

ABS	Australian Bureau of Statistics
ALS	Aboriginal Legal Service
ASIB	Australian Social Inclusion Board
CALD	culturally and linguistically diverse
CARS	Client Assessment and Referral Service
CBA	Canadian Bar Association
CLAC	Community Legal Advice Centre (England and Wales)
CLC	community legal centre
CLE	community legal education
CLSD	Cooperative Legal Service Delivery
COAG	Council of Australian Governments
CSJPS	Civil and Social Justice Panel Survey
CSJS	Civil and Social Justice Survey
DHS	Department of Human Services
EIU	Early Intervention Unit
ERSS	Early Resolution Services Sector
FLIC	Family Law Information Centre
HAP	Homeless Action Plan
HPLS	Homeless Persons Legal Service
ILP	Incorporated Legal Practice
LAF	Legal Assistance Forum
LCA	Law Council of Australia
LIAC	Legal Information Access Centre
LIV	Law Institute of Victoria
LOIS	legal online information service
MLP	Medical-Legal Partnership
MRC	migrant resource centre
NBN	National Broadband Network
NLAF	NSW Legal Assistance Forum
NPALAS	National Partnership Agreement for Legal Assistance Services
OECD	Organisation for Economic Cooperation and Development
PCP	Primary Care Partnership
PIAAC	Programme for the International Assessment of Adult Competencies
PIAC	Public Interest Advocacy Centre
PIB	Partnership Innovation Budget
PILCH	Public Interest Law Clearing House
RLAF	Regional Legal Assistance Forum
ROCP	Regional Outreach Clinic Program
RRR	regional, rural or remote areas
SCRGSP	Steering Committee for the Review of Government Service Provision
SHC	Self-Help Centre
SSI	Settlement Services International
UK	United Kingdom
US	United States

Executive summary

This paper provides a framework for discussion around how Australian access to justice research, policy development and the delivery of public legal assistance services can best build upon the substantial evidence base made up of findings from 'legal needs' surveys undertaken in Australia and overseas.

Findings from the Legal Australia-Wide Survey (LAW Survey) confirm that disadvantaged groups are among the most likely to experience legal problems and that legal problems tend to cluster. Just 9 per cent of LAW Survey respondents accounted for 65 per cent of reported legal problems. Income, distance, personal capability and the manner in which services are made available impact on people's use of legal and other services; with personal capability linking to the utility of different forms of assistance.

In recognition of this, access to justice policy and public legal assistance services are increasingly client focused. This entails that services are targeted (to those most in need), joined-up (with other services likely to be needed), timely (to minimise the impact of problems and maximise the utility of services) and appropriate (to the needs and capabilities of users).

Chapters 3 to 6 of this paper articulate more fully and explore the implications of these four precepts: targeted, joined-up, timely and appropriate. They expose conceptual, policy and operational tensions in delivering services so defined; but also provide guidance to and illustrations of practice, detail facilitators and obstacles to change and present a range of approaches to evaluation.

Chapter 7 brings together the ideas presented in Chapters 3 to 6 to provide a basis for discussing how to move from the theory to the practice of client-centred services. It starts by considering the extent, form, reach and location of current services; a reflection of successive policy decisions (including sector-wide funding decisions), aimed at addressing the unique (and changing) needs and spatial distribution of communities, and market conditions. It then explores targeted, joined-up, timely and appropriate services in this context, asks what more we need to know to maximise the utility of public legal assistance services, and then proposes a range of key issues for policy makers, service providers and researchers.

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1. Introduction

This paper provides a framework for discussing how Australian access to justice research, policy development and the delivery of public legal assistance services (e.g. pro bono, legal aid, Aboriginal Legal Service (ALS), community legal centre (CLC), etc. services delivered to the public) can best continue to build upon the substantial evidence base made up of findings from ‘legal needs’ surveys undertaken in Australia and overseas.

In Australia, the Law and Justice Foundation of NSW has been in the vanguard of this survey work, having been responsible for both the 2003 NSW Legal Needs Survey in Disadvantaged Areas (Coumarelos, Wei & Zhou 2006) and the 2008 Legal Australia-Wide Survey (Coumarelos et al. 2012); along with a range of more qualitatively based studies exploring the legal needs of defined population groups (Forell, McCarron & Schetzer 2005; Karras, McCarron, Gray & Ardasinski 2006; Grunseit, Forell & McCarron 2008).

Thanks to these surveys, along with much supporting evidence from Australia and overseas, the broad patterns in the Australian public’s experience of legal problems (i.e. problems that raise legal issues) are now relatively well understood. However, although legal service providers continue to innovate and work to meet the legal needs of all Australians, the detail of how best to translate a broad understanding into real world change in service delivery to better address the needs of the Australian community is only slowly emerging. It is towards debate around this end — the operationalisation of that understanding — that this paper is directed.

The evidence base

Over the past 20 years, 26 large-scale national surveys of the public’s experience of legal problems have been conducted across the globe (Table 1.1), with further surveys conducted at the regional level also (Pleasence, Balmer & Sandefur 2013). A small number of surveys have also been conducted of small businesses’ experience of legal problems (e.g. Pleasence & Balmer 2013), though none to date in Australia. These surveys are commonly referred to as ‘legal needs’ surveys, though, in recognition of earlier critiques of the concept of legal need (e.g. Griffiths 1980; Johnsen 1999; Lewis 1973), survey authors generally stress that there may be a range of appropriate responses to legal problems, and that these need not involve the use of law, lawyers or legal process (e.g. Reese & Eldred 1994; Genn 1999; Maxwell et al. 1999).¹ Thus, the 26 national legal needs surveys of the public’s experience have adopted ‘a more neutral stance’ to the experience of and responses to legal problems (Pleasence, Balmer & Sandefur 2013, p. 4),² with emphasis placed on exploring factors associated with problem experience,³ various forms of problem resolution behaviour and outcomes.

In terms of their overall approach and structure, most of the 26 national surveys can be said to be in the tradition of Genn’s (1999) landmark *Paths to Justice* surveys, conducted in England and Wales in 1997 and Scotland in 1998, with the largest such survey to date being the recent Legal Australia-Wide (LAW) Survey (Coumarelos et al. 2012).

1 Genn (1999) used the term ‘justiciable’ to describe problems which raise legal issues, regardless of whether or not this is recognised and whether or not any element of the legal system is utilised in their resolution. In this paper, ‘legal problem’ is synonymous with ‘justiciable problem’.

2 It could be argued that this is less so in relation to regional surveys. A number of US state level surveys have focused virtually exclusively on the use of legal advisers: Alabama (Alabama Access to Justice Commission 2009), Connecticut (Center for Survey Research and Analysis 2003), Georgia (Dale 2009), Illinois (Legal Aid Safety Net Steering Committee 2005), Montana (Dale 2005), Oregon (Dale 2000) and Utah (Dale 2007).

3 Reflecting concerns about the preclusion of problems that ‘may not be seen’ by respondents to raise legal issues (Maxwell et al. 1999, p. 17), recent surveys have adopted the practice of presenting simple sets of circumstances to respondents, ‘without labelling them as legal needs or susceptible to legal intervention’ (Reese & Eldred 1994, p. 9).

Table 1.1: National legal needs surveys conducted in the last 20 years (from Pleasence, Balmer & Sandefur 2013)

Country	Study	Date	Size
Australia	Legal-Australia Wide Survey (LAW Survey)	2008	20 716
Bulgaria	Access to Justice and Legal Needs Bulgaria	2007	2730
Canada	National Survey of Civil Justice Problems	2004	4501
		2006	6665
		2008	7002
England and Wales	Paths to Justice	1997	4125
	Civil and Social Justice Survey (CSJS)	2001	5611
		2004	5015
		2006–2009	10 537
	Civil and Social Justice Panel Survey (CSJPS)	2010	3806
		2012	3911
Hong Kong	Demand and Supply of Legal and Related Services	2006	10 385
Japan	National Survey of Everyday Life and the Law	2005	12 408
	Access to Legal Advice: National Survey	2006	5330
	Everyday Life and Law	2007	5500
Moldova	Met and Unmet Legal Needs in Moldova	2011	2489
Netherlands	Paths to Justice in the Netherlands	2003	3516
		2009	5166
New Zealand	Legal Advice and Assistance Survey	1997	5431
	Unmet Legal Needs and Access to Services	2006	7200
N. Ireland	Northern Ireland Legal Needs Survey	2005	3361
Scotland ⁴	Paths to Justice Scotland	1998	2684
Slovakia	Legal Needs in Slovakia	2004	1085
Taiwan	Legal Dispute Settlement Behaviour	2011	5601
Ukraine	Legal Capacity of the Ukrainian Population	2010	2463
United States	Comprehensive Legal Needs Study	1993	3087

The LAW Survey asked 20 716 respondents about their experience of 129 types of ‘everyday’ legal problem – across a range of categories concerning accidents, consumer issues, crime, discrimination, education, employment, government services, health, housing, money and relationships – and their use of information and advice services and informal and formal dispute resolution processes. Extensive demographic information was also collected.

From state of knowledge to effective implementation

Chapter 2 draws on the published findings of legal needs surveys, along with the findings of new analyses of LAW Survey data conducted for the purposes of this paper, to set out the state of knowledge of the access to justice needs of the Australian community. Chapter 2 also introduces the key directions for reform suggested by these findings, increasingly evident in access to justice policy and changes in the delivery of legal services in Australia and across the world.

The remaining chapters more fully articulate and explore the implications of these key directions for reform within the Australian context. These chapters also draw on research findings, reports of innovation in the public legal assistance sector (and beyond), and a series of 40 meetings with 135 legal and human service professionals in three areas of NSW (Central West, Far West, Northern Rivers), undertaken specifically to inform this paper, and further meetings with key

⁴ The *Scottish Crime and Justice Surveys*, conducted annually on a continuous basis (April to March) since 2008/9, have not been included in this list, as they included a much reduced set of questions.

stakeholders in NSW, with a view to providing a broader base for exploring the rationales for, benefits and problems encountered in innovating in the sector, and to giving greater voice to those who actually deliver public legal assistance services.

A final chapter summarises the main issues thrown up in each chapter to provide an overall framework for future discussion.

This paper does not purport to include a comprehensive account of either the findings of legal need research to date or public legal assistance services available (or being developed) in Australia. However, it does provide an overview of the growing evidence base in the field and reveal the range of options that exist to enable services to better mirror the needs of potential users. It also includes a discussion of the rationales for, benefits and problems associated with, different service options, and how these might vary between types of issue, provider, client and/or geographical region.

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2. Legal needs surveys: an evidence base

This chapter sets out the core findings that have emerged from legal needs surveys over the past two decades. These have informed and shaped the key directions for reform of public-funded legal services. It then briefly introduces these key directions for reform, as they have manifested in the Australian access to justice policy context.

Vulnerability to legal problems: inequality of experience

Legal problems and social disadvantage

Legal needs surveys, both in Australia and overseas, have established that legal problems are far from randomly distributed across the population. There is a clear inequality of experience, which derives from some groups being more exposed to the circumstances that can give rise to problems⁵ and/or less able to avoid or mitigate problems. This inequality of experience links to ‘social disadvantage’,⁶ with legal problems having been described as often existing ‘at the intersection of [law] and everyday adversity’ (Sandefur 2007, p. 113).

Pleasence, Balmer and Sandefur’s (2013) global review of recent national legal needs surveys identified that elements of disadvantage, such as ill-health/disability, single parenthood and unemployment are routinely found to be associated with the experience of legal problems. This has led Coumarelos et al. (2012, p. 5) to observe that ‘legal needs surveys demonstrate that socioeconomic disadvantage is pivotal to the experience of legal problems’.

In line with this, the main report of findings from the LAW Survey (Coumarelos et al. 2012) indicated that overall problem prevalence (particularly of ‘substantial’⁷ problems) was notably higher for people with a long-term illness or disability (hereinafter ‘disability’), people who had lived in ‘disadvantaged housing’,⁸ single parents and people who had been unemployed. In fact, people with a disability were found to have been significantly more likely than others to have experienced legal problems in all 12 categories examined, with the same being true of eight categories for single parents and people who had been unemployed, and seven categories for people who had lived in disadvantaged housing.

Further analysis has confirmed and built upon the initial LAW Survey findings. Figure 2.1 illustrates how LAW Survey respondents with a disability faced elevated problem prevalence at all stages of life, and that respondents who had faced both physical and mental incapacity were particularly vulnerable, especially at a young age (Coumarelos, Pleasence & Wei 2013). Problem prevalence was also found to increase with severity of disability.

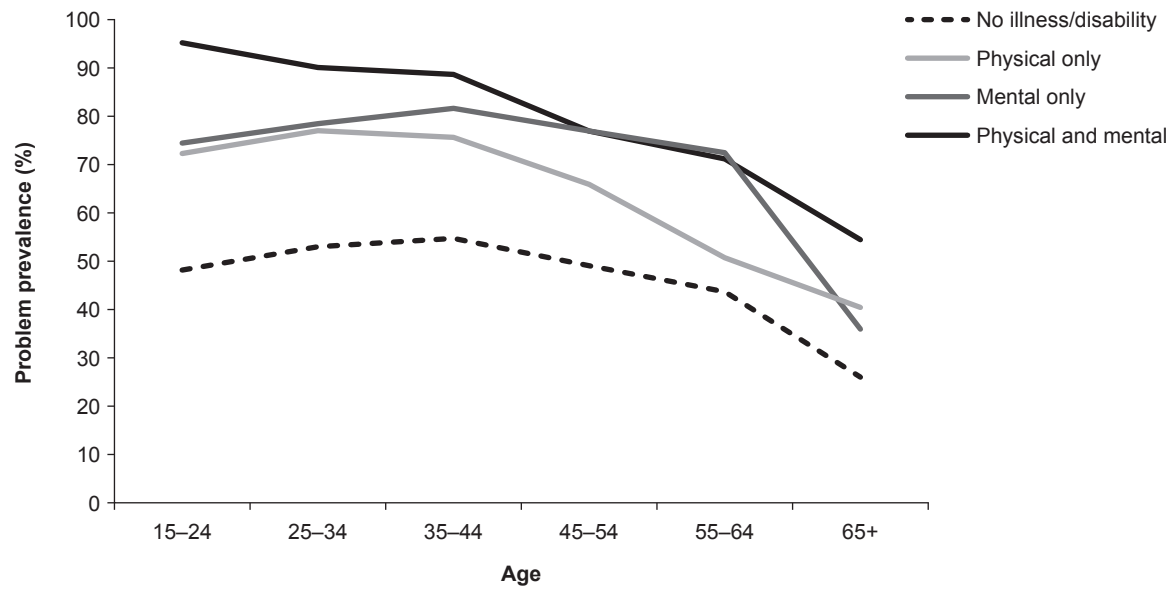
5 Pleasence et al. (2004a) have observed that patterns of problem experience reflect patterns of exposure to the ‘defining circumstances’ of problems, which, in turn, link to levels and types of participation in social and economic life. Similarly, Van Velthoven and ter Voert (2005, p. 2) have suggested, drawing on ‘participation theory’, that problems can be expected to increase along with greater participation in social and economic life. The risk of many types of disputes might be expected to increase with, for example, education, employment, income, interaction with government services and family formation, with problems related to the most frequent forms of activities the most frequent forms of problems.

6 Social disadvantage is a contested concept used to refer to various forms of social disparity, linking to such things as income, education, employment, language, mobility. The term links to other, similar, contested concepts, such as poverty (absolute or relative low income), deprivation (‘missing out’ on opportunity, education, work, consumption, etc.), social exclusion (being ‘left out’ of broad society on account of barriers to equal participation), low capability (lacking capabilities required to function effectively in society) entrenched disadvantage (such as intergenerational disadvantage or disadvantage brought about through residualisation) and multiple disadvantage (referring to combinations of elements of the above).

7 Problems reported as having more than a ‘slight’ impact on everyday life.

8 Disadvantaged housing comprised public housing and caravan/residential parks, boarding houses and other basic or impoverished accommodation (e.g. barn, shed, humpy).

Figure 2.1: Legal problem prevalence by age and disability status (LAW Survey)

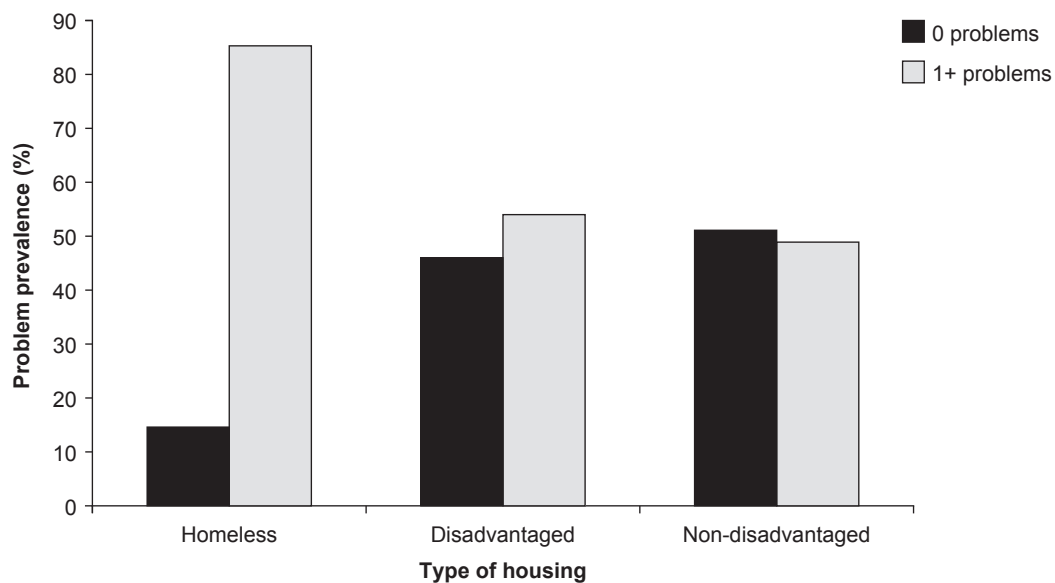


N=20 716

Again drawing on more recent analysis, Figure 2.2 illustrates how, of LAW Survey respondents who had lived in disadvantaged housing, those who had been homeless were particularly likely to have faced legal problems (Coumarelos & People 2013).

More recent analysis also points to other disadvantaged groups being associated with heightened problem prevalence, such as those who lived in out-of-home care as children (Coumarelos, forthcoming) and victims of crime (Pleasence & McDonald 2013).⁹

Figure 2.2: Legal problem prevalence by type of housing (LAW Survey)



N=20 716 respondents (including 270 homeless, 965 in basic/public housing and 19 481 in non-disadvantaged housing).

9 And criminal offenders.

In simple numerical terms, the LAW Survey also indicated that problem experience is linked to Indigenous status, with Indigenous respondents more often reporting legal problems.¹⁰ However, regression analysis suggested that this association was attributable to other characteristics of Indigenous people (Coumarelos et al. 2012), who are well established to be among the most disadvantaged Australians (e.g. Australian Bureau of Statistics (ABS) 2004, 2009; Cunneen & Schwartz 2008; Hunter 2009; Steering Committee for the Review of Government Service Provision (SCRGSP) 2007). Regression analysis did, though, suggest that Indigenous people who experienced legal problems had an increased likelihood of experiencing multiple legal problems.

A complex picture

Despite the evident relationship between social disadvantage and legal problem experience, the relationship between economic circumstances and the experience of legal problems has proven to be, as Coumarelos et al. (2012, p. 20) have noted, ‘complex’. Regression analysis of LAW Survey data has suggested that those respondents whose main income derived from government payments had lower overall problem prevalence (Coumarelos et al. 2012; Coumarelos, Pleasence & Wei 2013) and, in raw data terms, problem prevalence among respondents increased steadily with income.¹¹ Consequently, respondents on low incomes who were eligible for legal aid¹² reported legal problems less often than others.¹³

These findings are likely to reflect the complexities of the interactions between income, disadvantage and socioeconomic engagement — particularly in respect of the overall lesser economic and related activity of those on low incomes. The findings do not, therefore, detract from the broad range of consistently evidenced associations between other elements of disadvantage and legal problem experience. The findings also mask a pattern of experience that sees those on low incomes vulnerable to particular types of legal problem.

Various studies overseas have suggested that those on low incomes have heightened vulnerability to problems concerning debt, housing and welfare benefits (e.g. Pleasence et al. 2004a; Dignan 2006; Currie 2007).

As Figure 2.3 shows, those on low incomes (here represented by those eligible for legal aid) were significantly more likely than others to report legal problems concerning discrimination, clinical negligence, health services and relationship breakdown. In contrast, they were substantially less likely to report problems concerning consumer issues and employment.

The experience of multiple problems: compounding inequality

The experience of legal problems does not occur in a vacuum. As argued above, legal problems are the product of circumstances; circumstances that often reflect social disadvantage. Problems also change circumstances, and can increase vulnerability to further problems in doing so. They do this by bringing about consequences that are aspects of disadvantage, which act to further increase vulnerability to problems (Coumarelos et al. 2012; Pleasence et al. 2004a). Thus, legal problems

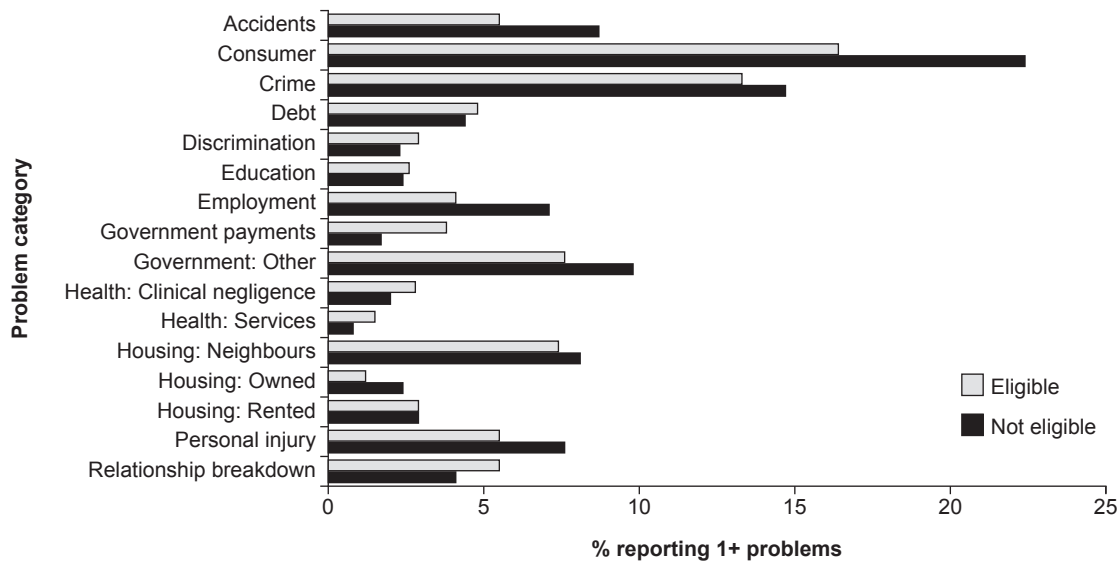
10 In the LAW Survey Indigenous status was self-defined using the question ‘Are you of Aboriginal or Torres Strait Islander origin?’ The LAW Survey had 20 716 respondents across each state and territory of Australia, of whom 612 self-identified as being Indigenous.

11 From 42 per cent for those with no reported income to 58 per cent for those with an annual personal income of \$67 600 or more.

12 Diverse eligibility criteria within and between states, along with limited LAW Survey data relating to income, necessitated the creation of a relatively simplistic legal aid eligibility proxy. For the purposes of this paper LAW Survey respondents were treated as (likely to be) eligible for legal aid if they were single and earned below \$20 800, if they were a single parent and earned below \$31 200, if they lived with a partner and earned below \$41 600, or if they reported no income and appeared to have government payments as their main source of income. The rate of proxy legal aid eligibility was 29.7 per cent.

13 43 per cent versus 52 per cent. When comparing those eligible and ineligible for legal aid, there was no significant difference in the number of problems reported by those reporting one or more problems. It is also to be noted that people with low educational levels are associated with lower legal problem prevalence (a finding replicated across the globe).

Figure 2.3: Percentage of LAW Survey respondents reporting legal problems by type of problem and legal aid eligibility



and social disadvantage can become entwined and mutually reinforcing in a way that ‘may partly define the dynamics that create and perpetuate poverty’ (Currie 2005, p. 2).¹⁴

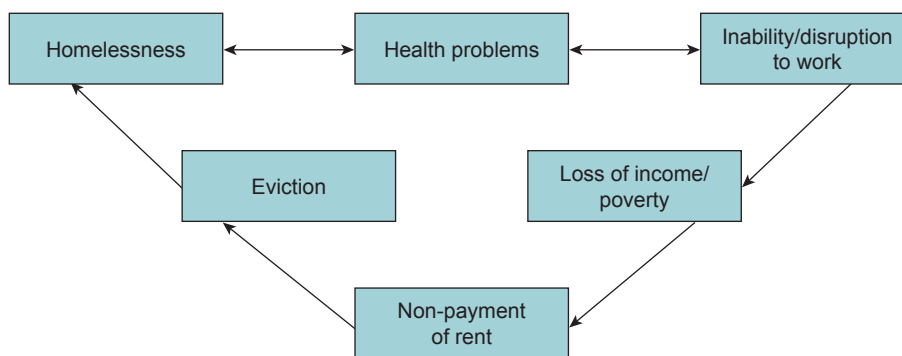
Of the 19 203 legal problems detailed by LAW Survey respondents, 45 per cent were reported to have brought about one or more of income loss/financial strain (29%), stress-related illness (20%), physical ill-health (19%), relationship breakdown (10%) or moving home (5%).

Figure 2.4 illustrates one mechanism by which legal and wider problems can become mutually reinforcing. Taken from the growing (principally US) literature on medical-legal partnerships, it describes how a disruption to work may bring about loss of income, leading to non-payment of rent, leading to eviction and perhaps even homelessness, which is likely to impact on health, and potentially bring about further disruption to work, etc. It is set out in a simple circular form, but it is notable that established lines of causation can be drawn between many of its constituent elements (Coumarelos, Pleasence & Wei 2013).

As Buck et al. (2010, p. 95) reported one client of an English Community Legal Advice Centre as saying:

That’s when my whole life changed. My whole life changed, so there you go. Just the loss of a job, and that’s it. It just tumbles and tumbles and tumbles after that.

Figure 2.4: A vicious cycle of vulnerability (adapted from Tobin-Tyler et al. 2011)



¹⁴ Thus, they have been observed to have an additive effect, meaning that the experience of one problem increases the likelihood of experiencing further problems (e.g. Currie 2005; Pleasence et al. 2004a).

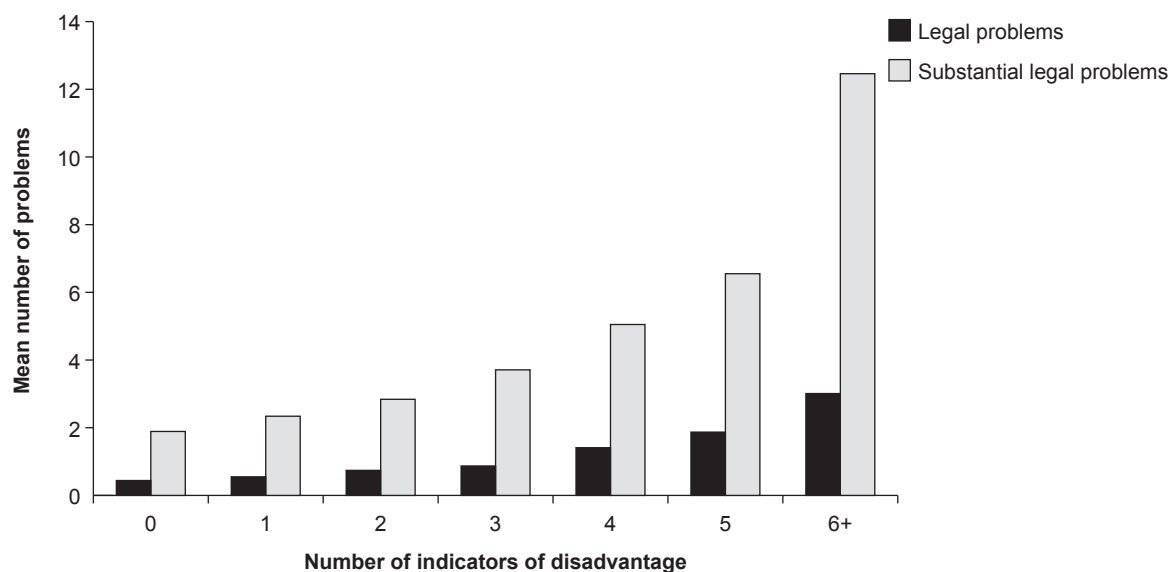
One manifestation of these types of mechanisms is the additive effect of legal problems — whereby the experience of one problem increases the likelihood of experiencing further problems. This has commonly been observed through legal needs surveys (e.g. Coumarelos et al. 2012; Currie 2005; Gramatikov 2008b; Pleasence et al. 2004a). This additive effect lies behind the fact that just 9 per cent of LAW Survey respondents accounted for 65 per cent of all reported problems (Coumarelos et al. 2012).

Another manifestation is the strong links observed between multiple disadvantage and multiple legal problem experience. Figure 2.5 shows how the mean number of legal problems reported by LAW Survey respondents increased along with the number of indicators of disadvantage. As can be seen, those respondents with six or more indicators of disadvantage reported six times as many problems as those with none, both overall and in respect of only substantial problems.

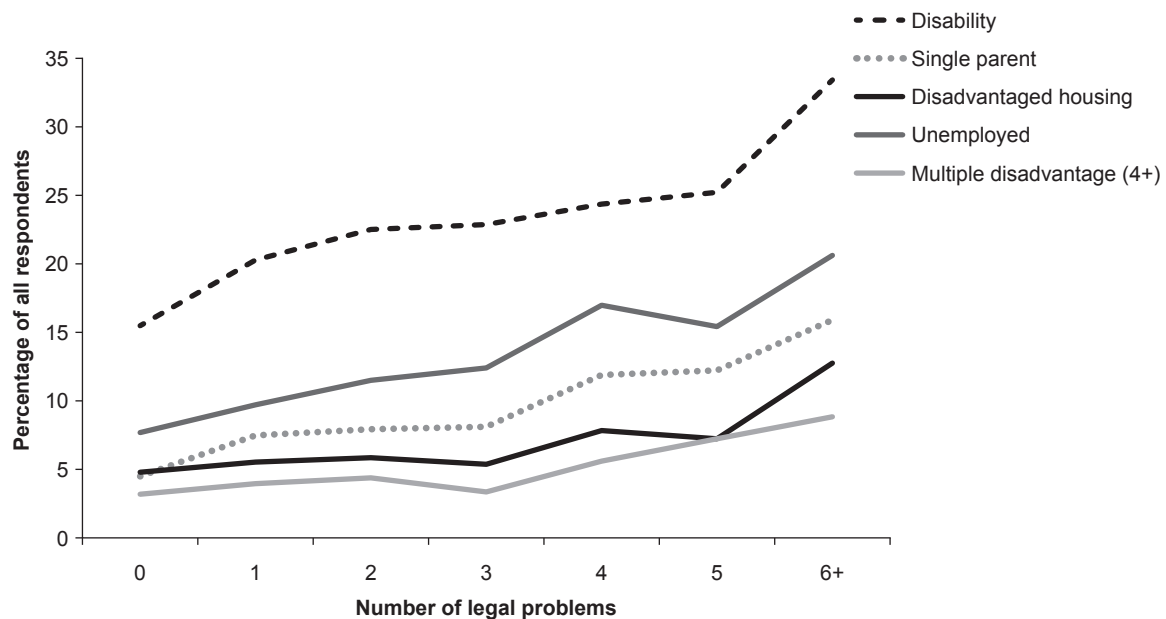
Looking at this another way, Figure 2.6 shows that as the number of legal problems reported by LAW Survey respondents increased, the proportion of respondents drawn from disadvantaged groups became more prominent. So, while just 15 per cent of LAW Survey respondents who reported no problems had a disability, the figure rose to 20 per cent in the case of those reporting one problem and 33 per cent in the case of those reporting six or more problems. Similarly, while just 4 per cent of those who reported no problems had been unemployed in the year leading up to the survey, the figure rose to 7 per cent in the case of those reporting one problem and 16 per cent in the case of those reporting six or more problems. And the corresponding figures were 8 per cent, 10 per cent and 21 per cent for those who had been unemployed at some point in the year leading up to the survey, 5 per cent, 5 per cent and 13 per cent for those who lived in disadvantaged housing, and 3 per cent, 4 per cent and 9 per cent for those with four or more indicators of disadvantage.

The story was even more powerful in relation to substantial legal problems. Here the proportion of respondents who had a disability rose from 16 per cent among those reporting no problems to 48 per cent among those reporting six or more. Similarly, the proportion of single parents rose from 5 per cent among those reporting no problems to 30 per cent among those reporting six or more. And the corresponding figures were 9 per cent and 23 per cent for people who had been unemployed, 5 per cent and 20 per cent for those who lived in disadvantaged housing, and 3 per cent and 16 per cent for those respondents with four or more indicators of disadvantage.

Figure 2.5: Mean number of legal problems and substantial legal problems by number of indicators of disadvantage (LAW Survey)



N=20 716 respondents

Figure 2.6: Proportion of LAW Survey respondents in disadvantaged groups by number of legal problems

N=20 716

Problem clustering: patterns of experience

Legal problem clustering

With multiple legal problem experience commonplace, legal needs surveys have, as Pleasence, Balmer and Sandefur (2013, p. 38) recently observed, ‘provided ample opportunity for study of justiciable problem clustering’.

Legal problem clustering¹⁵ is a consequence of various factors. These include direct causation between problems (i.e. one problem may bring about another), problems sharing defining circumstances (i.e. the circumstances that give rise to different problems may overlap), and people having coinciding vulnerabilities to sets of problems (i.e. the demographic factors associated with different problems may overlap).

Building on Genn’s (1999, p. 31) simple cross-tabulations showing ‘the overlap between the incidence of different types of problems’, sophisticated forms of analysis have now been used to investigate clusters in a number of jurisdictions (e.g. Pleasence et al. 2004b; Gramatikov 2008b; Currie 2009; Coumarelos 2012). The most visible clusters consistently have been seen in the context of family breakdown, where domestic violence, divorce, ancillary issues and problems concerning children link closely. Other clusters have also been identified, including clusters centred on economic activity (e.g. problems concerning employment, money, consumer transactions, welfare benefits and housing), and problems centred on poor quality housing.

In Australia, the LAW Survey data revealed three main legal problem clusters. A first comprised family and credit/debt problems. A second comprised problems concerning employment, personal injury, health and rights. A third comprised the four most frequent problem types – namely consumer, crime, government and housing related problems – along with money problems (other than credit/debt).

Legal problems in a broader context

Looking more broadly, and building on the patterns of vulnerability to legal problems outlined above, the LAW Survey data allows a picture to be built up of the degree to which the experience of legal problems overlaps with non-legal public service needs.

¹⁵ Clustering refers to an increased propensity for certain problem types to co-occur when multiple problems are experienced.

Table 2.1 presents new analysis of LAW Survey data showing the overlap between three different non-legal public services needs: health service needs, housing service needs and unemployment service needs. These (likely) needs were proxied by self-reported disability status, type of home housing and whether respondents had been unemployed (and either looking for work or receiving a disability or carer allowance) and in receipt of government payments. For health and unemployment service needs, the data allowed for analysis of a sub-group of more considerable needs, based on those who reported that their disability had at least a moderate impact on daily activities or had been unemployed for the entire year leading up to interview.¹⁶ Indication is also given of the degree of overlap between each non-legal service need and the experience of legal problems, and the extent of need across the whole population (i.e. all respondents).

Table 2.1: Percentage overlap of different welfare needs of LAW Survey respondents¹⁷

Type of need	Per cent overlap with other defined needs						
	Health	Considerable health	Housing	Unemployment	Considerable unemployment	Legal problem	Substantial legal problem
Health	–	–	12.4	23.7	2.7	61.0	41.7
Considerable health	–	–	14.6	31.1	2.6	64.6	49.7
Housing	41.1	24.0	–	26.7	4.5	60.9	42.4
Unemployment	57.2	37.0	19.4	–	–	59.5	42.7
Considerable unemployment	43.9	20.9	22.2	–	–	61.9	43.3
Legal problem	24.1	12.6	7.4	9.8	1.5	–	–
Substantial legal problem	30.3	17.8	9.3	12.9	1.9	–	–
All respondents	19.8	9.8	6.0	8.2	1.2	49.7	27.2

As is evident, there was a significant degree of overlap between needs. So, for example, while just 6 per cent of respondents had housing service needs, the figure was 12 per cent for those with health service needs, 15 per cent for those with considerable health service needs, 19 per cent for those with unemployment service needs and 22 per cent for those with considerable unemployment service needs. As is also evident, each non-legal public service need was associated with elevated reporting of legal problems.¹⁸

Looking at those respondents who were eligible for legal aid,¹⁹ they were also associated with high levels of non-legal public service needs. So, 33.4 per cent reported a health service need (19.2% a considerable health service need), 12.1 per cent reported a housing service need and 20.4 per cent an unemployment service need (3.6% a considerable unemployment service need). For those respondents who were eligible for legal aid and also reported one or more legal problems, levels of non-legal public service needs were higher still. So, 41.2 per cent reported a health service need (25.7% a considerable health service need), 15.9 per cent reported a housing service need and 26.5 per cent an unemployment service need (4.9% a considerable unemployment service need).

The overlap between non-legal public service needs, and the overlap of non-legal public service needs and legal problem experience, is explored further in Table 2.2. While only a relatively

¹⁶ For all types of non-legal public service need, respondents who were categorised as having a need had a median individual annual income of less than \$21 000. For others, the median income was over \$31 000. Half of those with multiple non-legal public service needs had formal education only to Year 11 or below, compared to 44 per cent for those with one or more needs and 28 per cent for others. Slightly more of those with non-legal public service needs had English as a main language.

¹⁷ Within the LAW Survey there were 10 289 respondents who had experienced one or more legal problems (5637 of whom had experienced one or more substantial legal problems). Details of frequencies for non-legal public service needs are set out in Table 2.2.

¹⁸ Just under half (46%) of the 9 per cent of LAW Survey respondents who reported 65 per cent of legal problems also had non-legal public service needs, twice as many as other respondents.

¹⁹ See above, footnote 12.

small percentage of respondents had all three non-legal public service needs (1.1%), a significant percentage had two (6.5%). Moreover, those respondents who had multiple non-legal public service needs were significantly more likely to have experienced legal problems. Indeed, in the case of those with three non-legal public service needs problem prevalence rose to 75 per cent, and in the case of those with multiple substantial non-legal public service needs it rose to 79 per cent.

Table 2.2: Percentage of LAW Survey respondents with welfare needs

<i>Non-legal public service need</i>	<i>Number</i>	<i>Per cent of all LAW Survey respondents</i>	<i>Per cent reporting one or more legal problems</i>
Health	4095	19.8	61.0
Housing	1235	6.0	60.9
Unemployment	1700	8.2	59.5
Health + housing	507	2.4	66.8
Health + unemployment	971	4.7	61.9
Housing + unemployment	331	1.6	71.3
Health + housing + unemployment	233	1.1	75.1
Considerable health	2021	9.8	64.6
Considerable unemployment	252	1.2	61.9
Considerable health + considerable unemployment	53	0.3	79.2
All LAW Survey respondents	20 716	100	49.7

Figure 2.7 illustrates the rate at which respondents with different non-legal public service needs reported different types of legal problem. With the sole exception of (non-injurious) accidents, those with non-legal public service needs were substantially more likely to report legal problems of all types. For example, while just 3 per cent of those with no non-legal public service needs reported legal problems concerning debt, the figure was 8 per cent for those with health service needs, 12 per cent for those with housing service needs and unemployment service needs and 20 per cent for those who had all three needs. Similarly, while just 2 per cent of those with no non-legal public service needs reported legal problems concerning rented housing, the figure was 4 per cent for those with health service needs, 6 per cent for those with unemployment service needs, 10 per cent for those with housing service needs and 18 per cent for those who had all three needs.

Reflecting their substantially increased vulnerability to problems, those with all three non-legal public service needs were more than 50 times as likely to report legal problems concerning health services.

Figure 2.8 shows the mean number of each type of legal problem respondents with different non-legal public service needs reported (for those who reported at least one problem). Those with non-legal public service needs reported a greater number of legal problems across all types apart from accidents and owned housing. In some cases, the difference in the mean number of problems reported was substantial. For example, while just 0.2 per cent of respondents with no non-legal public service needs had experienced legal problems concerning health services, the figures were 3 per cent for those with housing service needs, 4 per cent for those with unemployment service needs, 5 per cent for those with health service needs and 11 per cent for those with all three needs. Similarly, while just 3 per cent of respondents with no non-legal public service needs had experienced legal problems concerning debt, the figures were 8 per cent for those with health service needs, 12 per cent for those with housing service needs and unemployment service needs, and 20 per cent for those with all three needs.

Legal problems and crime

Non-crime legal problem experience, crime victimisation and criminal offending have all been linked to elements of social disadvantage, entailing some degree of overlap of experience (Kemp, Pleasence & Balmer 2008).

Figure 2.7: Percentage of LAW Survey respondents reporting legal problems by type of problem and non-legal public service needs

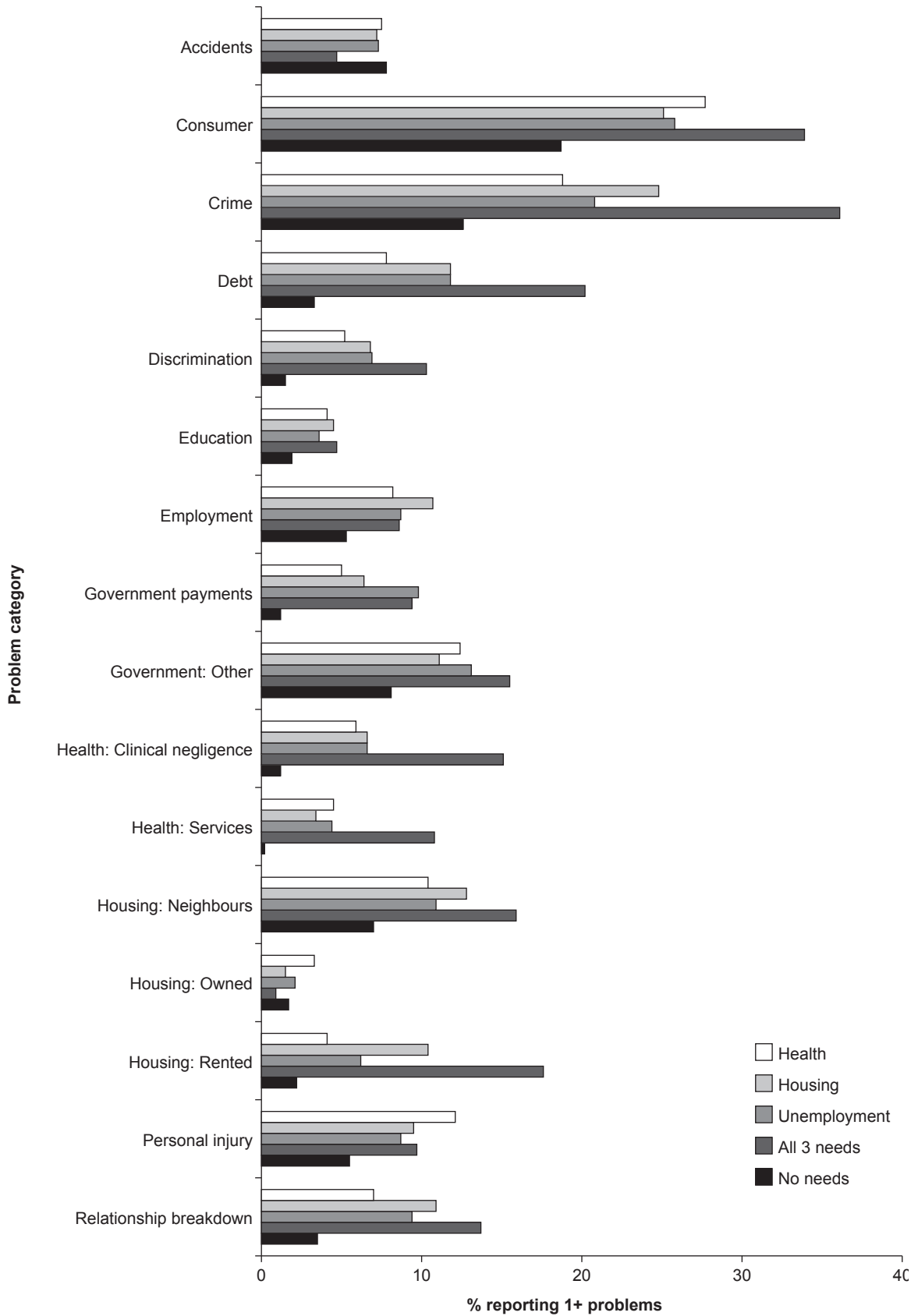
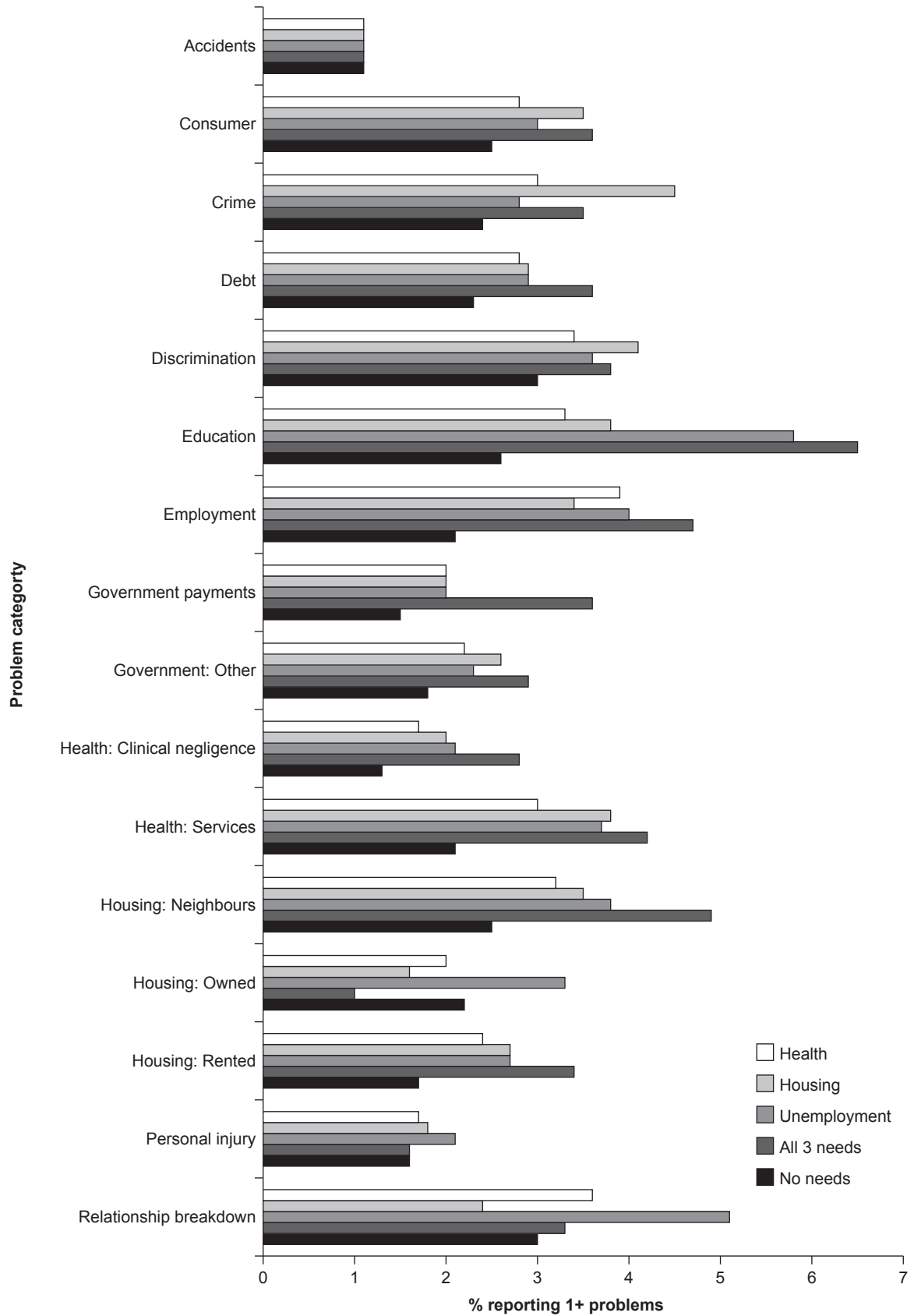


Figure 2.8: Mean number of legal problems reported by LAW Survey respondents by type of problem and non-legal public service needs



Single parents, those in rented accommodation and the unemployed have all been found to be more likely to be victims, particularly multiple victims, of crime (e.g. Johnson 2005; Mukherjee & Carach 1998; Tseloni 2006; Tseloni & Pease 2004).²⁰ As with legal problems in general, a principal driver seems to be vulnerability through exposure. So, for example, Tseloni (2006, p. 277) found that property crime victimisation was associated with single parenthood and social renting, ‘via social vulnerability’ and, in the latter case, ‘proximity to potential offenders’. Criminal offending is also associated with disadvantage (e.g. Weatherburn 2001).

While just 42 per cent of LAW Survey respondents who had not been victims of crime reported non-crime legal problems, 73 per cent of victims did so. Looking at victims of crime who also suffered from multiple disadvantage, 79 per cent reported non-crime legal problems (at a mean rate of nine problems each). Victims of crime also suffering multiple disadvantage reported problems concerning discrimination, government payments and health²¹ more than 10 times as often as respondents who were neither victims of crime nor suffered multiple deprivation. They also reported problems concerning debt, education, rented housing and relationship breakdown more than five times as often.

Turning to criminal offenders, 84 per cent reported one or more non-crime legal problems (at a mean rate of 10 problems each). Of those alleged to have committed more than two offences, 98 per cent reported one or more civil legal problems (at a mean rate of 27 problems each).

Figure 2.9 sets out the pattern of civil legal problem experience for criminal offenders. Offenders reported problems concerning discrimination and government payments more than five times as often as others. They also reported problems concerning debt, personal injury and relationship breakdown more than four times as often, and education, health and rented housing problems more than three times as often.

Resolving legal problems: the big picture

There are many potential paths to justice that people can take when faced with legal problems. Figure 2.10 shows the basic strategies employed by LAW Survey respondents to deal with legal problems, as reported in the main LAW Survey report (Coumarelos et al. 2012). Advice was sought in relation to a slight majority of problems (51%), with respondents dealing with most of the remainder on their own, though no action was taken to deal with a significant number (18%) of them.

There was no uniformity of strategy between problem types or (again) population groups. Regression analysis indicated that some problem types were associated with high levels of inaction (e.g. accidents, debt and health) and, when action was taken, problem types were associated with handling without advice (e.g. consumer and housing) and some with handling with advice (e.g. personal injury, crime and family).²²

Regression analysis also indicated that those whose main language was not English, those with fewer educational qualifications and those who had been unemployed were less likely than others to act to resolve problems and, when action was taken, less likely to seek advice.²³ This suggests an association between elements of social disadvantage and basic problem resolution strategy that sits on top of the association between social disadvantage and vulnerability to problems. This is an association given further credence by the findings of more recent regression analysis of LAW Survey data pointing to both lack of awareness of legal services and low income being related to a

²⁰ Though it is to be noted that some relatively advantaged groups, such as those on higher incomes, have also been found to be at elevated risk of crime victimisation (e.g. Johnson 2005).

²¹ Including clinical negligence, problems concerning treatment for mental illness and problems concerning health services more generally.

²² Later regression analysis indicated a link between problem seriousness and basic strategy also (Pleasence, Wei & Coumarelos 2013). Overall, fewer minor than substantial problems led to action being taken (12% versus 24%) or advice being sought (41% versus 62%), while the reverse was the case for handling without advice (35% versus 26%).

²³ In terms of age, the oldest respondents were associated with overall inaction and the youngest with a lower propensity to obtain advice. More recent analysis also indicates an interaction between action and remoteness in the case of Indigenous status, with Indigenous Australians less likely to take action in more remote areas. It should be noted that the analysis also indicated the same for those without a disability — perhaps linking to greater referral activity in respect of those with a disability.

Figure 2.9: Percentage of LAW Survey respondents reporting legal problems by type of problem and whether criminal offender

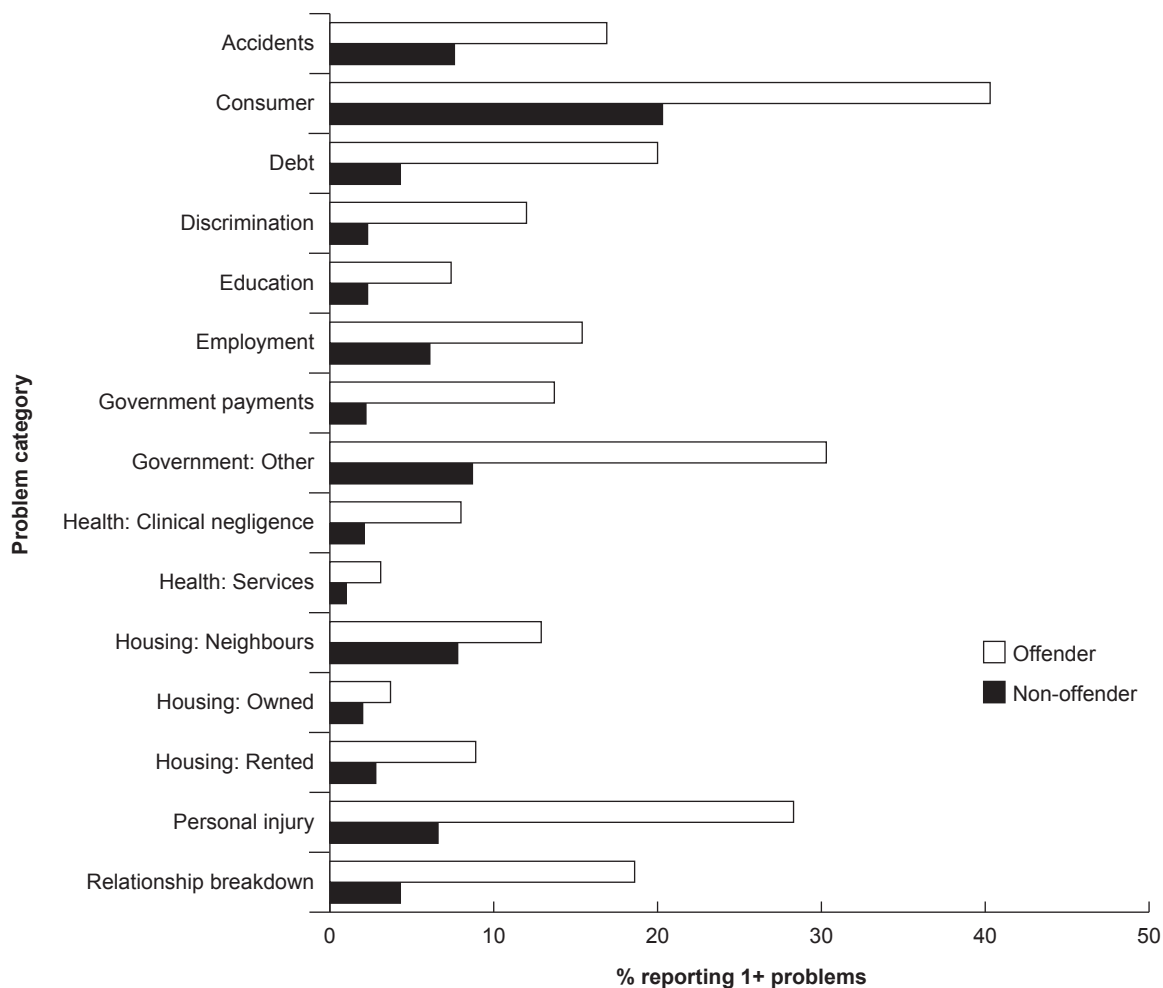
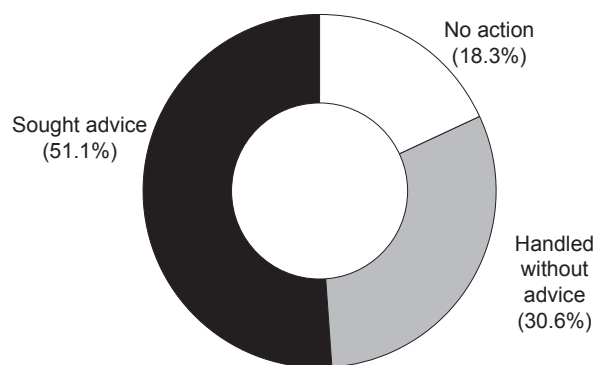


Figure 2.10: Problem resolution strategies utilised by LAW Survey respondents



lesser propensity to take action to resolve legal problems (Iriana, Pleasence & Coumarelos 2013a; Pleasence, Wei & Coumarelos 2013).²⁴ It may be that in the LAW Survey analysis awareness was acting in part as a proxy for availability of legal services. However, this finding is similar to that of Pleasence (2006), who was able to account for the availability of services. They found that inaction was far more common among respondents who were unaware of advisers in their locality than among respondents who were aware of local advisers.

²⁴ As is detailed in a later section.

Table 2.3: Reasons for no action in response to legal problems, LAW Survey

<i>Reason for No Action</i>	<i>Number</i>	<i>Per cent</i>
Problem not very important	1437	43.0
Problem resolved quickly	1874	56.1
Would take too long	1182	35.4
Would be too stressful	989	29.6
Would cost too much	906	27.1
Would damage relationship with other side ²⁵	425	12.7
Would make no difference	1879	56.2
Had bigger problems	1038	31.1
Was at fault/there was no dispute	914	27.4
Didn't know what to do	714	21.4
Didn't need information/advice	1310	39.2
Other reason	428	12.8

N=3342 problems where no action. Data were missing for 154 problems. Percentages do not sum to 100 because multiple reasons were reported for some problems.

Barriers to action: social disadvantage and capability

Findings that inaction in the face of legal problems is more likely among those who have low income, low awareness of legal services, fewer educational qualifications and a main language other than English point to associations between strategy, social disadvantage and capability. These findings also tie in with LAW Survey respondents' rationales for inaction and evidence from legal needs surveys more broadly that many people 'lump' justiciable problems because they are unsure about their rights, prospects, and/or the availability of help (e.g. Genn 1999; Pleasence et al. 2001; Currie 2007; McDonald & People, forthcoming).

Table 2.3 sets out the reasons for inaction provided in respect of the 18 per cent of LAW Survey problems that saw no action taken to resolve them. In 21 per cent of cases (4% of problems overall), respondents reported that one of the reasons they took no action was because they did not know what to do, and in 27 per cent of cases (5% of problems overall) concerns were expressed about the cost of taking action.

In raw data terms, respondents who provided these reasons were more likely to be characterised by disadvantage. For example, of those who took no action because they did not know what to do, 35 per cent were eligible for legal aid, 15 per cent were unemployed, 4 per cent were long-term unemployed and 12 per cent were living in disadvantaged housing, compared to 27 per cent, 10 per cent, 2 per cent and 7 per cent of others.²⁶ For concerns about cost, the figures were 32 per cent, 12 per cent, 4 per cent and 10 per cent, compared to 27 per cent, 11 per cent, 2 per cent and 7 per cent.

Regression analysis of LAW Survey data has also found that three of the reasons for inaction — respondents who didn't know what to do, thought it would be too stressful, and thought it would cost too much — were patterned by legal problem and socio-demographic characteristics (McDonald & People, forthcoming). Importantly, the findings indicated that personal legal capability is unequally distributed across the community. It is also problem and context specific. For instance, respondents who took no action because they 'didn't know what to do' were more likely to have low awareness of public legal services, low education, and to have been unemployed within the previous 12 months. Inaction because it 'would be too stressful' was more likely for

²⁵ Respondents were not asked about this reason for the 785 problems where there was no other side or the other side was an unidentified person.

²⁶ Various other studies have also revealed associations between disadvantaged groups, such as homeless people, people with a mental illness, prisoners, marginalised youth, people with debt problems and vulnerable workers and low levels of legal knowledge and capability (Buck, Tam and Fisher 2007; Casebourne, Regan, Neathey and Tuohy 2006; Day, Collard and Hay 2008; Forell, McCarron & Schetzer 2005; Grunseit, Forell and McCarron 2008; Karras, McCarron, Gray and Ardasinski 2006; Parle 2009).

females, people living in disadvantaged housing and people with a non-English main language. Taking no action because it ‘would cost too much’ was found to be more likely for people with an annual income of less than \$52 000.

Sources of advice: legal and non-legal

As has been found the world over (Pleasence & Balmer 2013), a broad range of advisers was consulted by LAW Survey respondents who faced legal problems.

Of those LAW Survey problems in which advisers were consulted, 30 per cent saw the use of a legal adviser, while the remaining 70 per cent saw the use of only non-legal advisers. The most common legal advisers were private lawyers (21% of problems where advisers were used), legal aid (6%), court services (3%) and CLCs (2%). Common non-legal advisers included the police (21% of problems where advisers were used), doctors (18%²⁷), insurance companies/brokers (11%) and trade unions/professional associations (8%). Other advisers included accountants, banks, employers and members of parliament.

Table 2.4: Selected adviser types by selected problem types (LAW Survey) (per cent)

Adviser type	Legal problem type						
	Accidents	Consumer	Employment	Family	Housing	Personal Injury	All
Legal adviser	8.4	22.2	22.1	71.3	33.3	22.3	30.3
Legal Aid	1.7	2.8	3.5	21.9	5.1	2.7	6.0
CLC	0.8	0.5	1.5	5.8	3.4	0.7	1.7
Private lawyer	5.1	16.2	16.0	49.6	19.3	17.2	21.3
Dispute/complaint-handling body	1.0	29.8	7.3	5.7	7.5	3.9	8.1
Government adviser	26.7	27.1	17.8	36.3	63.3	16.9	38.8
Local council/government	0.3	2.8	0.6	0.8	31.8	1.7	5.9
Police	25.6	4.2	2.2	11.2	20.3	7.6	21.4
Trade/professional association	0.4	8.4	45.3	1.1	4.6	12.1	7.6
Health or welfare adviser	5.1	8.6	35.6	47.6	8.9	79.1	27.2
Doctor	4.0	6.0	27.1	26.1	5.0	68.7	18.9
Psychologist/counsellor	0.4	1.4	13.5	24.5	2.0	5.3	7.2
Social/welfare worker	0.3	0.9	1.4	5.8	0.9	0.9	2.4
Financial adviser	76.3	20.3	10.1	15.4	8.1	12.7	22.2
Accountant	0.9	5.1	5.3	7.2	2.1	2.1	5.8
Insurance company/broker	72.6	5.7	1.1	0.7	2.2	9.9	10.8
Other adviser	9.2	13.3	31.3	14.4	13.1	20.7	17.1
Employer/boss/supervisor	7.5	4.6	23.7	4.1	2.3	16.0	7.2
School/educational institution	0.5	0.0	4.5	6.0	1.2	3.0	4.3
All problems where advice N	763	986	719	855	1070	808	9783

As Table 2.4 shows, advisers varied by problem type. So, while 71 per cent of family problems saw a legal adviser being used, the figure was just 8 per cent in the case of accidents. In contrast, while just 1 per cent of family problems saw a trade/professional association used, the figure was 45 per cent for employment problems.

Advisers also varied considerably by population group. In part this will be a reflection of the different problems faced by different groups within the Australian community. However, it will also be a reflection of opportunity, preference and capability.

²⁷ Overall, health professionals were used in relation to 27 per cent of problems in which advisers were used.

As can be seen from Table 2.5, those with non-legal public service needs who sought advice were (generally) slightly more likely to consult a legal adviser, and (generally) substantially more likely to consult legal aid or a CLC. Notably, they were also substantially more likely to consult a social/welfare worker, doctor or other health professional. So, while just 1 per cent of those LAW Survey respondents with no non-legal public service needs consulted a social/welfare worker, the figure was 12 per cent for those with a health, housing and unemployment need. Likewise, while 13 per cent of those with no non-legal public service needs consulted a doctor, the figure was 40 per cent for those with a health, housing and unemployment need.

Not all advisers respondents consulted will have been ideally suited (or even appropriate) to dealing with their problems. As Pleasence (2006, p. 79) described the situation in the English and Welsh context, 'people's choices of advisers, although often logical and apposite, can be uncertain and unpromising'.

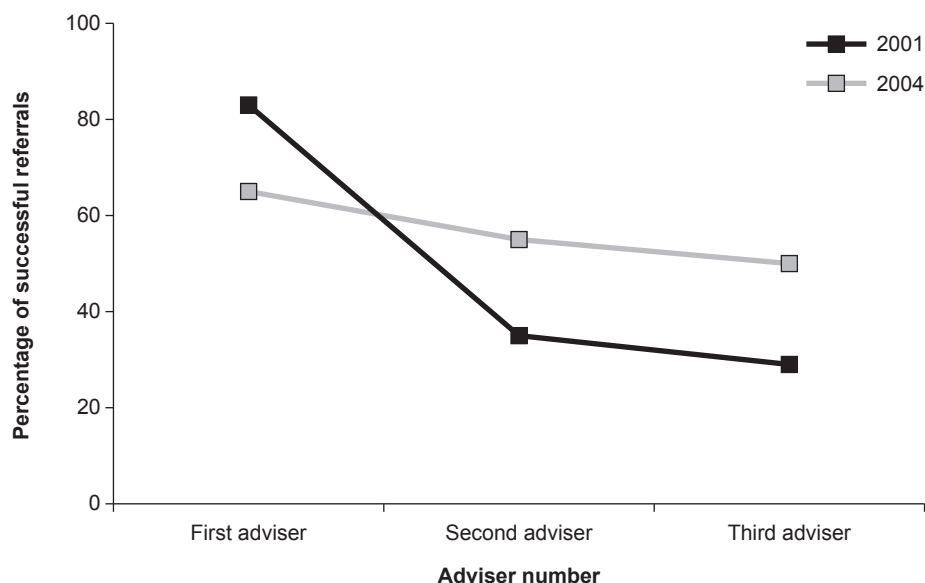
Unfortunately, legal needs surveys also tell us that, when people seek advice from an inappropriate source they will not necessarily be subsequently pointed in the right direction. Moreover, even if they are pointed in the right direction, they will not necessarily arrive at an appropriate destination.

Table 2.5: Selected adviser types by non-legal public service needs (LAW Survey) (per cent)

Adviser type	Non-legal public service need						
	Health	Housing	Unemployment	All three	Moderate Health +	Long-term unemployment	None
Legal adviser	32.6	36.3	36.7	32.7	36.5	27.2	28.7
Legal Aid	7.6	10.5	11.3	10.3	8.7	5.4	4.6
CLC	2.3	4.3	3.5	5.3	2.3	1.4	1.3
Private lawyer	21.9	20.1	21.1	15.5	24.5	20.3	21.1
Dispute/complaint-handling body	8.8	7.8	8.8	7.6	9.0	8.1	7.7
Government adviser	35.9	43.9	38.7	42.2	35.8	35.4	40.2
Local council/government	4.7	4.1	3.5	3.0	3.9	2.0	6.7
Police	18.9	24.8	19.0	20.8	18.5	18.9	22.4
Trade/professional association	8.4	4.0	4.9	3.4	9.4	1.4	7.7
Health or welfare adviser	43.8	39.9	46.4	60.5	49.9	50.0	19.2
Doctor	31.5	25.0	31.5	39.8	36.9	27.2	13.1
Psychologist/counsellor	11.8	12.1	11.9	17.9	11.9	17.0	5.0
Social/welfare worker	4.4	5.9	6.8	12.2	5.6	4.1	1.4
Financial adviser	18.4	13.8	13.7	8.7	15.7	18.2	25.1
Accountant	4.9	3.0	2.8	1.1	4.3	3.4	6.5
Insurance company/broker	7.4	4.6	5.1	1.9	6.3	6.8	13.1
Other adviser	16.4	18.7	12.4	11.7	15.8	12.8	17.1
Employer/boss/supervisor	6.8	7.1	3.7	4.6	6.4	0.0	7.3
School/educational institution	3.8	6.6	4.2	2.7	3.6	5.4	4.1
All problems where advice N	2284	875	1186	263	1647	148	6170

Signposting and referral is frequently ineffective and Pleasence (2006), drawing on both the 2001 and 2004 English and Welsh Civil and Social Justice Surveys has laid bare the phenomenon of referral fatigue, whereby people become less likely to successfully act on a referral each consecutive time they are referred on (Figure 2.11).

Figure 2.11: Percentage of successful referrals by adviser number in sequence (English and Welsh Civil and Social Justice Survey, taken from Pleasence (2006))



The use of lawyers: inequality of access

As with action to resolve problems, regression analysis of LAW Survey data points to lawyer use being linked to social disadvantage and capability (Iriana, Pleasence & Coumarelos 2013b; Pleasence, Coumarelos & Wei 2013; Pleasence & Macourt 2013). Among those who took action to deal with problems, lawyer use was low for those not aware of legal services, those living in very remote areas and those with a first language other than English (particularly if they had poor English language skills²⁸). Lawyer use also increased with age and was high among those with the highest incomes.

Awareness

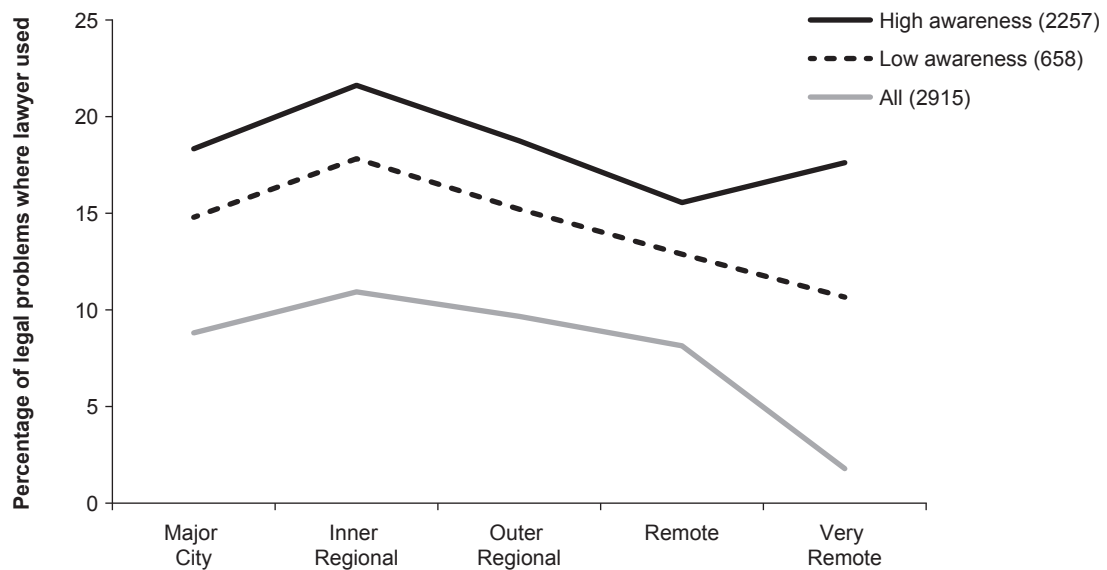
Figure 2.12 illustrates the combined impact of awareness and remoteness on lawyer use. Significant differences are apparent (Iriana, Pleasence & Coumarelos 2013b). Evidently, those LAW Survey respondents who had high awareness of legal services were much more likely to make use of lawyers.

As noted above, this may in part have been down to awareness acting as a proxy for availability of legal services; though this is less likely to have been the case in city and inner regional areas. In any event, the finding demonstrates a clear barrier to accessing legal services.

Also, it can be seen that lawyer use peaked (at 22% of cases) among respondents living in inner regional areas and with high awareness of legal services, but was negligible (2%) among the small number of respondents who were living in very remote areas and had low awareness of legal services.

Linking to awareness of legal services, there is also increasing evidence from legal needs surveys that people's advice seeking behaviour is influenced by beliefs about law, lawyers and dispute resolution, as well as people's perceptions of the issues they face and their motivations in addressing issues through particular channels. Surveys in both Japan and the United Kingdom have indicated that whether legal problems are perceived as being 'legal' influences whether lawyers are sought (Murayama 2009; Pleasence, Balmer & Reimers 2011). People's expectations about how problems should resolve have also been found to be influential (Gramatikov 2008b), as has people's confidence in resolving particular forms of disputes (Gramatikov & Porter 2010).

²⁸ Proxied by completion of the LAW Survey interview in a language other than English.

Figure 2.12: Use of lawyers by LAW Survey respondents, by awareness and remoteness

Cost

Cost is commonly reported as a worry in the context of legal assistance. A recent study of unmet legal need by the Australian Institute of Health and Welfare (2012) found that the vast majority of survey respondents, 83 per cent, agreed with the statement that ‘only the very wealthy can afford to protect their legal rights’. Respondents to the LAW Survey whose main adviser was a lawyer reported that they were ‘too expensive’ in 23 per cent of cases. Elsewhere, the New Zealand National Survey of Unmet Legal Needs and Access to Services found that 27 per cent of respondents did not approach a lawyer to help with legal problems because of ‘the cost’ (Ignite Research 2006).²⁹

Figures 2.13 and 2.14 illustrate the combined impact of income and legal aid eligibility³⁰ on lawyer use, separating out the use of low-income focused (i.e. legal aid and CLC) lawyers and private lawyers.³¹

While the prominence of income as a factor influencing lawyer use remains debated (Kritzer 2008; Pleasence & Balmer 2012), national legal needs surveys have pointed to a quite subtle relationship between income and lawyer use; one that links to the availability of legal aid and alternative funding mechanisms (such as contingency fees). Some national surveys have found evidence of a positive relationship between income and lawyer use, but one that is moderated by the availability of legal aid and alternative funding mechanisms. For example, in England and Wales, Pleasence and Balmer (2012) found that for problem types where legal aid was generally available the relationship between income and lawyer use was ‘U-shaped’; a finding echoed in New Zealand, Canada, Scotland and the Netherlands (Maxwell et al. 1999; Genn & Paterson 2001; Currie 2009; Pleasence & Balmer 2009).

When the same analysis was repeated for problems concerning personal injury problems, where no win no fee arrangements are possible, no statistically significant differences were found in the use of either low-income focused lawyers or private lawyers by legal aid eligibility/income.

However, as is illustrated in Figure 2.14, when the same analysis was repeated for all other LAW Survey problems, a strong association between income and private lawyer use saw those LAW Survey respondents on higher incomes much more likely, overall, to use a lawyer.

²⁹ See also Centre for Innovative Justice (2013).

³⁰ See above, footnote 12.

³¹ Recent analysis of LAW Survey data indicates that people on low and middle incomes (i.e. less than \$52 000 per annum) were significantly more likely than those on higher incomes to say they took no action for a legal problem because it ‘would cost too much’ (McDonald & People, forthcoming).

Figure 2.13: Use of lawyers for family problems by LAW Survey respondents, by family unit income and legal aid eligibility status

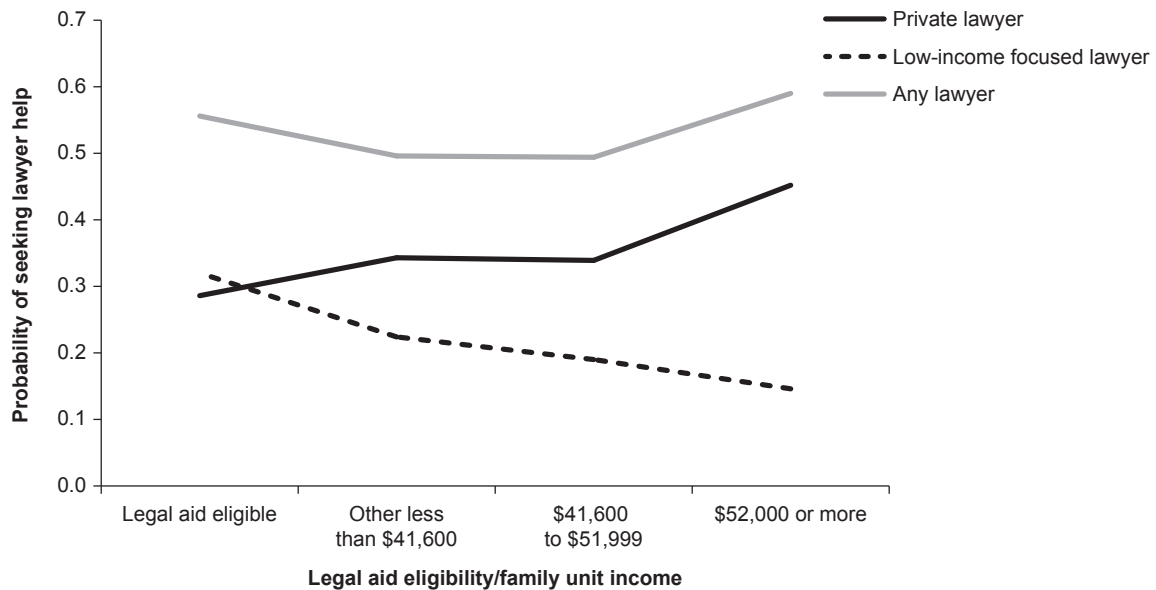
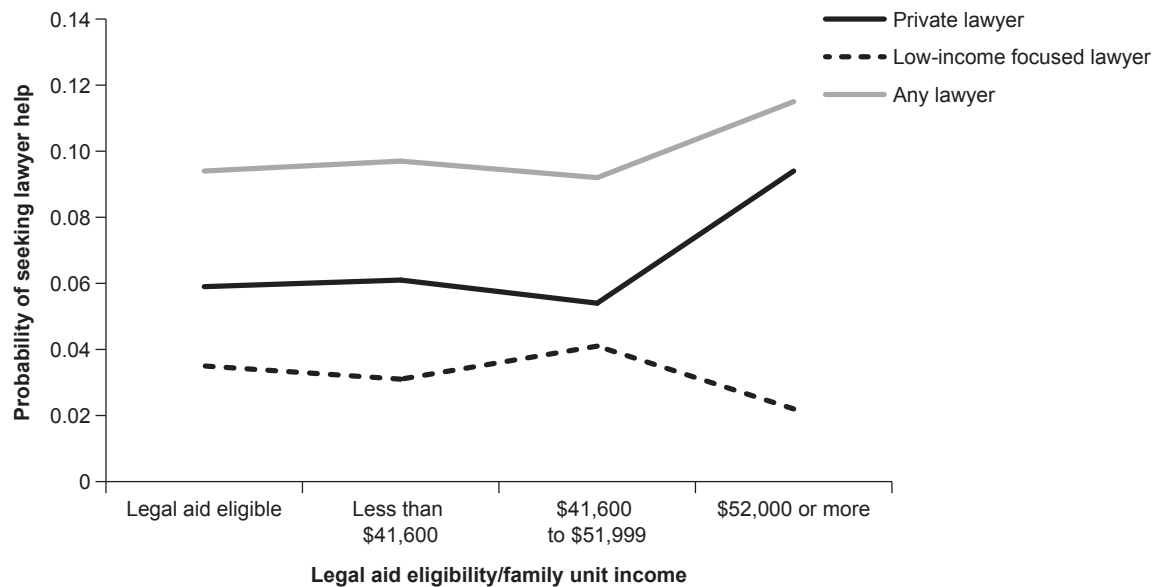


Figure 2.14: Use of lawyers by LAW Survey respondents, by family unit income and legal aid eligibility status (excluding family and personal injury problems)

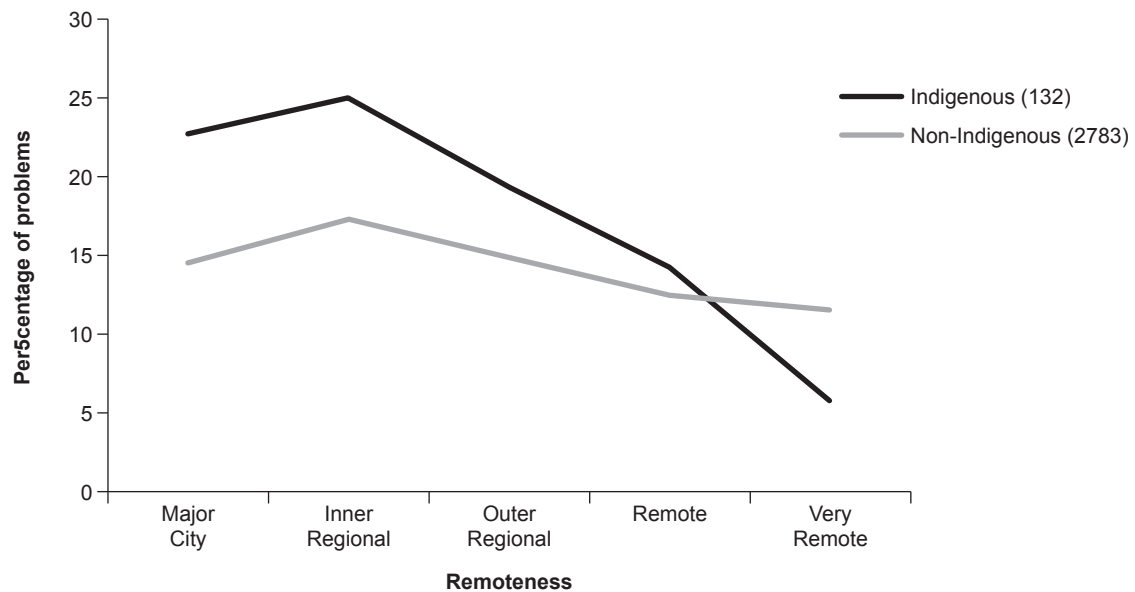


But, tying in with the findings set out in Table 2.4, it should also be noted that there was a very low rate of lawyer use in relation to non-family and non-personal injury problems recorded by the LAW Survey, evidencing an issue highlighted by Balmer, Pleasence and Reimers (2011) in England and Wales, that the great broadening of the scope of law over recent decades has not been fully reflected in the work undertaken by lawyers.

Indigenous Australians

While the main LAW Survey report suggested that there is little difference, once other factors are taken into account, in the overall patterns of problem resolution behaviour between Indigenous and other Australians (Coumarelos et al. 2012), evidence from new regression analysis points to an interaction between Indigenous status and remoteness when it comes to the use of lawyers (Iriana, Pleasence & Coumarelos 2013a).

Figure 2.15: Use of lawyers by LAW Survey respondents, by Indigenous status and remoteness



As is illustrated by Figure 2.15, Indigenous LAW Survey respondents were significantly less likely to consult lawyers if they lived in more remote areas.

Learned behaviour

A further finding from legal needs surveys points to problem resolution behaviour becoming entrenched within individuals and households over time. Surveys in both Australia and overseas have indicated that the way that individuals respond to problems tends to be replicated in respect of later problems. For example, the LAW Survey and other surveys have suggested that those who take no action to deal with problems are 'significantly less likely than others to take action for subsequent legal problems' (Coumarelos et al. 2012, p. 106; Pleasence 2006).

Characterisation of legal problems

Emerging findings from the English and Welsh Civil and Social Justice Survey point to a link between how people characterise legal problems and how they go about resolving them (Balmer & Pleasence 2012). Characterisation of problems as 'legal', rather than moral, social, etc., greatly increases the likelihood of people looking to legal services as a solution. However, people's use of general advice services (not branded as legal) generally remains constant, irrespective of characterisation.

Mode of delivery: inequality of capability

As well as there being difference between population groups in decisions around whether, and from whom, to obtain advice, legal needs surveys and other access to justice research have also indicated differences in preference for particular advice and information delivery channels.

The main report of findings from the LAW Survey (Coumarelos et al. 2012) indicated that in 66 per cent of cases respondents communicated with their main advisers by telephone at some point, with figures of 65 per cent for in-person communication, 17 per cent for email and 15 per cent for post. As suggested, more than one form of communication was utilised on 45 per cent of occasions. However, the report went on to detail that these figures varied by the type of adviser consulted, with a higher level of use of all forms of communication used for legal advisers: in-person (75%), telephone (73%), post (29%) and email (28%).

More recent findings from the LAW survey also indicate that different population groups are associated with different propensities to use the different modes of communication, once other factors are accounted for. So, for example, the youngest LAW Survey respondents were

significantly more likely than older respondents to obtain advice only in-person (as opposed to only remotely), with the same also being true of those with poor English language skills, lower levels of education, mental health problems, the lowest incomes, living outside major cities³² and men (Pleasence, Wei & Coumarelos 2013). Those with the lowest levels of educational qualifications were also significantly more likely to use a combination of both in-person and remote communication methods (again as opposed to only remote methods), as also were Indigenous respondents, those living outside major cities (with the exception of those in the most remote areas) and men (Pleasence, Wei & Coumarelos 2013).

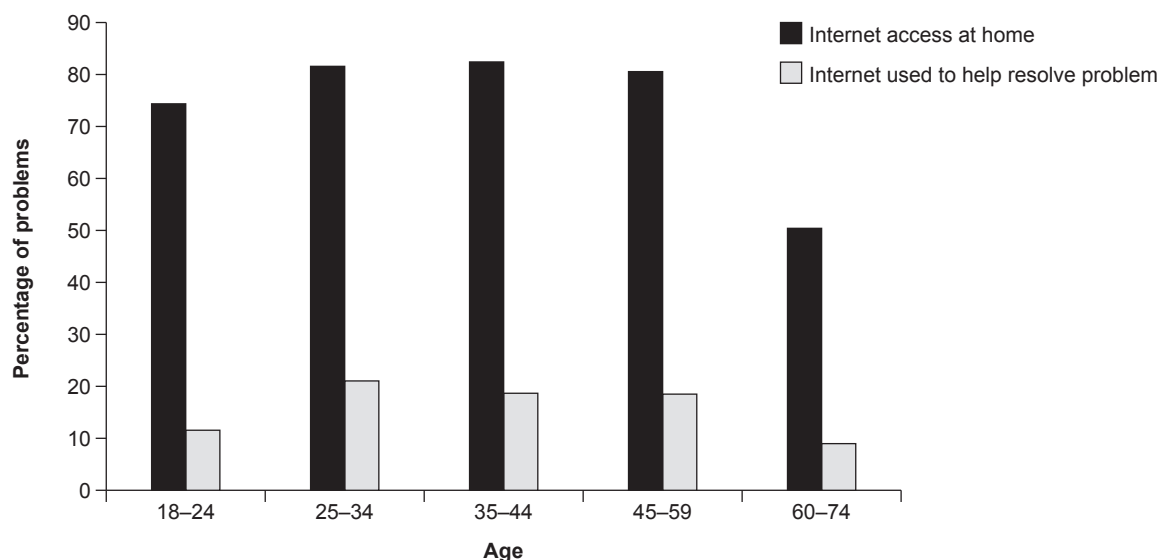
In relation to problem types, more serious problems were associated with significantly higher use of in-person communication, as were problems concerning personal injury, health, family, employment and crime (Pleasence, Wei & Coumarelos 2013). Studies elsewhere have also pointed to a greater use of in-person communication in relation to more involved or complex issues (Buck et al. 2010; Balmer et al. 2012).

Large-scale evaluations of telephone services in the United States and United Kingdom have also highlighted that the telephone is not a suitable delivery channel for all population groups (Pearson & Davis 2002; Legal Services Commission 2004). Pearson and Davis (2002), for example, pointed to clear differences in the capacities of different types of people to benefit from telephone advice, with people with lower education levels, language difficulties, lower income, and having suffered family breakdown least likely to do so. In the Australian context, it also remains the case that penetration levels for telephone and other communication technologies remain low in the Indigenous population.

To complicate matters, general patterns of use of communication technologies may not always be indicative of the appropriateness of usage. For example, there has been a suggestion — based on data from the English and Welsh Civil and Social Justice Survey — that young people, while heavy users of online services, are not great users of online advice services (e.g. Denvir, Balmer & Pleasence 2011).

However, research also clearly indicates that telephone advice offers advantages to those who live in more remote areas, those who have mobility problems, those who are time constrained, those with caring responsibilities and those without private transport (Pearson & Davis 2002; Legal Services Commission 2004). The Legal Services Commission's 2004 evaluation of a pilot telephone service found that 30 per cent of reasons for use of the pilot telephone service related to distance,

Figure 2.16: Access to and use of internet to help resolve legal problems by age
(from Denvir, Balmer & Pleasence 2011)



³² This ties in with overseas research that has suggested that proximity to legal services influences mode of access, with in-person advice becoming less prominent with distance (Patel et al. 2009).

disability or mobility problems. Moreover, as well as being valuable for those who face obstacles accessing advice through other means, the service was preferred by some.

Telephone advice has also been demonstrated to substantially extend the geographical reach of services (Meeker, Fossati & Richman 1998).

But, as the Legal Services Commission's (2004) evaluation ultimately cautioned, 'the capabilities of the client influence the complexity of problem that can be dealt with'.

Outcomes: inequality of outcomes

The various differences in problem resolution behaviour associated with different population groups would be of purely economic interest if all 'paths to justice' led to the same outcome. However, while establishing the impact of process on outcomes is far from easy (Pleasence 2008), there is evidence that basic problem resolution strategy choices may have a notable impact on outcomes. Using data from the English and Welsh Civil and Social Justice Survey, Balmer et al. (2010), for example, found that, when advice was not obtained, people unaware of their legal rights were significantly less likely than those aware of their legal rights to obtain their objectives in resolving problems (Figure 2.17). In contrast, when advice was obtained, the difference in outcomes largely disappeared (Figure 2.17). A similar pattern was observed in relation to whether people regretted the strategy they had adopted to resolve problems. So, when advice was not obtained, those unaware of their rights were significantly more likely to regret their problem resolution strategy (Figure 2.18). Again, when advice was taken, the difference largely disappeared (Figure 2.18).

Implications: key directions for reform

The impact of the findings from legal needs surveys has been profound across nations with extensive and developed public-funded legal services. As one stakeholder respondent to a review of the impact of such surveys observed, recent surveys have 'transformed thinking about legal aid and advice' (Pleasence, Balmer & Sandefur 2013) and consolidated a transition from a service to a 'more extensive user-centred' focus (Action Committee on Access to Justice in Civil and Family Matters 2013) within the legal aid sector. A United Kingdom policy stakeholder, for example, commented,

The [Legal Services Commission], backed by the government, published a paper ... 'Making Rights a Reality' ... That paper was entirely based on [legal needs survey findings] and used them [the findings] to try and reconfigure how services were organised ... It had a very great impact.

Figure 2.17: Outcome by awareness of rights and problem resolution strategy (English and Welsh Civil and Social Justice Survey) (Balmer et al. 2010)

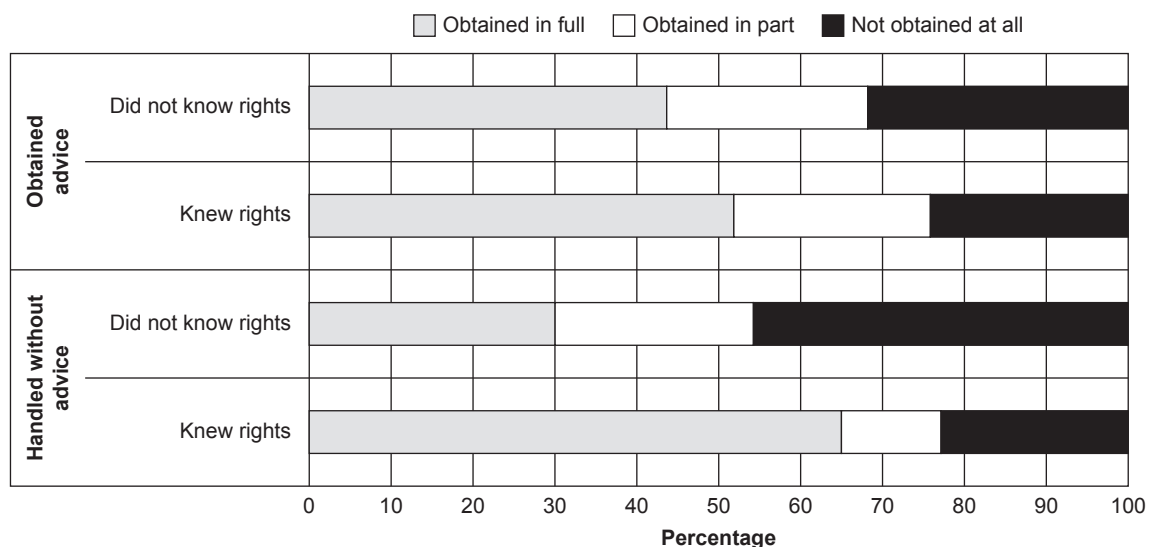
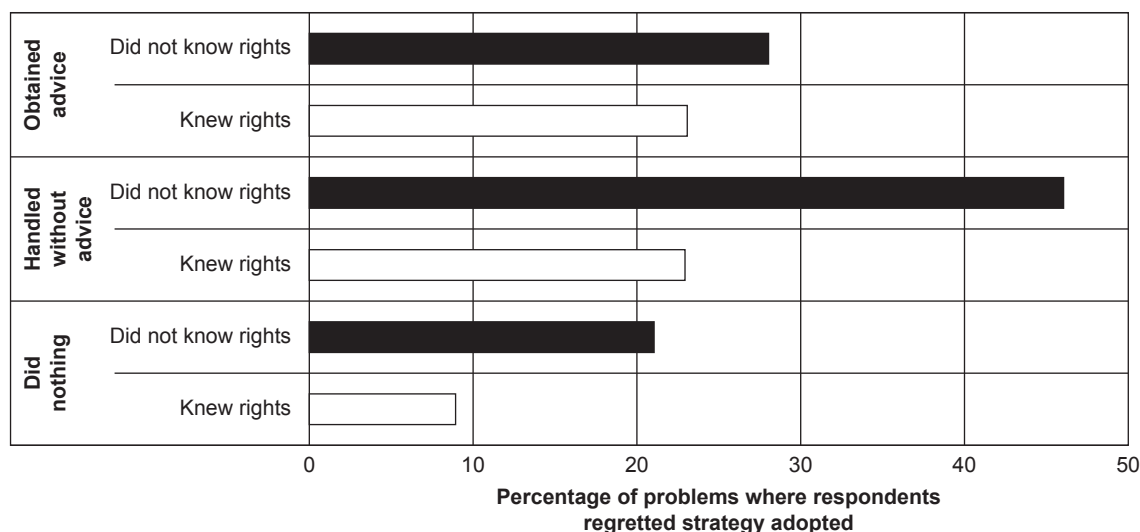


Figure 2.18: Whether strategy adopted regretted by strategy and awareness of rights (English and Welsh Civil and Social Justice Survey) (Balmer et al. 2010)



In Australia, legal needs surveys, and associated access to justice research, have been hugely influential in the development of the Commonwealth Attorney-General's Strategic Framework for Access to Justice, as well as similar state-based reviews, such as the *Review of the Delivery of Legal Assistance Services to the NSW Community* (NSW Department of the Attorney General and Justice 2012) and the on-going development of client-centred services. Findings have informed and shaped the key directions for reform of public-funded legal services; towards greater targeting (to those most in need), outreach (to target those who have difficulty access traditionally located services), joining up (of services, both legal and non-legal), early intervention (to prevent problems occurring or escalating) and appropriateness (of services, reflecting client capability).

There is also an economic basis for services to be targeted, joined-up, timely and appropriate. Targeted services help to ensure limited public funds are first used to assist those facing the most severe problems and least able to otherwise access help, thus maximising social return on investment. Joined-up services potentially provide time- and cost-efficiencies in assisting with a range of linked problems, through swifter and more effective problem noticing and referral, economies of scale, reduction in the number of public service contracts and, where underlying problems are consequently dealt with, better and more enduring outcomes. Timely services limit problem escalation, adverse consequences and dispute resolution process costs. Appropriate services (in terms of mode of delivery and level of assistance) enable efficiencies by migrating users to the least expensive services that adequately meet their needs.

Targeting

It is well understood that public-funded legal services '[address] a market failure', as 'people experiencing economic and other disadvantage are often unable to obtain legal advice and representation through the private legal services market' (NSW Department of the Attorney General and Justice 2012, p. 11). As the 2009 report of the Commonwealth Attorney-General's Access to Justice Taskforce noted, 'the costs of legal services ... are significant factors in the accessibility of advice and services' (Commonwealth Attorney-General's Access to Justice Taskforce 2009, p. 56). In this context, legal needs surveys confirm that cost can present a barrier to accessing services and indicate that public-funded legal services act to afford access to services for those who might otherwise be unable to afford them.

Moving beyond this, it is also clear from legal needs surveys that there are, among disadvantaged groups, some groups who are particularly vulnerable to the experience of legal problems, and that legal problems are often experienced in combination with other legal and related social problems. The LAW Survey findings have highlighted groups such as those facing mental health problems,

single parents, people who become unemployed and people who are homeless as being particularly vulnerable to a broad range of legal problems. Similar groups were also highlighted in submissions to the recent NSW Department of the Attorney General and Justice's review (NSW Department of the Attorney General and Justice 2012, p. 29).³³ This led the review to recommend that 'Public-funded legal assistance services should target and tailor their services to groups or areas in the community with the highest levels of legal need' (NSW Department of the Attorney General and Justice 2012, p. 4). Similarly, the National Partnership Agreement on Legal Assistance Services (Council of Australian Governments (COAG) 2010, p. 4) set out a priority of 'more appropriate targeting of legal assistance services to people who experience, or are at risk of experiencing, social exclusion'.

Outreach

It is evident that there exist physical barriers to people's ability to access legal (and other) services. Incarceration acts to physically restrict access to legal services (Grunseit, Forell & McCarron 2008), disability can involve substantially reduced mobility,³⁴ and distance can place services beyond the reach of those who do not have the means, time or money to travel.

The evidence from legal needs surveys indicates that distance from services can present a significant challenge to those needing to access legal services (Forell, Cain & Gray 2010; Cain, Macourt & Mulherin, forthcoming). Thus, the NSW Department of the Attorney General and Justice's review recommended that 'there should be a stock-take of the progress of ... strategies to support lawyers working in rural, regional and remote areas' (NSW Department of the Attorney General and Justice 2012, p. 5). Distance has also lain behind some innovations that have sought to utilise technology to overcome the need for services to be physically present in remote areas that they serve.

Legal needs surveys also demonstrate that lack of knowledge of legal rights and/or services and failure to recognise legal elements of problems also act to restrict access to legal services. So too can reservations about the use of legal services.

The Commonwealth Attorney-General's Access to Justice Taskforce (2009, p. 55) noted the evidence from legal needs surveys that 'when people experience legal issues, they often do not know where to go'. It also noted the problem of referral fatigue, which acts to limit people's prospects of obtaining support in dealing with legal issues each time they are referred on from one adviser to another.

This reflects a growing acceptance that legal services need to be more proactive in efforts to reach some of those most in need of help, and that this is likely to involve a range of actions, including harnessing wider networks of human services workers in order to facilitate the direction of those facing legal problems to appropriate legal advice. Thus, in its submission to the NSW Department of the Attorney General and Justice's review, the Council of Social Service of NSW 'recognised that social service workers in the non-profit sector can act as a gateway to an appropriate legal referral. NCOSS pointed out these workers and their organisations need support to learn how to recognise a legal problem and make the most effective legal referral' (NSW Department of the Attorney General and Justice 2012, p. 37).

The review subsequently recommended that ways should be examined 'to help non-legal professionals who deal with disadvantaged people to identify any legal issues faced by their clients and to refer those clients to appropriate legal services' (Department of the Attorney-General and Justice 2012, p. 4).

Joined-up services

Legal needs surveys have laid bare the fact that legal problems commonly exist as part of a broad set of related legal and wider social, economic and/or health problems. Moreover, there is clear evidence of links between social disadvantage and the experience of multiple legal problems, and

³³ Submissions also highlighted the disadvantage faced by recent migrants and ex-prisoners. In respect of the latter, see also, Grunseit, Forell and McCarron (2008).

³⁴ In this context see Karras et al. (2006).

the LAW Survey points to significant overlap of legal and non-legal public service needs — such as health, housing and employment related needs — in Australia.

This ties in with findings from overseas (e.g. Moorhead, Lewis & Robinson 2006; Buck et al. 2010; Balmer & Pleasence 2012) that clients of low income-focused legal services are frequently dealing (though do not necessarily present) with multiple related legal problems — typically concerning relationship breakdown, housing, debt and government payments — and associated social, economic and/or health problems.

Allied to this is a growing literature, emerging from the United States, pointing to the benefits of partnerships between legal and medical services, which has led to both the American Bar Association (in 2007) and American Medical Association (in 2010) resolving to encourage lawyers and doctors to develop partnerships so as to be able to better deal with the underlying problems faced by clients/patients.

The Commonwealth Attorney-General's Access to Justice Taskforce (2009, p. 56) stated that 'the clustering of legal problems ... indicates a need for flexibility of services to assist people with multiple problem types to deal with the underlying issues (legal or otherwise) that lead to the occurrence of legal problems'. It also recommended 'a more strategic approach to legal assistance, including greater collaboration between service providers' (p. 58). It therefore urged that 'justice initiatives should reduce the net complexity of the justice system' (p. 62), and set out its ambition of a legal (and broader) services sector in which there is 'no wrong number, no wrong door' (p. 79). This was echoed in the National Partnership Agreement on Legal Assistance Services (COAG 2010, p. 4), which set out a priority of 'increased collaboration and cooperation between legal assistance providers themselves and with other service providers to ensure clients receive "joined-up" service provision to address legal and other problems'.

In NSW, the Department of the Attorney General and Justice (2012) has recommended the promotion of 'seamless access to legal information and services' (p. 4), while highlighting that 'there are a number of key coordination mechanisms for legal assistance services in NSW, including the NSW Legal Assistance Forum (NLAF) and the Cooperative Legal Service Delivery (CLSD) Program'.

Both federal and state ambitions reflect a significant shift in policy focus from a professional to a client perspective, a recognition that legal services should mirror the experience and needs of those people who use them, and a hope that joined-up services will better deliver the whole-system objectives of federal and state governments.

Early intervention

With the recognition that legal problems can bring about and exacerbate other legal and non-legal problems (and entrench social disadvantage) has come a heightened interest in the promotion of services that can assist clients at the earliest point possible in a problem's life course. So, for example, the Review of the Commonwealth Community Legal Services Program (Commonwealth Attorney-General's Department 2008, p. 42) states that the primary function of the Commonwealth Community Legal Services program should be the provision of early intervention legal and related services designed to deal with identified needs'. Later, the Commonwealth Attorney-General's Access to Justice Taskforce (2009, p. 63) stated:

Early intervention will prevent legal problems from occurring and escalating. In many situations, early action can resolve a matter or identify the best course of action. However, if a person does nothing — which often happens if there is not enough assistance available or it is not clear to a person where to turn for help — it can be much harder and more costly to rectify the problem. Failure to address legal problems has been shown to lead to entrenched disadvantage.

Thus, one element of the proposed Access to Justice methodology was to promote 'intervening early to prevent legal problems from occurring and escalating' (p.63).

This led to the National Partnership Agreement on Legal Assistance Services (COAG 2010, p. 5) setting out a ‘performance benchmark’ of a ‘30 per cent increase in [the] number of early intervention services’.

Appropriateness of services

Legal needs surveys and broader access to justice research have made it apparent that no particular form of service delivery suits all clients. Evidently, technology may provide increased opportunity for those, for example, with mobility problems, some in remote areas and those who are time poor. As the Commonwealth Attorney-General’s Access to Justice Taskforce (2009, p. 83) observed, ‘Existing and emerging technology can greatly expand the availability of services’. However, empirical evidence points to there being vulnerable population groups that can face even greater marginalisation through retreat towards more efficient and broader reaching technology-based service delivery.

Obviously, those without access to communication technology will find technology-based services of little relevance. But those with lesser capability have also been found to be reluctant to use less intensive and personal forms of service delivery, as well as less able to use it. Moreover, in some instances, patterns of use of communications technologies mask capability issues. For example, the findings of legal needs surveys point to relatively low use of the internet to help resolve legal problems among young people who, while having high levels of access and being technologically literate are perhaps not so information and concept literate.

Consequently, the Commonwealth Attorney-General’s Taskforce also noted that ‘the Commonwealth should ensure that its focus on the Internet as a key channel for delivering information does not exclude people of any age or cultural background’. Similarly, the NSW Department of the Attorney General and Justice’s (2012, p. 40) review cautioned that:

While expanding these resources [e.g. self-help materials, internet resources] may assist and empower some people in some situations, there are many disadvantaged people for whom this kind of information is inappropriate or inaccessible, for example, those who do not have appropriate language, educational, material or motivational resources to access or use these kinds of resources.

More generally, the review also recommended that:

Publicly funded legal assistance services should ensure that, where possible and appropriate:
 (a) *relevant staff receive training on dealing with clients with mental health and cognitive impairments*
 (b) *clients with mental health and cognitive impairments have continuity of legal representation.*

But, recognition of the huge opportunities and the (perhaps³⁵) lesser expense of technology and self-help oriented services, also led the review to recommend that ‘Publicly funded legal assistance services should investigate ways in which technology may be used to deliver services more efficiently and effectively ... [and] where appropriate, identify opportunities to develop and implement self-help strategies and resources to assist those members of the public with capacity to resolve their legal issues’.

More broadly, it is recognised that legal services, as with other human services, should be delivered in a way that is appropriate to individual client’s capabilities. As the Final Evaluation Framework for the Review of the National Partnership Agreement (Allen Consulting Group 2012, p. 7) noted, ‘services should consider the characteristics and needs of the client group and how they will access the service’. The Framework went on to further note that services, ‘particularly in the context of Aboriginal and Torres Strait Islander clients ... [should be] culturally appropriate’.

35 Balmer 2012.

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3. Targeting and outreach: legal services for all

Inequality in access to justice

The fundamental importance of access to justice to community well-being is widely accepted, and equal access, regardless of financial, social and geographic circumstances, is a common objective of public legal services and governments (e.g. Commonwealth Attorney-General's Access to Justice Taskforce 2009; COAG 2010; National Legal Aid 2011; Social Inclusion Division n.d.). However, as noted by Community Law Australia (2012), inquiries examining access to the Australian legal system over the past decade have repeatedly concluded that there is significant inequality in access. Community Law Australia goes on to argue that 'chronic government underfunding' of legal assistance services has brought the system to 'crisis point'. Although there may be debate about whether the system has reached 'crisis point', the difficulty of working with limited funding and resources was a core theme arising from our consultations with legal practitioners across NSW. Furthermore, as detailed in the preceding chapter, legal needs surveys empirically confirm that cost can sometimes be a barrier to consulting a lawyer, particularly in cases where legal aid and alternative funding mechanisms are not available (e.g. Coumarelos et al. 2012; Currie 2009; Maxwell et al. 1999; Pleasence & Balmer 2009, 2012).

In addition, legal needs surveys and other research studies have laid bare a variety of other potential barriers to accessing legal assistance. The research indicates that a range of personal circumstances can limit access to justice. Most notably, as detailed in Chapter 6, studies show that people can lack the 'legal capability' necessary to resolve their legal problems. They can fail to identify that their problems have legal aspects, may only seek help from non-legal advisers about the non-legal aspects of their problems, may lack knowledge about legal rights, legal services and pathways for legal resolution, and may lack the necessary literacy and communication skills necessary to achieve legal resolution (cf. Allison, Cunneen, Schwartz & Behrendt 2012; Balmer et al. 2010; Coumarelos et al. 2012; Genn & Paterson 2001; Jones 2010; Nheu & McDonald 2010; Pleasence 2006).

The research also demonstrates that legal capability is often particularly low among disadvantaged groups – the same sections of the community who typically have the greatest vulnerability to legal problems. Studies focusing on the legal needs of specific disadvantaged groups (e.g. homeless people, Indigenous people, people with a mental illness, prisoners, people in debt, marginalised youth and vulnerable workers) have demonstrated poor knowledge about legal rights, legal remedies and the justice system, as well as poor literacy, language and communication skills. These studies have also reported a lack of psychological readiness to take action (e.g. feeling despair, overwhelmed, unworthy of justice, fear, intimidated by or distrustful of the legal system), more pressing basic needs and a tendency to ignore legal problems until they reach crisis point (e.g. Allison et al. 2012; Balmer et al. 2010; Buck, Tam & Fisher 2007; Casebourne, Regan, Neathey & Tuohy 2006; Day, Collard & Hay 2008; Forell, McCarron & Schetzer 2005; Grunseit, Forell & McCarron 2008; Karras, McCarron, Gray & Ardasinski 2006; Parle 2009).

Furthermore, the literature notes that barriers to accessing justice can result when services are not culturally sensitive and appropriate for Indigenous people and people from other culturally and linguistically diverse (CALD) backgrounds (e.g. Commonwealth Attorney-General's Access to Justice Taskforce 2009; Allison et al. 2012; Reid & Malcolmson 2008; Senate Legal and Constitutional Affairs Committee 2009). Notably, the Indigenous Australian community has experienced historical marginalisation, including marginalisation from mainstream public legal and related services (cf. Allison et al. 2012). The Australian Government's strategic framework for access to civil justice endorses the importance of 'supporting access to justice for all Australians, in a way that recognises and accommodates diversity' (Commonwealth Attorney-General's Access to Justice Taskforce 2009, p. 147).

The literature also indicates various physical and systemic barriers to accessing justice. In addition to the cost of legal services, particular barriers of note in the Australian context relate to geographical distance and fragmentation of the legal system. The ‘tyranny of distance’ in Australia has long been recognised (cf. Coverdale 2011). Australia’s enormous land mass coupled with its extremely low population density outside cities and major regional centres means that ‘achieving equity in the provision of infrastructure and services across Australia raises many challenges. Physical access to justice system services and resources is no exception’ (Coverdale 2011, p. 75). The lack of suitable public transport, health and other human services and justice services in more remote areas is well documented (Coverdale 2011). In terms of justice, it has been noted that ‘accessing legal services of any kind (public-funded or otherwise) is becoming increasingly difficult in regional, rural and remote Australia’ (Commonwealth Attorney-General’s Access to Justice Taskforce 2009, p. 146). The Senate Legal and Constitutional Affairs Committee (SLCA 2009) reported that the limited funding of public legal services contributes to the paucity of public and private lawyers based in some very remote areas. Recent research in NSW indicates, however, that the shortage of lawyers is not a uniform problem across all regional, rural or remote areas (RRR). The recruitment and retention of solicitors is more problematic in some RRR areas than others and population decline in some smaller towns has generally been paralleled by reductions in services and amenities (Cain & Forell 2010; Cain et al. forthcoming). Nonetheless, the LAW Survey found that 19 per cent of Australians in remote areas who obtained face-to-face advice for their legal problem travelled more than 80 kilometres to consult their main adviser (Coumarelos et al. 2012).

Importantly, the problem of distance and poor service infrastructure in some RRR areas is compounded by the fact that disadvantaged groups such as Indigenous Australians are more highly concentrated in RRR areas (Australian Bureau of Statistics (ABS) 2010, 2011). Thus, some RRR areas are microcosms of legal need, embodying the ‘double whammy’ of poor service infrastructure and populations with high vulnerability to legal problems.

Another systemic difficulty in Australia is the fragmentation of the legal system. A diverse range of private and public agencies provide a variety of legal services, and the available services differ across states and territories. Historically, ‘independent funding mechanisms have driven different approaches to the delivery of legal assistance services across Australia resulting in a fragmented approach to service delivery’ (Access to Justice Taskforce 2009, p. 140). Consequently, legal service delivery is typically siloed by the type of legal matter, legal jurisdiction and eligibility criteria for public legal assistance, with different types of legal issues tending to be dealt with separately by different legal service providers who function fairly autonomously (Coumarelos et al. 2012; Forell, McCarron & Schetzer 2005). It has been acknowledged that:

difficulties in navigating through the maze of services and institutions to identify the correct source of information, advice or assistance is itself a significant barrier to justice. (Access to Justice Taskforce 2009, p. 77)

The fragmentation means that legal service provision, while increasingly looking to reflect client needs, tends to be more problem-focused than client-focused. This can be a particular challenge for the especially needy who have multiple legal problems and, thus, may need to identify a separate legal service provider for each problem and navigate the disparate eligibility criteria attached to each provider. A problem-focused approach can also result in the failure to detect and address all of the legal problems faced by an individual, which can result in the need for extra contacts with legal services or, worse, in people giving up on obtaining advice (Buck, Smith, Sidaway & Scanlan 2010).

Thus, the empirical evidence is at odds with more traditional service delivery models that rely on people in need actively seeking out the professional assistance they require:

I can sit behind my damn desk and I can say ‘I’m a lawyer and I’ve had 15 years’ experience, come and see me’. If they don’t know they’ve got a problem they don’t walk through the door. (Public service lawyer)

Research findings make clear that legal service delivery will fall dramatically short of providing access to justice for all if it relies on servicing only those clients who make it through the lawyer’s

‘front door’. It is becoming increasingly evident that legal services need to be *proactive* in both reaching the community in general, and especially in reaching the disadvantaged groups who experience the most legal problems and are least able to resolve these problems alone. This appears to be ever more the case.

The remainder of this chapter examines possible strategies for increasing access to justice for the community in general, such as simplifying the gateways into legal services, more systematic use of non-legal professionals as legal ‘problem noticers’ and better legal ‘diagnosis’ and ‘triage’. The chapter then goes on to examine potential models for ‘reaching out’ to disadvantaged people and marginalised communities that are particularly unlikely to access mainstream legal assistance despite having high levels of legal need. It details some of the major challenges that such models of legal outreach must overcome, identifies the key features of successful legal outreach and the important benefits that they can produce, and outlines key considerations in planning legal outreach.

Improving access to justice for the general community

Simple gateways into legal services

The fragmented ‘maze’ of legal services underlines the importance of having simple gateways into the system of legal service provision. Simple, well-signposted entry points are critical to facilitating broad community access to legal services and the justice system, avoiding referral fatigue and maximising legal resolution (cf. Buckley 2010; Coumarelos et al. 2012; Pleasence 2006). Currently, however, there are as many entry points as legal service providers, rather than a consolidated scheme of entry. Thus, it would be useful to consider options for simplifying the entry points or ‘front door’ into the system of legal services. The most straightforward strategy from the public’s perspective may be to have a single gateway or a few major gateways into the legal service system that are well recognised, well resourced and well connected with the myriad of agencies contributing to the legal service system. A single or uncomplicated system of gateways into legal services promotes simplicity for clients, given that numerous options may be something of a chimera when people lack the knowledge for gauging their relative benefits (Clarke & Forell 2007; Pleasence 2006).

Entry points must have a number of features to be efficient and effective. First, they must have high visibility and accessibility. That is, they must be well known to the public and convenient to use. Given the low awareness of some legal services (Coumarelos et al. 2012), marketing of entry points may be necessary to ensure the public is familiar with first ports of call for legal information and advice. Ideally, entry points into legal services, and into human services more generally, should be as well known as the Triple Zero (000) emergency number.

Second, entry points must be able to act as legal ‘triage’ services, providing the first steps towards legal diagnosis. That is, they must be able to provide either a comprehensive legal ‘diagnosis’ or at least a preliminary legal diagnosis followed by suitable referral for a more complete legal diagnosis. Currently in Australia, a number of legal hotlines provide legal triage, such as LawAccess NSW and various hotlines operated by Legal Aid and community legal centres (CLCs). These hotlines vary in their scope and services, such as the extent to which they provide direct caller access to a lawyer, comprehensive referral to legal and non-legal services and follow-up ancillary services (e.g. face-to-face advice and written information). In addition, various CLCs provide generalist legal services and to some extent provide a triage service.

Third, entry points must be well connected to a wide range of legal services, so that they can provide relevant referrals to specialised legal services as appropriate. Given the overlap between legal and non-legal needs, it would also be helpful if the entry points into legal services could provide appropriate referral to other human services. Thus, the ‘front door’ entry points into legal services need to be more than just a ‘façade’ — they must provide the starting point for quick access to the most relevant legal and other human services.

Finally, entry points must be well resourced in order to fulfil these roles and to meet public need and demand for legal services. Thus, the ‘front door’ of the legal service system should ideally be obvious, well recognised and well equipped to act as a legal triage point. A key discussion point for policy makers and legal service providers is which agencies are best placed to act as effective

gateways into legal services in Australia.

Simplifying the legal service front door is likely to facilitate broad access for those in the community who recognise they have a legal problem and are ready and able to take action. However, simple, effective gateways into legal services, which efficiently triage clients to the most appropriate legal service, while highly useful, are not sufficient to achieve ‘equal access’ for all. In addition, more targeted strategies are necessary for those who do not recognise their problem has a potential legal resolution and for those who lack legal capability or face other barriers — as these people may not actively seek out legal assistance. Thus, effective gateways into legal services need to be supplemented with more targeted strategies for expanding the reach of legal services. The next sections discuss strategies for proactively reaching those who are unlikely to access the legal service ‘front door’ directly.

Non-legal gateways into legal services

A major opportunity for increasing the reach of legal services to the general community is to facilitate ‘side-door’ entry via other human services. The potential utility of harnessing wider networks of human service workers to help improve access to legal services is highlighted by legal needs surveys, including the LAW Survey, which confirm that a wide variety of non-legal workers are routinely the *only* points of contact with professionals for many people with legal problems (e.g. Coumarelos et al. 2012; Pleasence 2006). Thus, non-legal professionals are ideally placed to ‘notice’ legal problems and to act as significant gateways to legal services for people who may otherwise fail to access justice (Pleasence 2004c). The types of non-legal professionals and services that could potentially be used as ‘problem noticers’ include those routinely accessed by the general public (e.g. private doctors, community health services) and those that are frequented by particular disadvantaged groups (e.g. Centrelink, crisis accommodation services, welfare support services).

However, it is also recognised that, currently, non-legal human service providers are not necessarily well equipped to act as gateways, but may require training and support to fulfil this role effectively (Clarke & Forell 2007; Coumarelos, Wei & Zhou 2006; Pleasence 2006). For example, a public service lawyer in our consultations in Sydney noted:

what we see a lot is the need for GPs to have some sort of education to enable them to be better spotters of legal problems ... people will often go to their GP more readily than they would to a lawyer, particularly for civil law problems, which often aren't even seen as legal problems. You know, they're just problems. You know, the by-line we use in the civil division is 'law for everyday life', because it's just stuff.

Similarly, the recent review of legal services in NSW recommended that ‘further work be done to examine ways to help non-legal professionals who deal with disadvantaged people to identify any legal issues faced by their clients and to refer those clients to appropriate legal services’ (NSW Department of Attorney General and Justice 2012b, p. 37). It has also been noted that methods of harnessing the use of non-legal workers as gateways to legal services are likely to be more feasible if they are simple and not ‘overly onerous on non-legal workers, who have their own professional priorities’ (Coumarelos et al. 2012, p. 245). For example, a burdensome amount of specialised legal knowledge would need to be acquired by non-legal workers if they were expected to provide a referral to the most suitable specialist legal service in each case. Possibilities for relatively simple gateway roles, which would not require extensive legal knowledge, include:

- referring clients to one of the main ‘front door’ entry points into legal services — that is, by referring clients to a well-resourced legal ‘triage’ service (e.g. LawAccess NSW)
- acting as a point for dissemination of legal information fact sheets and packages on the types of legal problems that are relevant to their field (Coumarelos et al. 2012).

There are also examples of training non-legal workers to use screening tools or ‘legal health checks’ in order to identify legal issues faced by their clients. For example, in the United States, the I-HELP screening tool has been developed within the medical-legal partnership model for use by health care professionals to screen patients for unmet legal and other needs in the areas of **I**ncome supports, **H**ousing and utilities, **E**ducation and employment, **L**egal status (e.g. immigration) and

Personal and family stability (Lawton, Sandel, Morton, Ta, Kenyon & Zuckerman 2011).³⁶ Such tools can provide a means for identifying the full spectrum of legal (and other) needs faced by an individual, and, hence, for making legal referrals. Similar ‘legal health check’ diagnostic tools are emerging in Australia to identify legal issues across multiple life circumstances in order to provide legal and non-legal assistance. Examples include the legal health check produced by the Queensland Legal Assistance Forum to assist flood and cyclone victims,³⁷ the legal health check used to assess the legal and related needs of homeless people in Queensland entering Roma House for accommodation and support services (Encompass 2011) and the law check-up produced by Legal Aid NSW for community workers to identify everyday civil law problems.³⁸

As already noted, legal referrals need to be timely and appropriate, otherwise ‘referral fatigue’ can result in people giving up on legal resolution. The Commonwealth Attorney-General’s Access to Justice Taskforce (2009) concluded that we need to foster a ‘no wrong number, no wrong door’ best practice protocol that promotes warm referral and accurate and relevant information to build trust between the public and service providers, and to prevent people falling out of the system. Such a system would ensure that ‘no matter which information provider, legal assistance or related service a person approaches, a referral system is in place to help connect them with the most appropriate service’ (p. 79). Put simply, an efficient system is needed so that people who enter legal services via any ‘side door’ are quickly directed to the legal service ‘front door’. However, a significant development of infrastructure, problem identification protocols and referral paths would be required before a ‘no wrong number, no wrong door’ policy could be properly realised. And, as discussed earlier, once inside the legal service ‘front door’, appropriate methods for further triage or referral to the most appropriate or specialist legal service provider for the particular legal issue at hand would often also be needed.

Improving access to justice for disadvantaged people

Particular consideration needs to be given to appropriate ways of reaching disadvantaged groups, given their considerable legal and non-legal problems and their poor legal capability to resolve these problems on their own. Moreover, improving access to justice for disadvantaged groups is seen as one important route to tackling social exclusion (Pleasence 2006). Thus, the Commonwealth Attorney-General’s Access to Justice Taskforce (2009, p. 82) recommended that strategies be developed to increase ‘the accessibility of legal information and services among groups that may not be reached by more general programs. This may include targeted advertising, technological solutions, and outreach programs’.

The LAW Survey indicated that the following disadvantaged groups may benefit from targeted, tailored legal assistance because they either have high vulnerability to legal problems or are more likely to ignore their legal problems or are less likely to finalise them:

- people with a long-term illness/disability, especially those with a mental illness
- people living in disadvantaged housing, especially homeless people
- single parents
- people who are unemployed or whose main source of income is government payments
- Indigenous people
- people with a non-English main language
- people living in more remote areas (Coumarelos & People 2013; Coumarelos et al. 2012; Coumarelos, Pleasence & Wei 2013; Iriana, Pleasence & Coumarelos 2013a, 2013b; People 2013; Wei & McDonald 2013).

Various government and legal service delivery policies, guidelines and frameworks are geared to addressing the legal and related needs of disadvantaged groups. Across all human services, the Australian Government’s (2009) social inclusion agenda outlines priority areas focused on jobless families, children at risk of long-term disadvantage, the homeless, people with a disability or mental illness, Indigenous Australians and disadvantaged neighbourhoods. Similarly, the objective of the National Partnership Agreement on Legal Services is to provide:

³⁶ See also <www.medical-legalpartnership.org>.

³⁷ See <www.legalaid.qld.gov.au/floods/Documents/Legal_health_check.pdf>.

³⁸ See <laxextra.legalaid.nsw.gov.au/PublicationsResourcesService/PublicationImprints/Files/528.pdf>.

a national system of legal assistance that is integrated, efficient and cost-effective, and focused on providing services for disadvantaged Australians in accordance with access to justice principles of accessibility, appropriateness, equity, efficiency and effectiveness. (COAG 2010, p. 4)

In addition, public legal services in Australia typically have mandates focused on improving access to justice for disadvantaged people. For example, the National Legal Aid (2011) strategic plan prioritises services by areas of disadvantage and focuses on promoting social inclusion and human rights. It envisions ‘a socially inclusive, just society in which people have equitable access to services to meet their legal needs’, and identifies children, people with mental health issues and low-income consumers as the three key priority groups for the period 2011 to 2013 (p. 4). Similarly, the objective of the Commonwealth Community Legal Services Program is

to contribute to the provision of access to legal assistance services for disadvantaged members of the community and those with special needs and/or those whose interests should be protected as a matter of public interest. (Social Inclusion Division n.d., p. 7)

Our consultations with legal outreach services in RRR areas consistently indicated the disadvantage experienced by many of their clients:

A lot of our clients have issues around mental health, drug and alcohol, even intellectual disabilities, those sorts of things. As well as your geographic issues and what not. (Public legal service coordinator)

they can hardly afford to live. Because they love buying their drugs and alcohol first and that's when the kids get disadvantaged ... It's one big psych ward, this town. (Legal support worker)

The multiple, and often intertwined, legal and non-legal needs of disadvantaged groups highlights the potential value of client-centred services in increasing access to justice for these groups and providing holistic solutions to their problems. That is, they may often require joined-up responses from legal and broader human services in order to address all of their needs (Coumarelos et al. 2012).³⁹

However, as already noted, disadvantaged people can face considerable barriers to accessing mainstream assistance and may ignore their legal problems. Legal outreach is a key method for overcoming access barriers and providing legal services to demographic groups who have high levels of social disadvantage or exclusion and experience high levels of unmet legal needs and do not seek out legal assistance themselves. Notably, legal outreach is a vehicle for ‘bridging the distance’ to legal assistance for people who are isolated from mainstream legal services in RRR areas (Forell, Ramsey, McDonald & Williams 2013). It is also an important means of reaching and assisting people with limited legal capability who may not have the personal resources to seek legal advice.

Thus, ‘outreach is viewed as a necessary part of poverty law service delivery. The question is how to incorporate such services in an effective and affordable way’ (Long & Beveridge 2004, p. 66). Consequently, it is important to consider the types of models that could be used to deliver legal outreach services, the challenges that need to be navigated and the key features of successful legal outreach.

Outreach defined

The defining feature of outreach is that it involves service providers making a *proactive* attempt to contact clients or potential clients to relay information, advice or assistance, rather than waiting for clients to come to them (Buckley 2010; Long & Beveridge 2004). A common, narrow definition of outreach refers to service delivery that is focused in RRR areas by means other than in-office communication. However, broader, more inclusive definitions of outreach refer to any service delivery other than face-to-face communication that is provided in the legal service provider’s primary office, which has the aim of making the service more accessible to the target client group.

³⁹ Chapter 4 discusses joined-up services in detail.

For example, accessibility of services can be enhanced by location in places reachable or frequented by the target group or through technology-based service delivery such as via telephone, audio-visual link (AVL) and online services. The broader definition of outreach is used in this paper.

Forms of outreach

As Table 3.1 details, there is a wide variety of outreach models, which can vary along a number of dimensions. In part, the diversity in legal outreach arises from historical differences in the practices of legal service agencies. However, importantly, this diversity also reflects attempts to address the varied needs and capabilities of different target clients and communities, as well as the constraints embodied by different geographic contexts, resourcing and local service infrastructure (Forell, McDonald, Ramsey & Williams 2013). Thus, there is no one-size-fits-all model of legal outreach that is suited to all client groups in all service and geographical environments.

Target

The target of outreach programs can be a specific demographic or disadvantaged group (e.g. homeless people, Indigenous people, migrants), a specific location where people are likely to benefit from legal assistance (e.g. courts, tribunals, prisons) or a particular geographic area, such as a RRR area, which may have a high concentration of disadvantage and few on-the-ground legal services (cf. Buckley 2010; Long & Beveridge 2004).

Table 3.1: Dimensions along which outreach models can vary

<i>Dimension</i>	<i>Options</i>
Target	Demographic group (e.g. specific disadvantaged group) Location (e.g. courts, tribunals, prisons) Geographical area (e.g. RRR area)
Legal issue	Criminal Family Civil
Mode	In person outreach – hub office and satellite sites – mobile office (e.g. travelling advocate covering a set circuit) Technology-based outreach – legal telephone line – interactive internet services (e.g. online 'chat' services) – audio-visual link services, virtual law offices Inreach
Personnel	Public legal service lawyer Private lawyer undertaking legal aid work Pro bono private lawyer Other (e.g. paralegal field officer, non-legal professional, volunteer)
Intervention	Community legal education or information (e.g. workshops) Direct consultation (e.g. clinics): advice, minor assistance, major assistance/representation Indirect (secondary) consultation: information, advice Systemic advocacy and law reform Combination of above
Site/host agency	Public legal service (e.g. legal aid or private lawyer providing service at a CLC) Legal system institution (e.g. court, tribunal, prison) Non-legal human service provider (e.g. health care or welfare agency) Community organisation (e.g. neighbourhood centre) Client's home
Integration	No collaboration between agencies Independent agencies at same site Case management across agencies
Timeframe/schedule	Once-off (e.g. disaster recovery) Temporary (e.g. secondment, pilot program) Ongoing (e.g. fortnightly, monthly for a period of years)
Administration	Drop-in Appointment-based

Legal issue

Outreach programs are often focused on particular areas of law, such as particular criminal, civil or family law issues. For example, most of the legal outreach clinics provided by Legal Aid NSW focus on civil or family law issues, although some provide criminal law assistance (Forell, Ramsey et al. 2013). In contrast, given Indigenous people's overrepresentation in the criminal justice system, the Aboriginal Legal Service (ALS) across Australia has tended to have a greater focus on criminal law matters than on family and civil law matters (Commonwealth Attorney-General's Access to Justice Taskforce 2009; Cunneen & Schwartz 2008; Joint Committee of Public Accounts and Audit (JCPAA) 2005; Senate Legal and Constitutional Affairs Committee (SLCRC) 2004). Our consultations with ALS practitioners in both city and RRR areas of NSW confirmed that their 'number one priority still remains Aboriginal people in custody' and is driven by a lack of funding:

We did our sums and we said this is just absolutely impossible to try and run a civil practice as well as the criminal ...

Our consultations revealed that while the ALS in some areas of NSW is able to maintain a small, subsidiary focus on children's care and protection and family issues, in other areas of NSW they deal exclusively with criminal issues:

all of our offices in [this] region exclusively offer criminal law services ... The people that we're servicing in the criminal courts disproportionately have the care and protection issues, the family law issues, and they're people that are difficult to access ... We have contact with them. We have access to them. It's a real shame that we can't ... provide those [i.e. family and civil law] services. (Public service lawyer)

Mode

There is also a variety of modes for delivering outreach services, including 'in person outreach', 'technology-based outreach' and 'inreach'.

In person outreach

Traditionally, 'in person outreach', involving face-to-face engagement with clients, has been the main method for delivering legal outreach. The Commonwealth Attorney-General's Access to Justice Taskforce (2009) maintained that such direct engagement with clients may sometimes be not only preferred but necessary to address access issues faced by some communities, including Indigenous communities. For example, the Taskforce noted (p. 81) that:

the most effective way to educate Indigenous communities about legal issues and legal services is through direct contact, given their culture's oral/story-telling approach to learning.

A common method of delivering in person outreach is through a 'hub-and-spoke' system, where a 'hub' or main office in an urban or regional centre is connected to a number of smaller 'spoke' or satellite sites in other, often more remote, locations. The hub office includes lawyers, while the satellite sites may be staffed by paralegals or volunteers (e.g. Buckley 2010; Long & Beveridge 2004).

For example, lawyers from the hub office may visit and conduct advice clinics at the satellite sites on a regular or as-needed basis, depending on cost and distance. In some cases, the satellite sites may be non-permanent in that they operate in borrowed space within other agencies. There are also examples of multiagency legal outreach clinics, where a number of legal and allied service providers share an outreach site on a rotating or as-needed basis to deliver their services, such as the outreach clinic hosted by Intereach Neighbourhood Centre in Deniliquin NSW (see Box 3.1).

An alternative in person outreach model to the hub-and-spoke model is a more mobile office arrangement. For example, a travelling advocate may cover a set circuit, such as duty lawyers following the court circuit in RRR areas. Both overseas and in Australia there are also examples of mobile offices and roadshows in vans and buses travelling to a number of locations to deliver legal outreach.⁴⁰ Legal outreach clinics are sometimes staffed by fly-in and fly-out solicitors. For

⁴⁰ For example, see Long & Beveridge (2004) for overseas examples. See Community Legal Centres NSW 2012b and 2013 for information about the 'Centrelink Bus' and the 'FineMobile' in Australia.

Box 3.1: Intereach Outreach Clinic, Deniliquin, NSW

Legal and allied services in Albury and Deniliquin have collaborated to open a weekly joint-service advice clinic at Intereach Neighbourhood Centre in Deniliquin — a location long identified as high-need but with few on-the-ground services. The clinic provides free legal advice, financial counselling, advice for tenants, family support services and disability advocacy, addressing problems such as credit and debt, apprehended violence orders, crime matters, unpaid fines, family and children's matters, landlord issues and disability-related issues. It is a joint project of Intereach, Hume Riverina Legal Service, Legal Aid NSW, local private firm Murray Legal, South West Tenants Advice Service, Disability Advocacy and Information Service and Upper Murray Family Care working together to ensure that disadvantaged people in Deniliquin have regular access to these services. The clinic opened in March 2013 and operates every Thursday on an appointment basis, with the various service providers being rostered on as needed. (See Legal Aid NSW 2013a and <www.legalaid.nsw.gov.au/about-us/news-and-media/general-news/media-release-free-legal-advice-and-advocacy-in-deniliquin>.)

example, legal outreach services to the Mid North Coast of NSW include solicitors who fly in from Sydney (Forell, McDonald et al. 2013).

Technology-based outreach

Over the past decade or so, the 'digital revolution' has transformed legal services, just as it has transformed other areas of service delivery, at a 'dizzily rampant' pace both overseas and in Australia (Smith & Paterson 2014). Legal services have used innovations in technology to improve and expand access to justice, including legal telephone hotlines, AVL services, virtual law offices and a variety of internet services (cf. Buckley 2010; Long & Beveridge 2004; Forell, Laufer & Digiusto 2011; Smith & Paterson 2014). Internet services include general information and advice websites, informational YouTube-type videos, specific self-help websites and interactive internet services such as online chat services. An example of a ground-breaking interactive legal website is the Dutch Legal Aid Board Rechtwijzer site, launched in 2007, which seeks to resolve family breakdown problems from the beginning to end by providing dynamic assistance throughout the resolution process (see Smith & Paterson 2014).

In Australia, LawAccess NSW acts as a legal triage service by integrating a statewide telephone hotline service, an information website (LawAccess Online) and a specific self-help website (LawAssist), supplemented by referrals for more specialist legal advice and assistance. This integrated approach has been heralded as 'potentially a world leader', which seems 'well designed to meet its aim of being a first point of call' (Smith & Paterson 2014, p. 73). Other examples of technology-based legal services in Australia include Youthlaw Online, which provides virtual face-to-face legal information and advice over Skype to young people in Victoria,⁴¹ and the use of AVL conferencing to provide legal advice to prisoners and people in RRR locations and to conduct 'virtual' court hearings in some RRR areas (Commonwealth Attorney-General's Access to Justice Taskforce 2009; Coverdale 2011; Forell et al. 2011; Legal Aid NSW 2012). Furthermore, increasingly, in addition to operating various legal telephone hotlines, public legal service agencies, such as various Legal Aid services around Australia and the ALS in NSW and the Australian Capital Territory (ACT), are using social media internet sites such as Facebook and Twitter.⁴²

There have been calls to explore options for expanding the use of technology-based legal services in Australia (cf. Commonwealth Attorney-General's Access to Justice Taskforce 2009; Coverdale 2011). The Australian Government has recently funded the National Broadband Network (NBN) Regional Legal Assistance Program for four years to trial initiatives for using the NBN to increase access to legal services for people in RRR areas. Grants given to legal assistance providers (such as Legal Aid, ALSs and CLCs) will allow them to trial innovative NBN-based collaborative ways of providing legal service delivery and supporting professional staff in RRR areas (Social Inclusion Division 2012).

41 See <<http://youthlaw.asn.au/services/youthlaw-online-via-skype>>.

42 See, for example <<https://www.facebook.com/legalaidnsw>>; <<https://twitter.com/LegalAidNSW>>; <<https://www.facebook.com/LegalAidTasmania>>; <<https://www.facebook.com/NTLAC>>; <<https://www.facebook.com/ALSNSWACT>>.

Inreach

Rather than lawyers travelling to clients, another potential mode of delivering legal outreach services is via ‘inreach’, which would involve transporting clients to lawyers. For example, in the area of health, disability and age care services, low-cost community transport is used to bring eligible people to service providers where emergency ambulance assistance is not required and private and public transport is either not available or not practical (e.g. Denmark, Hurni & Cooper 2006; NSW Health 2006). Some community access buses transport people from very remote areas (e.g. Wilcannia) to larger towns (e.g. Broken Hill) so that they can access medical, dental, consumer and other services (Wilcannia Community Working Party 2005). During our consultations, a public legal service lawyer suggested that legal service inreach models may be worth considering in rural NSW. Similarly, an inreach model was proposed by a public service solicitor to facilitate resolution of criminal matters:

[It would help] if we could have a big bus and it could go and collect any client anywhere and bring them to court. (Public service lawyer)

Personnel

A variety of legal and non-legal workers can deliver or assist in the delivery of legal services within outreach models. Lawyers can include public legal service lawyers (e.g. Legal Aid, CLC, ALS lawyers), private lawyers administering grants of legal aid and private lawyers working pro bono. Legal Aid NSW, which is the largest legal aid agency in Australia, provides outreach clinics at 153 regional locations in NSW, with outreach programs including the Family Law Early Intervention Service, Child Support Service, Civil Law Outreach, Homeless Outreach Legal Service, Prisoners Legal Service and Regional Outreach Clinic Program (ROCP, see Box 3.2) (NSW Department of Attorney General and Justice 2012b; Forell, Ramsey et al. 2013; Legal Aid NSW 2012). While many of these programs involve Legal Aid NSW lawyers running legal advice clinics, they also include legal advice clinics shared with other legal services or integrated with non-legal services. In addition, the ROCP funds private and CLC lawyers to deliver services in locations where it would not be feasible for Legal Aid NSW lawyers to run outreach services. CLC outreach services include the Indigenous Women’s Outreach Project and the Rural Women’s Outreach Lawyer Services (Social Inclusion Division n.d.). Private law firms also provide pro bono assistance in the provision of legal outreach services in a variety of ways. For example, via volunteering and secondment, pro bono lawyers form partnerships with CLCs in RRR areas to help deliver or support community legal education and advice clinics and to take on case referrals (National Pro Bono Resource Centre (NPBRC) 2006, 2013).

Box 3.2: Regional Outreach Clinic Program (ROCP)

The Legal Aid NSW ROCP funds private and CLC lawyers to deliver clinics in 16 locations where it would not be feasible for Legal Aid lawyers to run outreach services. These locations were chosen on the basis of their socioeconomic disadvantage and relative lack of access to public legal services. The clinics operate in places such as local court houses, local community agencies offering a range of general client services such as neighbourhood centres, and other agencies (e.g. library, youth service, Indigenous organisation). The objectives of the ROCP are to provide regular access to sustainable and effective advice and minor assistance to people at risk of social exclusion living in RRR areas of NSW, and to develop and promote best practice in this area through the provision of training, resources and professional support to practitioners participating in the program (Cipants 2013).

The program commenced in September 2009 with current funding expiring in June 2014. In the 2011–2012 financial year, 127 clinics operated in 14 locations and provided 674 advice services, with 27 per cent of the services being provided to Indigenous people (Legal Aid NSW 2012).

Non-legal personnel can also assist in the delivery of legal outreach, including paralegal workers, non-legal professionals and volunteers. Notably, in Australia, paralegal Aboriginal Field Officers employed by the ALS play a key role in connecting Indigenous people to legal services. Aboriginal Field Officers are:

*cultural translators and interpreters ... [who] ... operate between and on behalf of [ALS] lawyers and ... clients ... ALS Field Officers provide Aboriginal people with immediate access to advice and assistance ... arrange for referral in appropriate cases ... and they provide legal and social justice education in the community. They provide assistance in areas such as criminal law, care and protection, and prisoner matters.*⁴³

Intervention

Outreach models also differ in the types of intervention they provide, and they sometimes provide a combination of interventions. They can focus on community legal information or education. They can involve lawyers providing clients with direct consultation, for example, through outreach advice clinics, which may include the provision of legal information, advice or representation. They sometimes involve lawyers providing secondary (or indirect) consultations to a client through the use of an intermediary rather than providing advice to the client directly. For example, outreach solicitors in the Riverina Homelessness and Reaching Home projects, in addition to delivering direct advice to some clients, provide secondary consultations in other cases through discussions with the case manager who then take back to the client the lawyer's information or advice about legal processes, possible legal strategies and any legal referral options (cf. Porteous 2012). Furthermore, outreach models sometimes include systemic advocacy and law reform work or combine this service with case work to address the needs of very marginalised clients (cf. Forell & Gray 2009; NPBR 2013).

Site/host agency

Legal outreach programs are rarely stand-alone services in that they often involve some collaboration with other agencies and are often located within 'host agencies' (Buckley 2010; Long & Beveridge 2004). Legal outreach can be provided at a range of sites or host agencies, although the potential sites for legal outreach in a RRR area will be limited by the locally available services, agencies and infrastructure. Legal outreach can be provided at a public legal service office, such as a legal aid lawyer or private lawyer providing a service in a RRR CLC or ALS office. Other legal outreach services are provided at justice system institutions, including 'duty counsel' services at various courts (e.g. local courts, Magistrates' courts, Children's Court, Family Law Courts) and tribunals,⁴⁴ and legal services at prisons.⁴⁵ In addition, it is very common for legal outreach to be provided at human service agencies, such as health care settings (e.g. doctor's surgeries, hospitals, community or mental health services), welfare agencies, accommodation/housing services, family relationships centres, migrant resource centres, charity organisations and community organisations (e.g. community neighbourhood centres, day centres, youth centres, community credit unions). A major initiative in the United States, the Medical-Legal Partnership (MLP) model, typically involves legal outreach being provided in health care settings (Lawton et al. 2011). In Australia, a number of jurisdictions have homeless persons' legal services that provide outreach services at locations frequented by people who are homeless or at risk of homelessness, such as crisis accommodation services, other homelessness assistance services and charity-run services.⁴⁶ In addition, there are examples of legal outreach services for people from CALD backgrounds being provided at migrant resource centres (see Box 3.3) (Legal Aid NSW 2012). Finally, in some cases, legal outreach may be provided in a client's home, for example, for the elderly or people with disabilities (Buckley 2010).

43 See <www.alsnswact.org.au>.

44 See, for example, <www.legalaid.nsw.gov.au/get-legal-help/help-at-court/list-of-court>, <www.legalaid.vic.gov.au/information-for-lawyers/doing-legal-aid-work/private-practitioner-duty-lawyers> and <www.legalaid.qld.gov.au/legalinformation/thejusticesystem/criminalcourtprocess/Pages/DutyLawyer2.aspx>.

45 See, for example, <www.legalaid.nsw.gov.au/what-we-do/criminal-law/prisoners-legal-service> and <[www.legalaid.qld.gov.au/legalinformation/thejusticesystem/Pages/Prison.aspx#I'm in jail, do I have any rights?](http://www.legalaid.qld.gov.au/legalinformation/thejusticesystem/Pages/Prison.aspx#I'm%20in%20jail,%20do%20I%20have%20any%20rights?)>.

46 See, for example, <www.piac.asn.au/campaigns/homeless-persons-legal-service>, <www.pilch.org.au/hplc> and <www.pilch.org.au/01/cms/details.asp?ID=7>.

Box 3.3: Civil and family law outreach services to culturally and linguistically diverse (CALD) communities

For the first time in Australia, people from CALD backgrounds will be connected to accessible legal services via an outreach service involving a collaboration between Legal Aid NSW and Settlement Services International, a peak body representing Migrant Resource Centres. This new service is funded under the National Partnership Agreement. Civil and family lawyers from Legal Aid NSW will provide legal advice services on-site to clients at Migrant Resource Centres, as well as offer regular education workshops about the Australian legal system. Legal outreach clinics will be provided at eight Migrant Resource Centres across Sydney, the NSW Central Coast and Wollongong.

The alliance was formed in response to a report released in 2012 by the Family Law Council of Australia, which found that the failure to address legal issues faced by CALD clients at an early stage was having detrimental effects on their long-term welfare. (See Legal Aid NSW 2012 and <www.legalaid.nsw.gov.au/for-lawyers/news/news-for-lawyers/partnership-gives-access-to-legal-services-for-migrants>.)

Integration

Good collaboration with other legal and non-legal services is often central to effective legal outreach, particularly in RRR areas (Dewson, Davis & Casebourne 2006; Forell & Gray 2009; Forell, McDonald et al. 2013; Porteous 2012). However, the level and type of integration with other services in outreach models can vary. As discussed further in Chapter 4, collaboration between services can range from relatively independent services operating at the same site to services integrating more fully to provide a consolidated case-management approach to address the client's needs. Where outreach involves integrated case management across services, it is more usual for a non-legal worker rather than a lawyer to take on the role of case manager. Some of the legal outreach services in Australia for homeless people are provided within a case-management model involving integration with a variety of non-legal agencies (see Box 3.4) (cf. Porteous 2012).

For example, according to our consultations, legal services for homeless people in South Australia are:

part of the joined-up services ... that homeless people access through the welfare sector ... We have a coordinator who attends every welfare centre and becomes part of their integrated programs so we get to know their support workers, their case workers, their health workers. Clients can come and on some occasions, they ... see the lawyers. (Public legal service)⁴⁷

Timeframe/schedule

Legal outreach services can also have different timeframes and schedules, ranging from once-off interventions to interventions provided on a longer-term or more ongoing basis. Examples of one-off interventions include legal services organised in response to disasters such as bushfires and floods,⁴⁸ and outreach programs developed as part of specific events such as Law Week (see Box 3.5). Some legal outreach services involve temporary secondments of solicitors, such as secondments of pro bono solicitors from city firms to services such as CLCs, Indigenous service agencies in RRR locations and homeless legal services (e.g. NPBRC 2006, 2013).

In many cases, the timeframes of legal outreach programs are dictated by government funding, which can be provided on a limited basis, such as to fund a pilot or temporary program. For example, as noted earlier, the NBN Regional Legal Assistance Program is funded by the Australian Government for four years from 2011 to 2015 to trial NBN-based innovations (Social Inclusion Unit 2012). The Legal Aid NSW ROCP, which provides fortnightly or monthly clinics in various RRR locations in

47 Based on consultations with service providers at the National Homeless Persons' Legal Clinics Forum on 4–6 June 2013 at the Public Interest Advocacy Centre, Sydney.

48 For example, see <www.bushfirelegalhelp.org.au> and <www.smh.com.au/environment/cruel-insurers-add-to-bushfire-trauma-20131102-2wth8.html>.

Box 3.4: Homeless Persons Legal Service (HPLS) Clinics

The HPLS in NSW was established in 2004 as a joint initiative of the Public Interest Advocacy Centre (PIAC) and Public Interest Law Clearing House NSW (PILCH NSW). It aims to provide access to justice for homeless people in NSW by providing free legal advice and ongoing representation to people who are homeless or at risk of homelessness, and advocating on their behalf.

HPLS currently operates 11 free legal clinics on a roster basis, partnering with welfare agencies in the greater Sydney metropolitan region that provide direct services, such as food and accommodation, to people in housing crisis. The clinics are hosted by the welfare agencies (e.g. Mission Australia Centre, Salvation Army, St Vincent de Paul Society, Uniting Care, Uniting Church, Wesley Mission, neighbourhood centres, emergency centres). They are coordinated by HPLS and staffed by lawyers from various agencies, including Legal Aid NSW and a number of private law firms (Allens Linklaters, Baker & McKenzie, Corrs Chambers Westgarth, Norton Rose Australia, Dibbs Barker, HWL Ebsworth, Gilbert + Tobin, Henry Davis York, Maddocks, Minter Ellison and Thomsons Lawyers). Most of the work is undertaken by private lawyers from firms acting pro bono under PIAC's supervision, although a small amount of the work is referred to and undertaken by the pro bono providers directly. PIAC provides induction training for all the lawyers working in the clinics. Each firm generally sends both a junior and senior solicitor to the clinic, so the senior solicitor can provide support to the junior solicitor. The lawyers attending the clinics fill in contact/advice sheets for each client, which are checked by the supervising solicitor at PIAC and used by PIAC to open a file on the matter.

Last financial year, HPLS assisted 1354 clients through pro bono legal services involving 400 commercial lawyers estimated to be worth \$1.5 million. HPLS assisted with a range of legal problems, including tenancy, credit and debt, social security, victim's compensation and family law. (See NPBRC 2013; PIAC 2013; <www.piac.asn.au/news/2014/02/new-clinic-homeless-persons>.)

Box 3.5: Law Week outreach to Bourke and Brewarrina in Central West NSW

As part of Law Week in May 2013, partners of the Central West Cooperative Legal Services Delivery (CLSD) program organised a four-day outreach to Indigenous clients in Bourke and Brewarrina, with almost 20 legal and non-legal agencies participating. The legal agencies included both public and private legal organisations and support workers (Legal Aid Dubbo, Western NSW CLC, Bourke ALS, Thiyama-li Family Violence Legal Service, Legal Aid/ALS Work & Development Order and Child Support teams, Bourke and Brewarrina Local Courts, Kingsford Legal Centre, the Australian Human Rights Commission, Ashurst Lawyers) while the non-legal agencies covered a range of government and non-government organisations (Births, Deaths and Marriages, Centrelink, Office for Fair Trading, Medicare Local, Roads and Maritime Services, State Debt Recovery Office, Transport for NSW and Centacare).

Over 500 legal advice or assistance services were provided, on issues such as birth certificates, wills, powers of attorney, guardianship, debts, consumer issues, licences and Centrelink benefits (Legal Aid NSW 2013a).

NSW, is funded from September 2009 until June 2014 (Legal Aid NSW 2011b). In addition, the frequency of more ongoing services depends on factors such as resourcing, demand and maintaining sufficient presence at outreach locations (cf. Forell, McDonald et al. 2013).

Administration

Finally, outreach models also involve a variety of administration methods. For example, client intake methods include drop-in services, appointment-based services and a mix of drop-in and appointment-based services (Forell, McDonald et al. 2013; Long & Beveridge 2004). The homeless persons' legal clinics across Australia variously involve drop-in and appointment-based models, depending on factors such as the type of access provided to the target group by the host agency and the availability of solicitors delivering legal outreach services.⁴⁹

Challenges to effective legal outreach

There are significant challenges in providing services within an outreach model, and this has been acknowledged not only in the area of legal services, but also more broadly, including in the area of health services. Table 3.2 provides a summary of some of the major challenges that need to be navigated in the provision of legal outreach.

Distance and transport limiting accessibility

Our consultations highlighted the well documented problem of large distances accompanied by a lack of suitable public transport as a major barrier to clients being able to access legal and other services in some RRR areas of Australia:

Public transport's an issue here in that we don't have any. (Electorate officer)

In addition, in keeping with the literature (e.g. NSW Department of Attorney General and Justice 2011, p. 13), our consultations confirmed that loss of driver licences can further compound the transport problem in some RRR areas and reduce access to legal services:

you're dealing with ... impoverished communities with very, very high rates of unlicensed and driver disqualification issues; the poverty meaning [that] people don't necessarily own cars. But maybe they do. They have a car in the family. But everyone's disqualified. People aren't accessing services. They're not hopping in the car and driving to [town]. (Public service lawyer)

Attempts to bridge the distance barrier by lawyers conducting regular in person outreach circuits in remote areas can require considerable effort and resourcing:

I think it's about 1200 kilometres ... That's one outreach that we do ... The big outreaches; the one that they're on now, and that's four days, it's Monday and they come back Thursday night and they're fairly tired. But with the three of them going they can share that driving. So far it's working. (Public legal service coordinator)

Distance can also act as a barrier to legal assistance in some urban areas, where only certain types of legal services are available locally, as our consultations in western Sydney indicated:

[Previously] if we had a client who had a civil law issue at Penrith we would have to refer them to Parramatta. A lot of those clients didn't get there ... that's a big distance for them to try and overcome ... there's a capital cost in getting there, even public transport. There's time If you're a single parent ... you spend the bulk of your day between school drop off and pick up just getting there. (Public service lawyer)

Some of our clients ... they can't get a grant of Legal Aid, but they just need some advice to start the process ... If we're there, proximate, then they'll get advice. (Public service lawyer)

While inreach models are another possible method of trying to bridge the distance barrier, particularly in more remote areas, they also face limitations due to the enormous size of the

⁴⁹ Based on consultations with service providers at the National Homeless Persons' Legal Clinics Forum on 4–6 June 2013 at the Public Interest Advocacy Centre, Sydney.

Table 3.2: Potential challenges of legal outreach services

<i>Relates to ...</i>	<i>Potential challenge</i>
Geography	Distance and lack of transport for clients
	Shortage of lawyers in remote areas
	Paucity of local legal services
	Paucity of local broader human services
Client engagement	Hard-to-reach clients
	Access barriers (e.g. cultural barriers, distrust)
Disadvantaged clients	Multiple, complex legal needs
	Multiple, complex non-legal needs
	Low legal capability
Staffing and resourcing	Availability of skilled legal and other staff
	Generalist and specialist lawyers
	Staff turnover
	Staff training, supervision at outreach sites
	Conflict of interest
	Availability of other resources
Collaboration with host agency and service networks	See Chapter 4 and Table 4.2 regarding challenges to building and coordinating partnerships (e.g. different strategies/objectives, professional ethics/languages, organisational practices, service use data, policy/regulation, services delivered)
Service delivery	High resourcing for regular in person outreach circuits
	High resourcing for inreach
	Limitations with technology-based outreach
	Availability of host agencies
	Availability of organisations for partnership/referral
	Responsiveness of service
	Consistency of service
	Administration of service (e.g. intake/conflict checks)
Sustainability of service	

distances that need to be covered and the substantial resourcing that would be necessary to do so. Our consultations indicated that where community transport services exist in some RRR areas, they are not always frequent enough:

There is a bus that comes ... a community bus ... I'm sure it's only once a week, yes. Not much, especially if you have no transport [of your own]. (Legal support worker)

Inreach models are also unlikely to provide a comprehensive solution as they will leave behind some people with disabilities who are unable to travel and others who are unwilling to travel. Furthermore, although technology-based outreach can be used to bridge distance barriers in some cases, there are also challenges with this type of solution, as is discussed later in the chapter.

Availability of lawyers in remote areas

A shortage of lawyers in some RRR areas has been raised as a major challenge to legal outreach (Cain & Forell 2010; Cain et al. forthcoming; Coverdale 2011; NPBR 2013; SLCAC 2009; TNS Social Research (TNS) 2013). A survey of legal practitioners in RRR areas of Australia by the Law Council of Australia and the Law Institute of Victoria (LCA and LIV) in 2009 concluded that the shortage of lawyers in RRR areas constituted a significant problem for access to justice in regional Australia, with nearly half of the existing RRR practices having insufficient lawyers to service their client base. In addition, a more recent research study investigating the participation of private lawyers in the provision of legal aid services across Australia found that the rate of lawyers per population was more than three times lower in RRR areas compared to capital cities (TNS 2013). Similarly, Cain et al. (forthcoming) confirmed that the ratio of solicitors to residents in RRR areas

of NSW is three times lower than that for NSW as a whole. In addition, Cain et al. (forthcoming) noted that there were 19 local government areas in NSW with no registered solicitor (private or public), while some other RRR areas had substantial levels of non-incumbents occupying public legal service positions, suggesting the possibility of high turnover in these areas.

Importantly, however, the recent research by the Law and Justice Foundation of NSW also revealed that the picture is nuanced, with considerable inter-regional variation in the shortage of lawyers (Cain & Forell 2010; Cain et al. forthcoming; Forell et al. 2010). Not all RRR areas are affected, with the more remote or 'dying' towns being more likely to be affected than the larger regional centres. Not all RRR areas had recruitment and retention issues. In general, the more remote the area, the greater the level of socioeconomic disadvantage, the greater the difficulty of attracting and retaining experienced lawyers and the more difficult the legal working conditions (Cain et al. forthcoming; Forell, Cain & Gray 2010). In addition, the Cain et al. (forthcoming) study indicated that some RRR areas may simply not have the population to economically sustain a viable legal practice. Consequently, the Foundation's research indicates that a blanket solution to the gaps in legal services in RRR areas is inappropriate and solutions need to be problem oriented and location specific.

The shortage of lawyers in various RRR areas appears to involve both public and private solicitors, and to involve both private lawyers undertaking legal aid work and private lawyers working pro bono (Cain et al. forthcoming; NPBRC 2013; TNS 2013). It has been argued that major contributors to the shortage of lawyers include difficulties associated with travelling long distances, problems with relocating to remote and sometimes 'dying' areas with poor infrastructure, and inadequate remuneration for legal aid work (Cain et al. forthcoming; NPBRC 2013; TNS 2013). As our consultations in RRR areas indicated:

It would be very difficult to get someone just for one year because, you know, they've probably got family. They would have to uproot. There is a lack of accommodation [here]; a lack of rental facilities. (Public legal service coordinator)

The NPBRC (2013) note that it can be difficult to find 'pro bono providers and individual lawyers who are willing to devote resources to outreach especially where long-distance travel is involved ... even a drive of 40 minutes (from Sydney to Macquarie Fields) can deter lawyers from participating in outreach' (p. 137). In terms of funding for legal aid work, it has been argued that, unless legal aid work is made more attractive in RRR areas, there is likely to be a further decrease in private firms taking on this work in the future, and there may be no one to replace the long-serving private lawyers located in remote communities once they retire (cf. Cain et al. forthcoming; TNS 2013, p. ix).

Given the shortage of lawyers in some RRR areas, and the significant amount of legal aid, pro bono and other volunteer work they undertake, the 2009 survey of lawyers across Australia concluded that 'it is extremely important that the current and potentially future shortage of legal services provided to RRR communities are addressed' (LCA & LIV 2009, p. 21). More recently, the NSW Department of Attorney General and Justice (2012b, p. 5) similarly recommended that 'there should be a stock-take of the progress of ... strategies to support lawyers working in ... [RRR] areas'.

Conflict of interest

'Conflict of interest' was a major theme emerging from our consultations, particularly in RRR areas. That is, a lawyer may be unable to take on a new client because the interests of another client would be compromised. The shortage of lawyers in more remote areas means that conflict of interest occurs more frequently, because there can be multiple parties involved in the same matter and not enough legal service providers to represent each party. For example, a public lawyer surveyed by Cain et al. (forthcoming) in their study of legal services in RRR areas observed that care and protection matters can require 'someone acting for the department, someone acting for the child, someone acting for each parent, and sometimes you get grandparents and other people joined to the action'.

Coverdale (2011), who surveyed regional lawyers in Victoria, reported that the greater potential for conflict of interest in more remote areas was endorsed by 69 per cent of those surveyed and was the most frequently nominated challenge. Coverdale (2011, p. 87) noted that:

conflict of interest is therefore more likely to occur in regional communities; where there are a smaller number of practising solicitors; parties are more likely to be known to each other; and past legal/commercial dealing with others within that community are more likely to have occurred.

In addition, due to issues of conflict of interest and the limited supply of lawyers in some RRR areas, private lawyers often feel obliged to take on legal aid work so that deserving people can access justice, even though in some cases, ‘financially it’s a disaster’ for the lawyer (TNS 2013, p. 45). Our consultations demonstrated that public legal services also sometimes took on cases they normally wouldn’t due to conflict of interest:

We very rarely offer representation because we just don’t have the time and the resources. But, occasionally, a matter will come along and we will take it on largely because, you know, they might conflict out with ... [the other public legal services] and they really can’t advocate for themselves. They may have disabilities, other things that may prevent them from doing their best in court. (Public legal service coordinator)

As a result, there have been calls to investigate the implications of conflict of interest protocols on legal service provision in RRR areas and to review options for amending the Solicitor’s Rules to manage these conflicts (Coverdale 2011; NSW Department of Attorney General and Justice 2012b).

Engaging the target group

Given that outreach models involve proactively seeking out clients, a common challenge is ensuring good engagement with the client group and other stakeholders. More specifically, the challenge is:

how outreach legal services actually connect with ‘hard-to-reach’ clients ... bearing in mind that this client group is unlikely to actively seek assistance, particularly from a service it is unfamiliar with. (Forell & Gray 2009, p. 9)

The very nature of some legal outreach services — which can only be provided irregularly, infrequently or for short periods of time due to the long distances involved — can impede building relationships of trust with the target community (NPBRC 2013). It is clear that building trust and rapport with the client group can take considerable time and effort, and needs to be approached thoughtfully and strategically (cf. Forell & Gray 2009; Forell, McDonald et al. 2013; NPBRC 2013), as our consultations illustrated:

a lot of the work that we do is community development work before we send the lawyers out. So that’s a big focus ... actually making connections with communities, working with communities, talking with communities ... so that when we do roll the lawyer in, or the community educators, we’ve actually got that entrée into the community and an understanding of what it is the community wants from us. (CLSD meeting)

Our consultations in a culturally diverse area of Sydney uncovered a specific challenge that public legal services may need to overcome when providing outreach to recent migrants:

I think our biggest barrier is that we’re government lawyers and we work in communities where people come from countries where they can’t trust the government, and they will not tell the truth to someone who works for the government. (Public service lawyer)

There are a number of strategies that can facilitate reaching and engaging with the target group. In some cases, outreach services may be provided by local solicitors who are already known and trusted by clients.

In other cases, legal outreach providers can partner with local agencies, such as community organisations, CLCs or ALSs, who are already linked with and trusted by the client group. A local partner who is directly involved on a day-to-day basis with the target group can provide information about community needs, assist with access to clients and help address barriers to accessibility (NPBRC 2013). For example, our consultations in Sydney revealed the efficiencies of partnering with migrant resource centres (MRCs) to provide legal outreach to CALD communities:

Well in CALD communities in the South West [of Sydney], one of our major stakeholders are migrant resource centres, because the South West ... [is] probably one of the most culturally diverse local government areas and it's comprised of many different cultures, and I suppose we always identify the migrant resource centre as a hub for being able to tap into as many communities as possible. It's ... bang for our buck and it also gives us an opportunity to consult with community leaders. (Public service lawyer)

Joining any 'interagencies' or collaborations between agencies that already serve the target community can also provide efficiencies for delivering legal outreach and connecting with the community, as our consultations in urban areas demonstrated:

I found that attending the different interagencies for the different suburbs ... was good because it was an opportunity to get a sense of who the players were in this space in one go rather than asking someone to trawl through the internet to figure out who they were. (Public service lawyer)

There are a couple of champions that run them [i.e. the interagencies] ... that are really knowledgeable with all the communities. (Public service lawyer)

And the interagencies, you know, they're good for promoting the services. (Public legal service executive officer)

In addition, engaging relevant community leaders can facilitate engagement with the client group and enhance the service provider's credibility. For example, the report on the Family Law Affidavit Pilot Project concluded that insufficient involvement of Indigenous workers and elders in the design and implementation of the service was a major contributor to the low uptake of the service.⁵⁰ Forell, McDonald et al. (2013) noted that part of developing trust with the community involves 'not sitting behind a desk' but actively seeking and engaging the support of key respected people in the local community, such as Indigenous elders. Their consultations revealed that building trust in Indigenous communities can require a lot of 'hard yards' and the role of Aboriginal Field Officers can be vital. Our consultations similarly highlighted that the Aboriginal Field Officers employed by the ALS are an important means of facilitating engagement between Indigenous clients and ALS lawyers and enhancing culturally appropriate services:

But when ... [Indigenous people] see the lawyer they go, 'oh he's just another lawyer ... [Lawyers] don't get our community, they don't get what we're about' ... There's no rapport unless a field officer that they respect is with them. (Public service lawyer)

In addition, given the diversity in the cultural practices and languages of Aboriginal communities across Australia, our consultations revealed the importance of recruiting Aboriginal Field Officers from the local community:

Another complexity of representing Aboriginal clientele — it's all very well to talk about being culturally appropriate, but you've got to be culturally appropriate for that actual location. And that's why [recruiting] the local field officer ... from the community in which you're going to service is vital. You can't ... appoint a ... field officer [from one area] to be based [in another area] ... and think that they can deal with stuff. It won't happen. (Public service lawyer)

Forell and Gray (2009, p. 10) found that 'the best sources of referrals are sources who are already trusted by the client group, such as case workers, community members or friends'. Similarly, Forell, McDonald et al. (2013) noted the valuable role that 'community champions' or 'leaders' can play in engaging the client group:

there's a lady ... who was running the Migrant Resource Centre there and she was very keen. She knew everyone in the community, she could speak five different languages, and she would herself initiate articles in the newspaper to promote the service. So those people who are like real community champions are the ones that make all the difference with outreach. (Public service lawyer)

Linking with clients can also be enhanced by locating the outreach service in a place that is familiar to the client group and is either easily accessible to clients (e.g. via public transport) or is already

50 See <www.lawfoundation.net.au/ljf/app/andid=96A5E275C9519729CA257544000FFA9C>.

frequently accessed by the client group for other purposes (Forell & Gray 2009; Forell, McDonald et al. 2013; Long & Beveridge 2004; NPBRC 2013). For example, location of many of the homeless persons' legal services in crisis accommodation and other homelessness assistance services means that there is a flow of target clients through the service. Our consultations in urban areas indicated that cultural sensitivity when choosing a host agency or site for outreach can be critical to successful uptake of the service in Aboriginal communities:

we've got to be careful with some [Aboriginal] groups ... [about] picking the right location. Because you can alienate part of the community by going to one agency which you think is in that community ... In [that] area, there's essentially two different [Aboriginal] factions ... So in order to get the service going, we went to this other place. But people tend to go to one [place] or the other. So ... [we are] actually now servicing both of these different factions.

Similarly, cultural sensitivity was reported to be important when choosing a site for legal outreach to CALD communities, particularly when a service aims to reach a number of different ethnic or cultural groups:

while we might try and link in with very specific community groups there is a delicate line of making sure that you're not seen as only providing services to one group, and I think that's the value of trying to link in with an MRC because MRCs seem to be open to everyone. (Public service lawyer)

In addition, it is important that outreach settings offer a private space in which clients and lawyers can comfortably discuss confidential issues (Forell & Gray 2009; Forell, McDonald et al. 2013). Confidentiality can be problematic in some small towns, where 'everyone knows everyone's business', particularly if host sites lack a private interview space, do not have suitable mechanisms for keeping appointments and personal documents confidential, or are staffed by volunteers who are not appropriately trained (Forell, McDonald et al. 2013).

However, Forell and Gray's (2009, p. 9) systematic literature review of outreach services found that 'simply locating a service on-site at a host agency was usually not enough to generate sufficient and appropriate referrals to the service'. In addition to appropriate location, it was important to build systems for appropriate referrals by establishing relationships with key 'problem noticers' and training problem noticers to identify relevant legal issues for referral.

Marketing of the service directly to target clients and to the agencies and individuals who support them can also help to promote uptake of an outreach service (Forell & Gray 2009; Forell, McDonald et al. 2013; NPBRC 2013). Raising awareness can be achieved through means such as community legal education (CLE), community expos, flyers, posters, media releases, mail outs to other service providers and meetings with other service providers (Forell, McDonald et al. 2013). Consideration of the most appropriate audience for any given promotion strategy is also important. For example, one of our interviewees felt that:

that's certainly [our] ... experience with CLE — that it's far more effective if it's targeted at the workers in the agencies rather than at the end clients. (Public service lawyer)

It is also clear that promotional strategies need to be appropriate to the target audience, for example culturally appropriate and in plain language (Forell & Gray 2009). Our consultations in an urban area illustrated the importance of cultural sensitivity in engaging community leaders from CALD backgrounds:

This is not something you can do from head office, sending emails to community leaders. It's not really something you can do by telephone because that's not the way cultures operate on the ground, especially some of the Middle Eastern. A lot of the cultures we deal with ... I'll probably buy a little cake and take it round. It's about food, it's about meeting face-to-face, it's about developing relationships. (Public service lawyer)

Once a service starts providing quality services, 'word-of-mouth' referrals can also help to further engage the community and can have a 'ripple effect' (Forell & Gray 2009; Forell, McDonald et al. 2013; NPBRC 2013). Thus, to some extent, a service's credibility is built up by continuing to 'turn up' and 'do good work' while 'word-of-mouth' builds (Forell, McDonald et al. 2013). Nonetheless,

ongoing marketing or promotion through host agencies and other local services may still be necessary (Forell & Gray 2009). For example, public lawyers in our consultations noted the importance of advertising when a travelling service would next be in town.

However, it is important to note that strategies to facilitate engagement with target clients are more necessary in some areas of legal practice than others. A criminal public service lawyer we consulted stated that ‘in crime, we don’t have to go advertising for work’ as their client base is ‘very prescriptive’ in that they service people charged with criminal offences appearing before the courts.

Disadvantaged clients with multiple needs and low capability

Legal outreach services also face the challenges associated with providing assistance to what are often the most needy clients. As already noted, these clients will often be extremely disadvantaged and have multiple complex legal and non-legal needs that exacerbate barriers to justice. They may have chaotic lives, mental health or drug or alcohol issues or cognitive impairment, which can compromise their capability to deal with their legal and other problems (cf. Coumarelos et al. 2012; Forell & Gray 2009; Forell, McDonald et al. 2013; NPBRC 2013).

There are a number of challenges that can arise in providing services to such a client group. First, it will sometimes take multiple appointments before all of a client’s issues become apparent, and legal outreach services need to be able to invest in extra time to come to a full diagnosis, as the consultations by Forell, McDonald et al. (2013) illustrate:

you may not get the whole story the first time, so you make another appointment for them.
(Host agency)

Secondly, when outreach clients have low levels of legal capability, they usually require more intensive forms of support, which can be challenging to provide in the context of a single visit, and may need considerable follow-up work (cf. Forell, McDonald et al. 2013). Our consultations highlighted the more intensive support needed for people with poor literacy:

Often getting the client to sign the inside of the file cover, which they have to do, if they struggle to write their own name [it] is a fairly good indication that ... their literacy levels are sometimes non-existent and you need to pay more attention to making sure they understand what’s going on.
(Public service lawyer)

Thirdly, some of the client’s legal problems may not necessarily ‘fit’ within the legal practice area of the outreach (Forell, McDonald et al. 2013). Thus, the outreach service needs to be well-connected to other legal service agencies in order to make referrals so that all of the client’s legal issues can be addressed. In addition, outreach lawyers need to have ‘generalist’ legal skills that are not limited to their specific civil, family or criminal practice area, so that they can successfully refer on clients to other legal services. Forell, McDonald et al.’s (2013) consultations highlighted the importance of ‘generalist’ legal skills in more remote areas:

I think if you’ve broken down in the bush, any mechanic is better than none ... it’s a start... we can open up a lot of other services within Legal Aid to those people, or within the legal sector.
(Legal Aid solicitor)

However, as Forell, McDonald et al. (2013) noted, clients don’t necessarily understand the distinction between different legal service agencies and don’t realise that they provide different types of assistance — it’s common for public legal services to be conflated. This lack of understanding can cause problems, as demonstrated by our consultations:

You refer them on, they don’t want to go. They seem to get comfortable with one particular person and they want to deal with that person. So if you can’t help them, what can you do? (Legal support worker)

Fourthly, good referral networks with broader human support services are also often necessary to deal with the client’s non-legal needs, and outreach lawyers sometimes need to invest time in helping clients to connect with these services, as our consultations illustrated:

clients don't always identify they have a mental health problem as well. But we've had some that have presented in obviously quite serious ways ... So we might end up spending that first part actually dealing with the mental issue and actually trying to get some help for that. (Public service lawyer)

However, the chaotic nature of the lives of some clients can mean that it is difficult for them to get the broader support they need:

Some of the really high maintenance [clients] don't get any [intensive support from other services] because they're just too difficult, to be honest. What they get is when they're locked up ... and on the outside everything's just mayhem. (Public service lawyer)

Finally, our consultations highlighted that limited funding and resourcing can also present a challenge to delivering the high level of assistance that disadvantaged clients may require:

in this particular region, given the demographics ... the preferable thing is for the more involved involvement ... But ... the challenge is the fact that really the bulk of our clients really do need that level of assistance which we just don't have the resources for. (Public legal service lawyer)

Staff skills, training and supervision

In an ideal world, the skill set of outreach lawyers would include expertise across the areas of law relevant for the client group, the local knowledge necessary to make appropriate referrals to other services, the ability to communicate effectively with their typically disadvantaged client group, and their ability to work 'off site' and provide on-the-spot advice and assistance (cf. Forell & Gray 2009; Forell, McDonald et al. 2013; NPBRC 2013). In addition, the importance of building rapport and reputation with the target client group, as well as with host agencies and other service providers places a premium on the professional and personal qualities of outreach lawyers (Forell, McDonald et al. 2013). Forell and Gray's (2009) review of legal outreach services revealed that it can be difficult to recruit outreach lawyers who have the full range of ideal skills. Similarly, the NPBRC (2013, p. 144) noted that 'the pro bono lawyers assisting with legal outreach do not always have the expertise in the type of matters that arise at the clinics and may be unfamiliar with both the legal issues and dealing with disadvantaged clients'.

To some extent, the challenge of finding lawyers with relevant expertise is a function of the complexity of the law, which results in legal specialisation in relatively narrow areas of law. However, the shortage of lawyers in some RRR areas may further undermine the ability to recruit appropriately experienced outreach lawyers. Outreach services can experience a high turnover of staff, can have inadequate locum relief and backfill support staff, can be forced to rely on junior or less experienced staff and can face excessive workloads (cf. LCA & LIV 2009; Next Challenge Consultancy (NCC) 2003).

As a result, outreach lawyers may often benefit from orientation or training concerning the needs and referral options for clients and the operation of the outreach service (cf. Forell & Gray 2009; NCC 2003). The potential benefit of having a formal orientation program to provide information about the locally available legal and human services was also raised in the context of our rural consultations:

I would have a program for all new lawyers out here set in stone where they go and do a tour of all the different services available, have a contact person in each office that they can contact and just shortcut a lot of the hard work that they have to build up from scratch ... not just the legal induction side of it, the community induction. (Public service lawyer)

In addition, legal outreach services can also be adversely affected by staff turnover in host agencies and other non-legal agencies through which they reach clients, as our consultations in Sydney revealed:

You find a lot of these agencies too have volunteers at their front desks. So that then becomes a hard issue, because there's like a turnover of staff. So, it's just about how do we ... convince [those agencies that] this [legal referral] is an important part of the orientation to the volunteers. (Public service lawyer)

Furthermore, outreach staff in RRR locations can be professionally and socially isolated, and ongoing supervision and support of staff can also be challenging at a distance or at a temporary outreach location (cf. Forell et al. 2011; NCC 2003; NPBRC 2013). Thus, outreach staff are ‘often working in stressful circumstances a long distance from usual support networks’ (NPBRC 2013, p. 137). In addition, there can also be a lack of access to professional development and a lack of structure for career progression (NCC 2003). In addition, the frequent and long travel required to deliver legal outreach to remote locations can cause ‘burnout’ and pose occupational health and safety risks (Forell, McDonald et al. 2013; NPBRC 2013). Our consultations highlighted some of the difficult working conditions which can confront lawyers conducting outreach to remote locations:

[She was] on her own doing outreach and it was during floods. So she went to stay at the motel and there'd been an error in her booking and there was ... not a room in the whole ... [town] for her to stay. She couldn't travel because the roads were – it was just too dangerous ... Finally, she did get somewhere to stay but it was basically a shearer's hut. It was dreadful. (Public legal service coordinator)

In some cases, technological solutions may provide a means of training and supporting outreach staff at a distance. For example, there are initiatives using AVL to train, mentor and support outreach staff (see Forell et al. 2011). There are also examples of supporting outreach staff via online services, such as the ‘Ask LOIS’ website (see Box 3.6), which provides free legal information, training and advice to domestic violence support workers stationed in RRR areas of NSW.

Box 3.6: Ask LOIS

Ask LOIS is a secure website providing a free legal online information service (LOIS) for community workers who respond to women with legal needs, particularly women experiencing domestic violence, in RRR areas of NSW. It is a project created and run by Women's Legal Services NSW. It provides community workers with free online training and advice on legal issues such as domestic violence, AVOs, family law, child protection and victims support. It offers fortnightly webinars, a comprehensive resource library, case studies, video-conference appointments, forums and a NSW domestic violence service directory.

Ask LOIS currently has 900 members. In 2013, the project received funding to continue running through the National Broadband Network (NBN) Regional Legal Assistance Program.⁵¹

Collaboration

Given that most outreach services involve some form of collaboration or joining up with other services or organisations, all of the potential challenges to collaborative working are also potential challenges for many outreach services, as our consultations confirmed:

Obviously one of the big things in outreach is often it can sink or swim by the relationship and the quality of who you've got to work with. (Public legal service coordinator)

Challenges to collaboration are discussed in detail in Chapter 4 (and are listed in Table 4.2) and include difficulties related to resourcing, building partner relationships, challenges due to competing professional responsibilities, ethics and cultures, and differences in organisational work practices, administration and recording systems.

In addition, some of the challenges to collaboration can become even more problematic within legal outreach programs in RRR areas, given the added burdens of large geographical distances and sparse legal and other service infrastructure. For example, building trusting relationships between partners and suitable work practices may be more difficult when partners are not co-located or are long distances apart or when a legal worker relocates to an unfamiliar RRR area, as our consultations demonstrated:

⁵¹ See <www.asklois.org.au> and Community Legal Centres NSW 2012a.

For me to tap into other services was quite hard. It took me 12 months. You'd have to gain their trust and build that relationship. So now I'm in there, I can ring up anyone and say, 'Look, this is the problem. How can you help me?' And ... now I can get that service for clients ... So it took a while, but I got there. (Legal support worker)

Once networks or partnerships are established, distance can also limit coordination, communication, interaction and effective referral between partners (e.g. Noone & Digney 2010; NCC 2003; NPBRC 2013):

It's tricky when services are only coming on an outreach basis because it's tricky to find a day where you can get people around the table coordinating. But good coordination is critical. (Human service worker)

Our consultations also revealed problems with collaboration in administering the Yellow Card system in a RRR area, despite the project's success in various urban locations.⁵² This project is a collaborative response to domestic violence that proactively assists victims to connect with a range of services, including legal services. Police obtain the victim's consent (via signature on a Yellow Card) to forward their details to a domestic violence support worker who will then call the victim to offer assistance with accessing services. However, in the Northern Rivers area of NSW, problems led to piloting a replacement system:

It used to be a Yellow Card system ... but sometimes we'd get the card, like, about three or four months later or not at all. (Legal support worker)

The new system involves the domestic violence support service regularly attending the police station to obtain information and call the victims, rather than waiting for police to forward on the victim's details.

Our consultations also revealed that appropriate education or training of non-legal partners or host agency staff may be necessary to ensure appropriate referrals to the legal outreach service:

doctors, caseworkers or social workers ... perhaps educating them to help spot those [legal] issues and then make those referral links back [to the legal service]. (Public service lawyer)

Thus, it is essential to make arrangements for regular catch-ups between partners to ensure that everyone involved is aware of what is going on and that referrals between partners are occurring smoothly (cf. NPBRC 2013). Again, where distances are involved, it may be more difficult to navigate differences in the professional cultures of outreach partners and perceived inequalities between partners, such as when 'the CLC feels like the poor cousin in the partnership' with a private law firm (cf. NPBRC 2013, p. 142). Developing suitable file management and other administrative systems can also be more challenging given that information and documents may move between several locations, such as the host organisation's premises, an outreach location or the offices of a law firm (NPBRC 2013).

Technology-based outreach

Digital delivery of legal services has an immediate attraction in the face of economic decline and funding constraints. In removing the need for the physical presence of a lawyer, technology-based legal services open up potential opportunities of scale, capital and centralised service delivery (cf. Smith & Paterson 2014). For example, the use of technology-based solutions are often viewed as a means of addressing unmet legal need that is exacerbated by lack of physically available or accessible services, such as in RRR areas that lack local services or where a client has limited mobility. In addition, some client groups, like children and young people, may simply prefer the potential immediacy and anonymity of the online medium (NPBRC 2013).

However, 'there are dangers in all the excitement over the possibilities of new technology' (Smith & Paterson 2014, p. 8). Although existing and emerging technology has the potential

⁵² See, for example <<http://rlc.org.au/article/yellow-card-project-speaks-koori-radio>>, Family and Community Services (2012) and Lormer (n.d.).

to greatly expand the reach of legal services, it is also becoming apparent that technology does not provide a solution for everyone (cf. Commonwealth Attorney-General's Access to Justice Taskforce 2009; Smith & Paterson 2014). Smith and Paterson (2014) argue that there are three 'digital divides' that limit the suitability of technology-based legal services for some people: physical access to the relevant technology, the technical capability to use it, and the cultural inclination to do so.

In terms of physical access, not all Australians have easy access to telephones and the internet, with access tending to be lower among disadvantaged and remote communities (cf. Commonwealth Attorney-General's Access to Justice Taskforce 2009; Coumarelos et al. 2012). A public service lawyer in a remote area of NSW in the Cain et al. (forthcoming) study reported:

I was told [this town] was being well serviced by telephone services. Out of the five clients I saw that day, none of them had telephones; of the two public phones in town, neither of them had been working for more than three months; no one can access telephone services.

Furthermore, even if technology-based legal assistance was made universally available, it would still 'not be appropriate for everyone, particularly those with less capacity to help themselves' (NSW Department of Attorney General and Justice 2012b, p. 41). There would still be disadvantaged sections of the community who would lack the skills to use such assistance, and it has been argued that such a 'digital caste system' is likely to endure well into the future (Schmidt & Cohen 2013; Smith & Paterson 2014). In addition, research has indicated that disadvantaged people and older people may sometimes require high-quality face-to-face advice in order to achieve beneficial legal resolution and may struggle to understand telephone and internet advice (cf. Buck, Tam & Fisher 2007; Buck, Pleasence & Balmer 2008; Forell, McCarron & Schetzer 2005; Forell & Gray 2009; Genn & Paterson 2001; Pearson & Davis 2002; Pleasence 2006). Smith and Paterson (2014) note that some cultures may also be more reluctant to use various types of digital solutions. Our consultations similarly indicated that sometimes people prefer face-to-face advice:

Some people just don't want to talk to someone over the phone. Sometimes people want to just be able to see that someone's there ... and [that] 'they're actually interested in what I'm doing'.
(Public service lawyer)

In addition to the limits of technology-based legal services associated with physical inaccessibility, lack of technical capability and lack of cultural inclination, there are potential barriers associated with task appropriateness, quality, convenience and cost. In terms of task appropriateness, some legal work is difficult to do remotely, as illustrated by Cain et al.'s (forthcoming) consultations:

A lot of them have documents that you need to read and that's not possible, obviously, over the phone, and it's very hard for them to find faxing facilities to fax them over. That's why we do the outreach.

There are also indications that 'virtual' or 'remote' communication may sometimes be less effective or more difficult than in person communication (Forell et al. 2011; NPBRC 2013). For example, with regard to court hearings in RRR locations, Coverdale (2011, p. 49) observed that 'there are limitations in the technology delivering a process comparable to face-to-face hearings'. Issues regarding the reliability and quality of the technological interface can also arise, such as drop-outs and poor sound and picture quality (Forell et al. 2011).

Forell et al. (2011) noted that, compared to other forms of assistance such as telephone advice, AVL assistance may sometimes be less convenient and may confer less privacy and confidentiality. In addition, clients, lawyers and host agencies were sometimes less confident or less comfortable using AVL technology, which could result in failure to use this technology after it had been installed (Forell et al. 2011). All of these factors may act as key barriers to the uptake of technological solutions, leaving behind people who are not familiar with or comfortable using such technology (Forell et al. 2011; NPBRC 2013).

Furthermore, there can also be considerable cost in setting up and sometimes also in maintaining particular types of technology, and this has been a major obstacle to developing such services

(Coverdale 2011; NPBR 2013). However, the costs of setting up specific types of technology-based services need to be weighed up against the alternatives. With regard to virtual court hearings, Coverdale (2011, p. 49) noted:

The set-up costs have also tended to be a major restrictive element. Caution in the use of audio visual technology in hearings is well founded. However, the personal and financial costs to participants in travelling distances to have a matter heard, if indeed they proceed with formal court processes ... given the associated time and financial costs, should also be part of the consideration in offering remote hearings.

Concerns about managing the demand and client expectations associated with some technology-based solutions have also been raised. For example, for services already operating at full capacity, there are concerns that advertising a new online service will ‘open the floodgates’ and the service provider will ‘not have the resources to respond to the deluge of requests for assistance’ (NPBR 2013, p. 186). A related concern is that given the convenience, ease and accessibility of requesting assistance by telephone, internet or mobile technology for those familiar with it, clients will also have a stronger expectation of receiving immediate advice and won’t appreciate that the lawyer may need time to do research (NPBR 2013). In addition, concerns have been raised about quality control and risk management in relation to technology-based advice, especially where the client expects speed and anonymity. Thus, it has been suggested that there is a need to establish protocols for ensuring the quality of online advice and to check that the advice is properly understood and the risks are properly addressed (NPBR 2013).

In their recent review of technology-based legal services, Smith and Paterson (2014, p. 83) concluded that ‘we cannot yet expect digital delivery to be a complete or even nearly complete substitute for face-to-face services’. They also note that there is relatively little quality evaluation of digital legal service delivery so there is a great need to assess the effectiveness of different digital delivery models. Clearly, technology-based legal outreach needs to be appropriately designed, planned, resourced, evaluated, and also needs to be supplemented with other modes of legal service delivery.

Responsiveness of services

Duty solicitors at courts function as ‘the emergency room professionals of the court system. They keep the courts running by providing unrepresented litigants with immediate help’ (Buckley 2010, p. 8). However, providing ‘emergency’ or ‘immediately responsive’ services is a common challenge for many legal outreach services, which, by their very nature, do not have an ongoing presence within all the towns and communities they service. As already discussed, our consultations in remote areas revealed the considerable resourcing required to conduct a sizeable outreach circuit once a month where huge distances are covered, let alone more frequently. The considerable distances between towns in some remote areas mean that lawyers can be on the road for several days at a time. Responsiveness is also limited by the considerable organisation necessary before commencing a circuit in terms of teeing up host agencies, advertising the upcoming service to the communities and planning travel and accommodation arrangements for the outreach lawyers, as our consultations demonstrated:

in some of those outreach towns ... it’s very difficult sometimes to get a motel ... The solicitors ... did a very late appointment ... When they got to their motel ... they’d given their accommodation to someone else ... so they had to travel ... at night with kangaroos and that’s always dangerous. But luckily they did get the accommodation. (Public legal service coordinator)

New legal outreach services can also face challenges in responding to the demand that can be engendered as the community becomes aware of the new service, as our consultations in Sydney revealed:

So, you know, it’s an awkward [double-edged] sword. You go out to promote your service. Do you then have the resources to fill that need that all of a sudden comes knocking on your door? (Public service lawyer)

Forell, McDonald et al. (2013) noted that the nature of legal outreach services means that they have the challenge of trying to provide assistance 'on the spot', given that they are not permanently located at the outreach site:

at an outreach you're less able to go 'I'll talk to you tomorrow about this', so you've really got to be able to address the issue as best you can then and there. And that's always been the model, we do as much as we can on the spot, or as close to on the spot as possible, and really try to be resourceful about how we sort things out ... (Public service lawyer)

In addition, Forell, McDonald et al. (2013) noted that, when issues cannot be fully addressed on the spot, sometimes the matter must wait until the next outreach visit, as follow-up over the telephone may be difficult:

Some people you really need to see face-to-face again. Other people with a bit more capacity to assist themselves, you can just talk to them on the phone. (Public service lawyer)

Similarly, Long and Beveridge (2004) argued that most outreach models offer only short client service sessions, they are seldom available for emergencies, and follow-up work must sometimes wait until the client has left and the worker has travelled back to the base. They noted that it may be possible to mitigate some of these difficulties by using technological solutions or well-appointed mobile offices.

Consistency of services

Regular and consistent outreach clinics can help raise awareness of the service and build trust in the service (Forell, McDonald et al. 2013). However, providing consistent services can also be a challenge within outreach models, given the infrequent or irregular nature of outreach, problems with staff turnover and the use of rosters of volunteers in some cases (Forell & Gray 2009; Forell, McDonald et al. 2013). Our consultations highlighted that staff turnover can impede consistent service provision by impacting on community engagement and trust:

If you're building ... community relationships, it's with a person, it's not with a service. If you have that constant turnover of staff, you lose those relationships and you have to rebuild them up all over again ... People leave, they come for 12 months and they go ... Just as ... people get to know them and trust them and can talk to them, they disappear. (Public service lawyer)

Where continuity of staff is not possible, particularly for matters that continue over protracted periods of time, consistency of advice, good handover strategies and good record keeping systems are vital (Forell & Gray 2009).

Another challenge for outreach services is determining the appropriate frequency of outreach, which can depend on factors such as demand, legal practice area and location (Forell, McDonald et al. 2013). Forell, McDonald et al.'s (2013) study revealed that there can be tension between obtaining sufficient client numbers to sustain a certain frequency of service and conducting outreach frequently enough to demonstrate commitment, raise awareness and build community trust:

these trips can't simply be too frequent, at the same time they can't be too far apart, because you don't have that continuity and you're no longer seen as a 'real' service ... Two months is starting to be a bit of a stretch. If people know you won't be back for two months, it's almost like 'it's not going to happen'. (Public service lawyer)

Furthermore, as Forell, McDonald et al.'s (2013) consultations demonstrate, consistency means that even if there are no client bookings, 'the show must go on' as advertised in order to build a local presence and avoid being dismissed as a 'fly-by-night' service:

it's important to be there even if the daily list is not overflowing with appointments, might have been a quiet month, but the visit is still there and the word still gets around [that you'll turn up]. (Public service lawyer)

Our consultations also indicated that reducing the frequency of outreach due to a lack of appointments can also be damaging to relationships with other service providers:

[If] ... the solicitors are totally, totally under siege with work here and there's no appointments out there [at the outreach site], they might skip an outreach. But we've found it very important to continue doing outreach, even if ... [there are] no appointments, because service providers in those towns change a lot so we're constantly renewing those contacts. (Public legal service coordinator)

Administration

There can also be administrative challenges that are unique to outreach services and can hinder their efficient operation. For example, managing client files can be more difficult within legal outreach models than within mainstream legal services, given that documents may move between several locations, such as the host organisation's premises, a number of outreach locations or the offices of a law firm (NPBRC 2013).

Furthermore, as the first point of contact, the client-intake system has been identified as the foundation stone of good outreach, and it has been noted that the outreach service can fail if the intake system breaks down (Forell, McDonald et al. 2013). There are a number of complications to client intake procedures within legal outreach models. First, outreach services often have to contend with the transience of their client populations (Forell & Gray 2009; NCC 2003). As noted earlier, these clients often have chaotic lives and if they 'could not "drop in" on the spot or make an appointment as soon as possible, some simply did not come back' (Forell & Gray 2009, p. 11). Thus, the intake system must suit the client group.

Challenges have been reported for both appointment-based and drop-in models. A challenge for appointment-based models is that some clients fail to attend scheduled appointments. As our consultations in Sydney revealed, appointments do not always suit clients in crisis:

when ... we just had advices by appointment ... they'd be booked two or three weeks in advance. We have a very high no show rate to those ... if people have to wait two or three weeks, by the time the appointment comes around it's actually no longer the most pressing issue. (Public service lawyer)

A number of interviewees in our consultations,⁵³ and in the Forell, McDonald et al. (2013) study, felt that drop-in services may be preferred by some transient clients who are less capable of making and keeping appointments, such as homeless people. Some interviewees in the Forell, McDonald et al. study also reported that Indigenous communities often prefer to drop in rather than make bookings. However, our consultations and the literature suggest that, although drop-in services can be effective in dealing with clients at a time they are ready to take action, they can be inefficient for service providers during periods of low access and can also result in having to turn people away during periods of high access (Forell & Gray 2009; Forell, McDonald et al. 2013). Checking for conflict of interest, or 'conflict checking', can also be difficult in drop-in models (Forell, McDonald et al. 2013; NPBRC 2013). In addition, our consultations with homeless legal service providers revealed that it can be difficult to recontact transient clients for the purposes of organising follow-up sessions.

Sometimes, as one of our interviewees suggested, using a mix of both appointment-based and drop-in models can help to provide a more balanced intake solution:

So, we find — well, you've got the combination... you get the mixed result: drop-in oversubscribed, appointment undersubscribed. (Public service lawyer)

When appointments are made, different types of booking systems can also result in different types of challenges in legal outreach models. The bookings can be made by the host agencies at the outreach sites, the outreach staff at the 'hub' or regional offices, or more centrally by the legal service provider. Forell, McDonald et al. (2013) noted that different types of intake may be suited to different service environments and client groups, and have different strengths and weaknesses. Challenges with central booking systems can be that weaker links to the community may result

⁵³ Based on consultations with service providers at the National Homeless Persons' Legal Clinics Forum on 4–6 June 2013 at the Public Interest Advocacy Centre, Sydney.

in poorer client uptake, and they may not always be feasible given available resources. However, their advantages can include more appropriate referrals to the outreach service, better opportunity for conflict checking, and better administration in terms of advising the client what documents to bring and collecting data (Forell, McDonald et al. 2013):

We take all the details of the client and we make up the advice sheet beforehand. We do all the conflict check and everything when we've got them on the phone. (Public service lawyer)

Forell, McDonald et al. (2013) noted that host-agency bookings had the advantage that the local community knowledge of the host may support better client engagement. However, challenges with host-agency bookings were found to include inadequate legal knowledge to make appropriate referrals to the outreach service, problems with client privacy and confidentiality, failure to forward client information to allow conflict checking, as well as clients being double-booked or booked on the wrong day. Forell, McDonald et al. (2013) concluded that it was critical that host agencies making client bookings are provided with training and resourcing to establish and maintain appropriate booking practices:

what about privacy, what about training, what about support, those kind of things ... the thing that worries me about multiservice clinics is that we are asking non-legal, often volunteer, reception ... to work out which week to book them in — so [to identify the] kind of legal problem ... (Public service lawyer)

Our consultations in Sydney also revealed that client intake systems sometimes need to be tailored to suit CALD groups who have poor English proficiency:

the newer arrivals ... because of their restricted English, they were tending to rely on their case worker to make the approach to us during our phone advice sessions. If they ... didn't have the case worker with them, that opportunity was sort of lost. So we set up a dedicated service ... where if they can't get through, the case worker will email us a referral sheet and we make sure that we ring ... the client back with an interpreter. (Public service lawyer)

Sustainability of services

Many of the challenges faced by legal outreach services, discussed above, can act as major impediments to the sustainability of these services. For example, sustainability can be compromised by failure to successfully engage the target client group, failure to manage collaborative relationships with host agencies, other stakeholders and services, and inadequate staffing and resourcing (Forell, McDonald et al. 2013). As noted earlier, the adequacy of staffing and resourcing is often dictated by government funding, which can be limited or provided on a temporary basis. Insufficient funding obviously limits the outreach services that can be provided and can affect the working conditions of outreach staff, as illustrated by our consultations:

it would be good if it was made ... a permanent position, if we got adequate funding to make that permanent. (Public legal service coordinator)

We were looking at employing a senior solicitor for a fixed period, you know, 12 or 18 months ... and we were literally looking at having to use our shed out the back as an extra office space. (Public service lawyer)

Changes in programs, funding and legislature can also create difficulties that are amplified in the context of legal outreach to RRR areas. For example, our consultations revealed the difficulty posed by having to inform clients in remote areas about the recent reductions in compensation payments to victims of crime in NSW, which included reductions applied retrospectively:

it's going to be a huge issue especially because, you know, we have clients 400 kilometres away from us, who you can't go and sit down with every one of them face-to-face and say, 'Look, we've been telling you for the last two years ... you've had a good claim for \$30 000, \$50 000. You're now looking at \$1500'. (Public service lawyer)

In addition, our consultations and past research indicate that temporary or short-term initiatives can have a flow-on effect, adversely affecting the uptake of future programs through the erosion

of community trust. For example, Forell, McDonald et al.'s (2013) consultations revealed the considerable cynicism within disadvantaged communities that can result from constant changes to services:

People think, 'We get a service and as soon as the next budget or election or what not, the service is gone or changed' or something like that. So there is a program put in place, but it never really stays very long. (Public service lawyer)

Chang (forthcoming) similarly found that pilot programs can jeopardise community trust in new programs:

[If you're] just here to do a pilot project then leave ... I hate pilot projects, hate them, especially in regional areas. Because I know you're going to put some resources in, and then you're going to take them away. You raise the expectations and then you take them away. And people go, 'well, why should we trust you?' It's about a relationship of trust, especially when you're doing it in disadvantaged communities. Trust is absolutely vital. (Public service lawyer)

One of our Sydney interviewees suggested that it can be better to delay introducing a new outreach service until the sustainability of the service can be confirmed:

Our ALAP [Aboriginal Legal Access Program] worker wants to expand her outreach, but in the Aboriginal community, you can't stop start something and take it away. You've got to build the trust and rapport. So we've kind of got to hold back really until we know what it looks like. (Public service lawyer)

Key features of effective legal outreach

Despite the diversity in legal outreach models, research has identified common characteristics of outreach services which appear to be critical to their success in reaching and assisting disadvantaged clients (cf. Forell, McDonald et al. 2013; Long & Beveridge 2004; NPBRC 2013). Furthermore, many of the elements that are required for a successful outreach service have developed in response to the barriers and difficulties in implementing outreach services. As is further discussed below:

good outreach services require careful planning, proper resources, and need to fit with existing community resources and needs. They should offer more than just an initial short contact, and staff must be knowledgeable and well trained. Venues for outreach services must be linked to community networks that offer ancillary services and have local credibility (Long & Beveridge 2004, p. 70).

Targeted to meet priority legal need and fill a service gap

Effective outreach services are appropriately planned and targeted to meet priority client needs that are not routinely addressed by other local services (Forell & Gray 2009; Long & Beveridge 2004; NPBRC 2013; National Rural Health Alliance (NRHA) 2004). Pre-planning and analyses of needs and service gaps is therefore critical to inform the establishment of an effective and appropriate outreach service that does not duplicate existing legal services (Forell & Gray 2009; Forell, McDonald et al. 2013; NCC 2003). Thus, a well-planned effective outreach service will meet a 'consumer demand for the service, and [generate] a positive consumer response' (NRHA 2004, p. 20).

Engages clients

Building trust and rapport to successfully engage hard-to-reach disadvantaged communities is central to effective outreach (Forell & Gray 2009; Porteous 2012; Dewson, Davis & Casebourne 2006). Successful outreach programs have a clear, credible identity and effectively engage their client group by addressing any barriers to accessibility. The client group knows and trusts the service, recognises the service as reputable and, ultimately, uses the service. As already discussed, client engagement and trust can be facilitated by a number of strategies, such as the service provider partnering with a trusted local agency, engaging respected community leaders and stakeholders, locating the service in an accessible place (e.g. within a frequented and trusted host

agency) with private space for confidentiality, building referral systems with key problem noticers (e.g. within the host agency or elsewhere) and marketing the service (Forell & Gray 2009; Forell, McDonald et al. 2013; NCC 2003; NPBRC 2013).

Appropriate service delivery

A key feature of effective outreach is service delivery that is well tailored for the target group or community (Forell & Gray 2009; NCC 2003). The target client group is identified at the early planning stages and decisions about the placement and type of legal outreach service are influenced by a consideration of the specific needs and capabilities of the target group (Forell, McDonald et al. 2013).

Client-centred services and effective referral pathways

Legal outreach programs typically target clients who are disadvantaged, who often have multiple, complex and interrelated legal and non-legal needs, as well as low levels of legal capability. The client group will include people who are poor, have literacy issues or low levels of education, have chaotic lives, and may have cognitive impairment or be emotionally unstable due to mental health issues or drug or alcohol problems (cf. Forell & Gray 2009).

Consequently, effective legal outreach delivers services that are appropriate for the client's needs and capabilities or 'client-centred'. First, outreach lawyers should be skilled at communicating and working with disadvantaged people and identifying limitations in personal and legal capability. They must be able to build up trust and rapport with their clients, who may feel intimidated, distrustful or embarrassed about seeking assistance. Secondly, outreach lawyers would ideally have a broad general knowledge across the key civil, family and crime issues affecting the client group in order to provide basic information outside their usual area of practice and provide appropriate legal referral. Thirdly, the outreach service should be able to offer more intensive forms of assistance for clients who lack the personal resources to help themselves. Finally, the outreach service needs to have good referral links with other services given that clients may often have legal and non-legal problems that are beyond the scope of the outreach service (cf. Forell & Gray 2009; Forell, McDonald et al. 2013).

Effective collaboration

Effective coordination and collaboration with other service providers is therefore a key feature of effective outreach. Effective collaboration is not only required with other service providers, but also with the host agency and other community members or organisations who may act as 'problem noticers' (Forell & Gray 2009; Long & Beveridge 2004; NPBRC 2013; NRHA 2004). 'It is essential to form relationships that will be strong enough to overcome the barriers of distance and encourage the provision of assistance in situations where it may not be so convenient' (NPBRC 2013, p. 138). Trust and respect on both sides of the partnership are critical, as is development of formal and informal mechanisms for sustaining the relationship. Successful strategies for maintaining effective partnerships include shared planning, regular staff meetings, informal or social communication, training for the host agency by the outreach staff and vice versa, and formal dispute resolution processes (Forell & Gray 2009; NPBRC 2013).

Accessibility

A number of studies have stressed the need for flexibility in outreach services to facilitate accessibility (Allison et al. 2012; Dewson, Davis & Casebourne 2006; Forell & Gray 2009; Forell, McDonald et al. 2013; Porteous 2012). The service needs to be flexible enough to reach transient clients and to provide timely assistance to clients who have chaotic lives, are facing an emergency or are at crisis point (Forell & Gray 2009; Long & Beveridge 2004).

The outreach service should also be in an accessible location, should offer consistency and continuity in service provision and should overcome any cultural barriers by being culturally appropriate and sensitive (Commonwealth Attorney-General's Access to Justice Taskforce 2009; Forell & Gray 2009; Forell, McDonald et al. 2013; Long & Beveridge 2004). Furthermore, the outreach service needs to be delivered in a mode that is effective and comfortable for the client (which might sometimes necessitate in person consultation). Offering a private space for confidential communication between lawyer and client is also an important factor for facilitating use of the service (Forell & Gray 2009).

Sustainability

Effective outreach needs sufficient funding to be sustainable, to employ skilled, trained and supported staff and to operate with adequate facilities, resources and technology (Forell & Gray 2009; NCC 2003; NPBRC 2013; NRHA 2004). The ability to maintain client numbers is one important indicator of outreach sustainability (Forell, McDonald et al. 2013).

Staffing

Sustainable outreach requires appropriate incentives to attract skilled legal staff, particularly where large distances are involved, and enough funding for back-up support and succession planning (NRHA 2004). In addition, training and supervision will often be necessary so that lawyers have sufficient expertise in the areas of law relevant to their clients and a sound knowledge of the local community and services to make suitable referrals (Forell & Gray 2009; NPBRC 2013). Host agencies involved in client intake also need to be appropriately trained and supported (Forell, McDonald et al. 2013).

Other resources

Effective outreach also involves sufficient funding for quality infrastructure, equipment, facilities and technology in outreach locations (Forell & Gray 2009; Long & Beveridge 2004; NRHA 2004). Access to equipment such as mobile phones, computers and appropriate technology at outreach sites facilitates quicker and more effective service delivery. For instance, access to the internet at outreach sites enables lawyers to undertake research, access precedents and produce letters and documents on the spot (Forell & Gray 2009). Furthermore, resourcing may also be required to fund for technological alternatives to in person advice such as virtual clinics (Forell, McDonald et al. 2013).

Efficient administration

Effective administration, coordination and record keeping from intake through to referral have also been identified as an important feature of successful outreach (Forell & Gray 2009; Forell, McDonald et al. 2013; NCC 2003; NPBRC 2013; NRHA 2004). Efficient administration is important for facilitating coordination between partners and other agencies, marketing the service and linking with clients, booking in and referring clients, training and supporting legal and host agency staff, coordinating recruitment and training and managing funding and reporting requirements (Forell & Gray 2009; Forell, McDonald et al. 2013; NPBRC 2013). Furthermore, efficient record keeping can be vital when the outreach involves multiple locations and can assist with follow-up of transient clients. If host agencies are booking in clients, there needs to be guidance and support to ensure that intake and conflict checking is managed appropriately (Forell, McDonald et al. 2013).

Monitoring and evaluation

Ongoing monitoring and evaluation are a key method of demonstrating effective service provision in any area, including the area of legal outreach. They are invaluable tools for determining whether the outreach service achieves its central goals of effectively reaching the target client group and producing quality client outcomes (cf. Forell & Gray 2009; Forell & McDonald 2013; Forell, McDonald et al. 2013). As demonstrated by our consultations, the ability of legal outreach to achieve these fundamental goals cannot be taken for granted:

I think all of us struggle to actually target the clients that actually need us the most ... because ... we cover a huge area, the limited funding, all of that, the complex things of our clients, I'm still convinced that the majority of people who really, really, really need our services aren't getting them.
(CLSD member)

Ongoing monitoring and evaluation are also essential in the development of best practice legal outreach models. They can be used to inform decisions about service delivery, such as the most appropriate mode of delivery, location of services, type of assistance services, type of coordination with other services and referral systems, and frequency of services (cf. Forell & McDonald 2013). Finally, at a purely pragmatic level, monitoring and review systems can be critical in demonstrating accountability, mounting a case for ongoing project funding and resourcing, and hence, facilitating the sustainability of the service (cf. Forell & Gray 2009; NPBRC 2013).

Forell and McDonald (2013) outline a framework for monitoring and evaluating legal outreach services. They argue that monitoring legal outreach essentially involves answering whether the service is operating as expected. For example, monitoring data can examine the number of target clients being reached, the types of assistance being provided (e.g. information, advice, minor assistance, representation), the number of appropriate referrals from local services, the appropriateness of the client intake system, the appropriateness of the frequency of the service and the training conducted for outreach solicitors and host agency staff. Forell and McDonald (2013) note that evaluation of legal outreach generally examines the worth of the service, usually in terms of whether the service has achieved its aim of addressing the legal needs of the target group. They note that the specific questions asked in an evaluation will depend on the scale of the outreach service and the resources and relevant data available to undertake the evaluation. At its simplest, a periodic review or evaluation may involve the summation of monitoring data over a period of time. More complex evaluation may explore issues such as the impact, cost and cost-effectiveness of the legal outreach service compared to other types of service. These more complex types of evaluation are more resource-intensive, specialist research tasks (Forell & McDonald 2013).

Benefits of effective legal outreach

Legal outreach services, when appropriately designed, planned and executed, can result in considerable benefits, such as those listed in Table 3.3. Some of the key benefits are further discussed below.

Addresses the legal needs of disadvantaged groups

Legal outreach is a crucial part of ‘poverty law service delivery’ (Long & Beveridge 2004, p. 66). It is a key method for proactively reaching marginalised disadvantaged groups who have particularly high levels of unmet legal needs and have poor capability for addressing those needs or face significant barriers to accessing mainstream legal assistance.

Table 3.3: Potential benefits of legal outreach services

<i>Focus</i>	<i>For...</i>	<i>Potential benefit</i>		
Needs	Individuals and families	Earlier/more timely access and intervention		
		Increased awareness/understanding of available services		
		Increased access through trusted host site		
		Lesser requirement of self-diagnosis as a precursor to action		
		Identification and appropriate response to emerging and ongoing needs		
		Positive legal and other outcomes for clients		
		More holistic/client-centred service delivery		
	Community	Access to broader range of services that meet local needs more effectively		
		A larger pool of skilled and connected professionals		
		Systemic advocacy and law reform		
		Service improvement	Professionals	Skill transfer between partners in outreach
				Development of collegial and supportive relationships
				Improved training/support (e.g. via technology)
			Services	Sharing of professional expertise and improved referral between services
Improved service profile and status in the community				
Transfer of trust between services				
System	Potentially faster service provision using appropriate technological solutions			
	Culturally appropriate services			
	Funders/government	Greater reach		
		Greater coherence		
		Prevention of problem escalation and entrenchment		
Funders/government	Potentially reduced number of contacts due to earlier/more timely intervention			
	Potential long-term savings with appropriate technological solutions			
	Promotion of social inclusion			

Forell and Gray's (2009) review of legal outreach services demonstrated that carefully designed legal outreach can both reach and provide positive outcomes for disadvantaged clients who might otherwise have limited or no access to justice. Location of outreach services in host agencies that are familiar to and trusted by clients can improve access. For example, positive legal outcomes and improved life circumstances were achieved in the areas of law covered by the outreach service, such as housing, tenancy, debt, access to children and access to welfare payment.

By reaching clients who may otherwise have left problems unaddressed or only sought assistance once issues reached crisis point, legal outreach may also potentially provide earlier or more timely intervention, and hence, may prevent legal and other problems from escalating (Forell & Gray 2009). A number of studies have also demonstrated that legal outreach can have positive impacts on broader life circumstances (Forell & Gray 2009). For example, debt advice was found to lower stress levels and improve general health, relationships and housing stability.

Benefits of collaborative working

Given that legal outreach services often involve collaboration between agencies, they have the potential benefits of collaborative working, which are discussed in detail in Chapter 4 and also listed in Table 4.3. These potential benefits include benefits to the legal outreach provider, the host agency and the clients (Forell & Gray 2009; Forell, McDonald et al. 2013; NPBRC 2013). For example, the legal outreach provider can benefit from use of the host agency's facilities, local community knowledge and networks; the host agency can benefit from an increased capacity to offer clients a wider range of services; and clients can benefit from the provision of legal assistance in an accessible, familiar and trusted site, and from more streamlined and holistic service delivery and referral (Forell & Gray 2009; Forell, McDonald et al. 2013; NPBRC 2013).

Benefits of technology-based outreach

Technology-based legal outreach has the potential to broaden access to legal advice and assistance, particularly among those sections of the community who have a high capacity for self-help and are technologically savvy (Commonwealth Attorney-General's Access to Justice Taskforce 2009; NPBRC 2013). Technological solutions have the potential to provide legal information and advice to suitable clients in a relatively short timeframe, and may sometimes provide long-term savings in cost, time and resources, once set-up funding to establish such solutions has been invested (cf. Coverdale 2011; NPBRC 2013).

In addition, carefully designed technological solutions may be helpful in bridging some of the challenges associated with providing legal outreach services at a distance in RRR areas. While technological solutions will not suit all clients, they have a potentially useful role to play in training and supporting lawyers delivering outreach at a distance and in streamlining administration, record-keeping and review processes (Forell & Gray 2009).

Culturally appropriate legal services

Legal outreach services targeting a specific demographic group, such as Indigenous persons or persons from a particular CALD background, allow the opportunity to design services that are culturally sensitive and appropriate to that group (Commonwealth Attorney-General's Access to Justice Taskforce 2009; NPBRC 2013). For example, the Commonwealth Attorney-General's Access to Justice Taskforce (2009, p. 81) stated:

Outreach enables information to be provided in community members' language and by people who are sensitive to and ... [respectful] of cultural difference. It can also be more responsive to the needs of people from different cultural backgrounds.

The Taskforce noted that 'outreach helps CALD communities learn about the law, their rights and the legal pathways available to them' and stressed the value of focusing on 'community leaders and workers ... given their roles in communities as sources of information and potential gateways to legal services' (p. 154).

Systemic advocacy and law reform

Legal outreach work can also have the benefit of leading to systemic advocacy and law reform, as lawyers participating in outreach work are often dealing with a large volume of clients from the

same disadvantaged group, many of whom may have similar core legal needs. As a result, on the basis of what is learned through the legal outreach service, strategic action can sometimes be taken to improve the ways laws affect all people in the target group (Forell & Gray 2009; NPBRC 2013). For example, the NPBRC (2013, p. 124) reported that pro bono partners assisting in a homeless persons' legal outreach clinic developed expertise in fines and tenancy issues that lead to law reform work in these areas:

A program to address infringement issues arose from seeing many homeless people at the clinic with the same problem, and is much more effective than having lawyers dealing with infringements on a case-by-case basis.

A public service lawyer in our consultations similarly noted that law reform work can provide efficiencies by facilitating more systematic and earlier intervention:

I think that the best case scenario is the stability for early intervention with law reform. I'd love to spend more time on [that] ...

Promotes social inclusion

As detailed earlier, empirical evidence demonstrates a strong bidirectional relationship between socioeconomic disadvantage and legal problems. That is, not only does disadvantage increase the likelihood of experiencing legal problems, but experiencing legal problems can create, perpetuate or further entrench social exclusion (Buck, Balmer & Pleasence 2005; Currie 2007). This tight nexus between disadvantage and legal problems indicates that promoting access to justice is a major route to tackling social exclusion (Pleasence 2006). Thus, by addressing the legal needs of some of the most marginalised 'hard-to-reach' disadvantaged groups who may otherwise fail to access justice, effective legal outreach has the potential benefit of promoting social inclusion.

Planning legal outreach

Evidently, there is no one-size-fits-all model for legal outreach. A framework for legal outreach services cannot be based on a blanket approach within a jurisdiction, but must take into account regional and local differences. Any such framework must aim to identify and address the existing gaps in legal service provision and must acknowledge that a variety of different types of outreach services are likely to be required to meet the needs of different demographic groups in different geographical areas. In each case, legal outreach services need to be tailored to the particular population, legal needs, gaps in services to address those legal needs, local service infrastructure (including available legal services, broader human services and community organisations), and must overcome any existing barriers to accessing services in those areas. In short:

outreach services should be grounded in a thorough assessment of the target population and area to ensure that they meet community needs and incorporate the most effective and appropriate accessibility options. (Long & Beveridge 2004, p. 69)

Thus, when embarking on legal outreach 'careful pre-planning and needs assessment is needed to ensure that the service will actually address the need' (NPBRC 2013, p. 138). The key steps in planning legal outreach services are discussed below and are summarised in Figure 3.1.

The first step in planning a new legal outreach service is identifying the target client group. Typically, the target client group will have high levels of legal need that are not being met by existing (mainstream or other outreach) legal services due to either a lack of local services or major personal, physical or systemic barriers to the accessibility of existing services. As already discussed, the target client group may be a specific disadvantaged group (e.g. homeless people, Indigenous people), a location frequented by people with legal need (e.g. a court or prison) or a RRR area.

The next major steps are developing a thorough understanding of both the target client group and the 'infrastructure' or 'environment' in which the client group is situated. These understandings form the building blocks for successful legal outreach. The particular legal needs of the client group, their level and type of disadvantage and social exclusion, their legal capability and other

competencies, their cultural influences and the existing barriers they face to accessing legal assistance will ideally influence the legal outreach model that is established and its location. Similarly, the legal outreach service should be shaped by a consideration of the client group's environment, including the physical and geographic environment, existing legal and broader human services, other stakeholders and community leaders, and other potential facilitators and barriers to legal outreach. Thoroughly tapping into local intelligence can be invaluable in building a comprehensive understanding of the needs and capabilities of the target client group and the opportunities and barriers provided by their existing environment. For example, one of the public service lawyers we consulted noted the importance of:

being careful when you're looking at putting in a service; speaking to a broad range of stakeholders and community agencies, not just targeting a couple because they might not be the ones to give you the total picture ... in somewhat of your haste to put in a service you might short-cut it and you've really got to do the ground work first, otherwise you won't get a service that works.

However, it is also important to note that there may be existing data to draw on to help identify regional legal needs, demographic characteristics and gaps in services. Thus, it may not be necessary to conduct new needs, demographic and regional analyses from scratch each time an outreach program is designed. For example, a key strategy of the CLSD program in NSW is to conduct such analyses in each CLSD region when a CLSD partnership first commences in that region and biannually thereafter, drawing on census data and legal service data (Forell, McDonald et al. 2013). Consultants to the Forell, McDonald et al. (2013) study, which reviewed Legal Aid NSW outreach services, identified CLSD partnerships and meetings as a key source of information about legal needs and existing legal and broader human services in their regions of NSW. Furthermore, legal outreach initiatives tailored to local need and service gaps have arisen from CLSD planning (Forell, McDonald et al. 2013).

Knowledge of the existing legal and non-legal service environment can help to avoid duplication of services, as well as to identify potential partners and avoid service providers 'acting like they're lone rangers' (Forell, McDonald et al. 2013).

In addition, knowledge of the service environment can help assess the feasibility of outreach services in a location. While an area may be identified as high need with legal service gaps, it may not be a viable location for certain types of legal outreach (e.g. in person outreach) due to insufficient supporting infrastructure, such as lack of a host agency or inadequate local services to support a referral network.

Armed with a comprehensive understanding of the target client group and the environment, the next steps, namely designing appropriate methods of engaging the target client group and appropriate legal outreach service delivery, can then be undertaken. For example, for some target client communities, there may be well-trusted community leaders or organisations that can be used as facilitators of community engagement. Such local community knowledge is 'like gold' and can be critical to developing a viable 'local place based solution' (Forell, McDonald et al. 2013).

In terms of providing appropriate legal service delivery, decisions may need to be made about which of the legal needs of the target client group it is feasible for the outreach service to focus on, and which legal issues may need to be referred elsewhere. In addition, decisions about the mode of service delivery and the type of intervention (e.g. information, advice, minor assistance, representation) will ideally take into account both client need and capability, but may also need to be considered in terms of what is practicable with the available resources. As noted earlier, some disadvantaged groups may be more suited to in person legal outreach rather than technology-based legal outreach and may require tailored, intensive, holistic assistance.

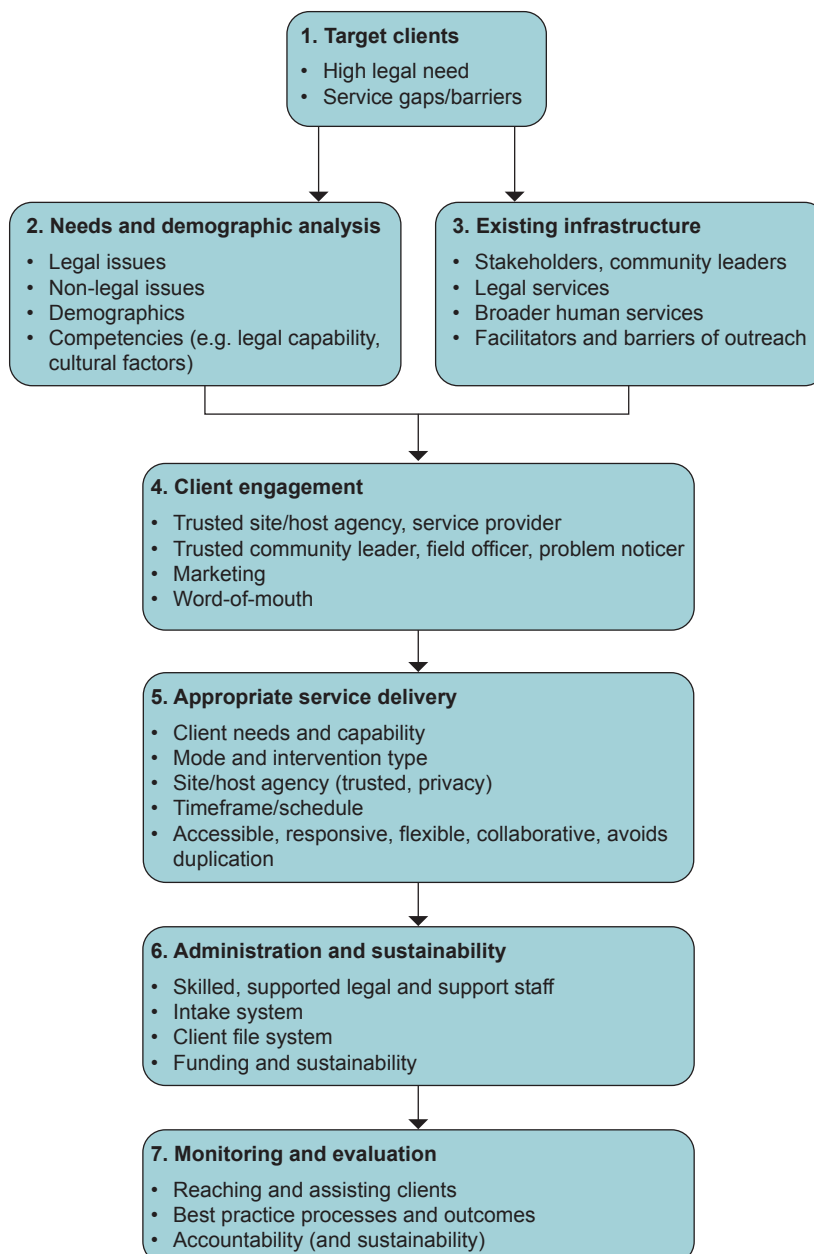
Identifying the right host site or agency is also a key strategy that can facilitate promotion of the service, accessibility of the service through a trusted agency, a cultural fit for the target client group, and good referral links to other legal and broader human services (Forell, McDonald et al. 2013). Another important consideration in choosing the outreach site, particularly in RRR areas, is its accessibility via public transport.

Once the type of outreach model and service delivery has been designed, it is also valuable to consider factors that are likely to enhance the efficient administration and sustainability of the

outreach service, including the competencies required for legal staff and other staff; appropriate staffing levels; staff induction, training and support requirements; suitable outreach schedules; efficient client intake and client file systems; necessary equipment and facilities at offices and outreach sites; and funding requirements. It is worth noting that transport is also a crucial consideration when determining the schedule for outreach clinics, visits or other services. For example, holding outreach services in town at times when target clients in remote areas are able or more likely to travel into town (e.g. on the day that Centrelink benefits are paid) can facilitate accessibility (Forell, McDonald et al. 2013).

Finally, as part of the planning of any new legal outreach service, it is important to consider appropriate monitoring and evaluation strategies. Ongoing monitoring and evaluation are key methods of demonstrating effective service provision in any area, including the area of legal outreach. Evaluation is critical not only in assessing whether target clients have been reached and successfully assisted, but can also be used to develop best practice in legal outreach, demonstrate accountability and facilitate ongoing funding and sustainability.

Figure 3.1: Planning a legal outreach service



4. Joined-up services: mirroring and efficiency

Towards joined-up services

Chapter 2 set out evidence demonstrating that legal problems commonly exist as part of a broad set of related legal and wider social, economic and/or health problems, and sit ‘at the intersection of [law] and everyday adversity’ (Sandefur 2007, p. 113). It also set out evidence that, when help is sought to resolve problems, ‘people’s choices of advisers ... can be uncertain and unpromising’ (Pleasence 2006, p. 79), a problem compounded by the phenomenon of referral fatigue, whereby people become less likely to successfully act on a referral each consecutive time they are referred on. Access and transitioning between services can also involve delay that may impact on outcomes.

Building on concerns to ensure that timely access to appropriate help is facilitated (discussed in detail in the following chapters), and reflecting the shift to a more client-centred approach to the provision of public-funded legal services, there is an increasing policy and operational focus on developing joined-up services (legal/legal and legal/non-legal) that reflect the experience and needs of service users, are best positioned to address underlying and consequential issues (particularly where these are aspects of social disadvantage) and better yield whole-system policy objectives (e.g. Commonwealth Attorney General’s Access to Justice Taskforce 2009; COAG 2010; NSW Department of Attorney General and Justice 2012b; Legal Aid NSW 2012).⁵⁴ Though there can be tension between concerns about, on the one hand, holistic client-centred service delivery and, on the other hand, service quality and increasingly specialist professional practice.⁵⁵ There can also be tension between the idea of holistic client-centred service delivery and the reality of how users engage (and wish to engage) with services.

Chang (forthcoming), in the context of her application of transaction cost theory to integrated public-funded legal services, has also highlighted how competitive and economic advantages may attach to joined-up services. For example, depending upon their form, joined-up services can potentially benefit from increased client numbers (through, for instance, cross-referral), time-efficiency and economies of scale (through, for instance, shared administration, marketing and purchasing power). Joined-up services may also benefit funders through a reduction in the number of contracts and relationships that need to be managed.

Thus, as Wong et al. (2012) have observed, there can be both ‘needs’ and ‘service improvement’ benefits to joined-up services. Building on the literature, they provided a broad summary of the potential benefits of joined-up services, broken down by the nature of the beneficiary.⁵⁶ This is set out, extended and adapted to the legal services domain in Table 4.1.

⁵⁴ This can be seen as part of the ‘stunning evolutionary change in institutional forms of governance’ referred to by Alter and Hage (1993, p. 12).

⁵⁵ In the legal services domain, the tendency towards greater specialisation has been detailed most comprehensively by Heinz et al.’s (2005) longitudinal study of Chicago lawyers, but the phenomenon is evident across jurisdictions. The tension between holistic client-centred service delivery and increased specialisation is evident across all human services domains. For example, Rush et al. (2008, pp. 1–2) have described how ‘silos’ can be cogently argued to be one aspect of the specialisation critical ‘to nurture and preserve the resources and competencies required to treat and support people with the most complex needs profile’, while at the same time these complex needs ‘contribute to a “reverse pressure” to form various types of interorganisational relationships and cross-sectoral strategies to better address people’s needs’.

⁵⁶ Wong et al.’s (2012) summary is concerned with collaborative working. However, as we describe in the next section, our interest here extends to joined-up services more broadly. The summary has therefore been adapted accordingly.

Table 4.1: Typology and summary of potential benefits of joined-up services (adapted from Wong et al. 2012)

Focus	For...	Potential benefit
Needs	Individuals and families	Lesser requirement of self-diagnosis as a precursor to action
		Increased awareness and understanding of available services
		Easier access to, transitioning between and simultaneous use of services
		Reduced stress/embarrassment in accessing services
		More effective identification and appropriate response to emerging and on-going needs
		More holistic service delivery
		Increased consistency and continuity of service
		More timely intervention
		Reduced duplication of information provision
		Community
	A larger pool of skilled and connected professionals	
Service improvement	Professionals	Increased knowledge and skills
		Development of collegial and supportive relationships
		'Demystification' ⁵⁷ of professions
		Increased career opportunities
	Services	Greater sharing of professional expertise
		Greater scope for risk sharing
		Ability to achieve objectives beyond single services' abilities
		Reduced duplication of work and administration
		Increased capacity for innovation and creativity
		Greater flexibility for targeting and prioritising
		Improved service profile and status in the community
		Transfer of trust between services
	System	Greater reach
		Greater coherence
		Prevention of problems becoming entrenched or worsening
	Funders and government	Reduced public expenditure through reduced duplication
		Reduced number of contracts
		Greater success in achieving whole of government objectives, including tackling 'wicked problems' ⁵⁸

However, joining up services, whether through assisting users to navigate between them or through services working together, is far from straightforward. In the case of collaboration, Huxham and Vangen (2005, p. 13) observed:

The overwhelming conclusion from our research is that seeking collaborative advantage⁵⁹ is a seriously resource-consuming activity so is only to be considered where the stakes are really worth pursuing.

They continued

Our message to practitioners and policy makers alike is don't do it unless you have to.

However, within the current legal and social policy framework, the evident interconnections between different types of legal problem and between legal problems and broader health, social

⁵⁷ See, for example, Noone and Digney (2010, p. 154).

⁵⁸ 'Wicked problems' are complex social problems that resist resolution (Churchman 1967).

⁵⁹ Huxham and Vangen (2005, p. 37) define collaborative advantage as 'achieve[ing] something really worthwhile that you couldn't otherwise achieve'.

and economic problems,⁶⁰ and the ‘broad practitioner consensus in favour of fostering greater joining-up’ (Dunleavy 2010, p. 15), demand that efforts be made to develop joined-up services that mirror the complex multidimensional needs of public-funded human services users. Moreover, as Huxham and Vangen (2005, p. 8) note, ‘those who make a success of community collaborations are often hugely energised by and enthused about the tangible benefits to the community that result’.

In this context it is therefore important to understand the nature, challenges and facilitators of collaborative working and joined-up services and consider how services can be joined-up within the legal services domain and between the legal services and other human services domain.

Forms of joined-up service

There is an infinite variety of forms of joined-up service. Services may be joined-up formally (through contracts or memoranda of understanding) or informally (through practice), episodically or continuously, horizontally (e.g. as with separate specialist services) or vertically (e.g. as with generalist and specialist services), within sectors or between sectors, visibly or invisibly, physically or remotely, voluntarily or forcibly, for private purpose or for social goals,⁶¹ and they may be joined to any extent on a continuum that extends from near complete separateness to full integration. Services may also be joined-up internally, within organisations, and externally, between organisations, and while the focus in this chapter is on the latter, much of the discussion applies to the former also.

In a legal services context, Coumarelos et al. (2012) have also described joining-up initiatives as being place-based, issue-based, client-based and education-based.

Our meetings with practitioners across NSW impressed on us the extent to which local legal service providers are actively involved in efforts to join up with other legal and non-legal providers.⁶² These include: the provision of on-site civil and family advice by Legal Aid NSW to clients of the ALS; collaboration between Legal Aid in Fairfield and Penrith and MRCs; collaborative working between Western NSW and Elizabeth Evatt CLCs and Family Resources Centres; the Lismore Legal Information Access Centre (LIAC) working with the local neighbourhood centre, CLC and Law Society in the provision of CLE; the referral activities of LawAccess; the involvement of 22 legal and human services organisations in legal outreach events in Brewarinna and Bourke in May 2013.⁶³ These initiatives are generally set against a backdrop of very limited resources and significant capacity constraints.

From a service provider perspective, services are generally thought of as joined-up whenever they work together (or ‘collaborate’) for the benefit of a common client or goal. However, from a service user perspective, a slightly broader range of services may be considered as joined-up, to capture, for example, occasions of passive referral (or signposting) between services (where there may be no active engagement, or even mutual understanding, between services). Here, while services may not be working together, they may appear seamless from the user perspective (and in a way that is indistinguishable from more active referral involving communication between services).

60 Including all of the component elements of social exclusion (a ‘shorthand term for what can happen when people or areas suffer from a combination of linked problems such as unemployment, poor skills, low incomes, poor housing, high crime, bad health and family breakdown’ (United Kingdom Social Exclusion Unit 2001, p. 10). While the Social Exclusion Unit’s definition provides a useful indication of what is generally understood by the concept of social exclusion, it has been criticised for being overly concise and for ‘implying a passivity on the part of those who are socially excluded’ (Hannah 2004). It should also be noted, as Ardill (2005, p. 7) has observed, that many definitions of social exclusion exist, with a study of European Union policy documents found to contain references to ‘at least fifteen different types of social exclusion ... and over fifty ways a person could qualify as “socially excluded”’.

61 Social goals have been frequently overlooked in discussions of interorganisational relations, which often focus on practice in the private sector (Selsky & Parker 2005).

62 Our consultations also impressed on us the extent to which legal services providers were seeking to join up different services provided within single organisations (see Chang, forthcoming, for a detailed description of such efforts) and were engaged in service delivery that extended beyond the purely legal.

63 All these examples were identified at locations we visited while undertaking meetings with practitioners across NSW. More broadly, examples of collaboration have been variously set out in the literature. For example, Coumarelos et al. (2012, pp. 223–224) listed 21 examples of collaborations between legal and non-legal organisations, including place-based initiatives, co-located services, issue-based initiatives, client-based initiatives, legal information and education initiatives, ‘hosted’ and outreach legal services and multidisciplinary services. See also Forell and McDonald (2013).

Such one-way connection may also be regarded as joined-up from a system perspective, as might services that are linked indirectly (and even abstractly), such as through physical proximity, service directories, or service brokers (such as Not-for-Profit Law).

Degrees of joined-up services

While various terms have been used to describe different degrees of joined-up services (cf. Himmelman 2002 and Moore & Skinner 2010), a common framework for considering the operationalisation of such services is that of a continuum of levels of joined-up service, and typologies such as Himmelman's (2002, p. 2) 'matrix of strategies for working together' can be used as a basis for populating the continuum.⁶⁴

In Figure 4.1, adapted from Himmelman (2002) and Rush et al. (2008), the continuum of levels of joined-up services can be seen to extend from 'recognising', through 'networking', 'coordinating', 'cooperating' and 'collaborating' to 'integrating'. The continuum differs from Himmelman's and Rush's in the addition of the initial 'recognising' stage, which is intended to embrace practices such as passive referral. However, the continuum still does not capture the potential input of third-parties (such as government agencies) into the joining-up process through the provision of infrastructure, such as signage, directories or common housing.

Definitions of the remaining stages of the continuum are taken from Himmelman (2002) and Rush et al. (2008). Networking involves exchanging information and coordinating involves exchanging information and altering activities. Together, these represent 'the most common collaboration mechanism' in the legal services domain (Chang, forthcoming) and, as Coumarelos et al. (2012, p. 223) have observed, 'initiatives that provide communication among various legal services and associations have begun to take shape' across Australia. Most notably, these include the national and state Legal Assistance Forums (LAFs) and, in NSW, the Cooperative Legal Service Delivery (CLSD) program.

Cooperating involves exchanging information, altering activities and sharing resources, while collaborating is distinguishable from cooperating through the inclusion of an additional aim of the services to learn from each other and thereby improve. Thus, the co-location of West Heidelberg Community Legal Service and Banyule Community Health would count as an example of the latter, as would the many medico-legal partnerships now established in the United States (Tobin-Tyler et al. 2011). Integrating involves the merging of organisations.

Dunleavy (2010) has pointed out that the various stages of collaboration set out in the literature, such as those in Figure 4.1, are far from clear-cut and, also, that various forms of partnership can exist at particular stages.⁶⁵ Nevertheless, the continuum serves the purpose of demonstrating the breadth of possibilities and some of the characteristics of services.

As services move further towards integration their autonomy is reduced, hence requiring a greater willingness to 'share turf' (Himmelman 2002, p. 2). This tends to go along with a need for greater trust between services — although, as Huxham and Vangen (2005, p. 153) note, trust may become less important as the potential rewards of collaboration increase, and in collaborative practice 'trust is frequently weak (if not lacking altogether), and suspicion is rife'.

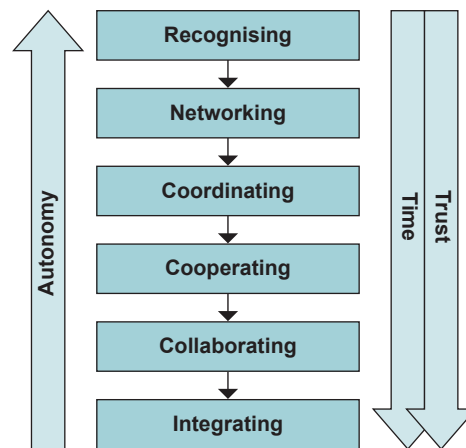
Some evidence of this suspicion was evident from our consultations. For example, in Broken Hill a service manager observed:

Most people think they have to watch out, and I don't know whether this is a Broken Hill thing or whether it's a wider spread thing but people out here in some organisations get very protective of their turf, so sometimes engagement can be slow.

As detailed further below, we also heard about suspicion between different community organisations in urban Sydney.

64 Many other formulations appear in the literature, such as Frost's (2005) continuum from uncoordinated through cooperation (in which independence is maintained), collaboration (in which there is joint planning), coordination (which involves coordinated action to meet agreed objectives) and integration (in which services are unified).

65 Dunleavy (2010) sets out seven main stages, with a penultimate stage that could encompass various forms of partnership, including those involving 'lead agency' coordination, pooled budgets or joined-up senior management.

Figure 4.1: The continuum of joined-up services

Source: Adapted from Himmelman (2002) and Rush et al. (2008)

Also, as levels of collaboration increase, their development and management tend to become increasingly time (and other resource) consuming. Collaboration rarely represents a quick fix.

In the absence of a revolution in service structure brought about through either an internal or external decision-making process, processes resulting in full service integration take considerable time. For example, in the Victorian Department of Human Services planning for the establishment of 31 Primary Care Partnerships (PCPs), made up of 800 organisations, the timeframe for moving through the networking and coordination stages was estimated at four years, the timeframe for achieving effective cooperation an additional two years and the timeframe for achieving effective collaboration a further three years (Victorian Department of Human Services 2005).

Choices concerning form of joined-up service

Choices concerning the form of joined-up services are far from straightforward, and recent history is strewn with examples of ‘collaborative inertia’ (Huxham & Vangen 2005, p. 3), where efforts have made slow, or no, progress towards their stated aims.

Importantly, Huxham and Vangen (2005) have warned against the idea of there being a collaboration template that might be simply rolled out across a range of scenarios. Collaboration ‘is an inexact art involving a lot of judgment’ (Huxham & Vangen 2005, p. 4). Very different patterns of supply, demand and need in different places, populations and in respect of different types of service entail that attempts to join up services should be grounded in their unique circumstances. Processes of joining up services should also recognise the nature, philosophy, objectives, commitment, capacity, continuity and needs of those organisations and individuals involved, which will again vary widely between situations. So, for example, efforts by a large-volume call centre-based human service to join up with (non-core) support services, such as in the case of the Family Violence Risk Identification and Referral pilot run by the Department of Human Services in the child support context (Salvage 2013), are unlikely to be similar in nature to efforts by small organisations delivering resource intensive personalised services in remote areas to join up with community leaders or groups, such as in the case of the Queensland Indigenous Family Violence Legal Service’s outreach program. And both of these will be different to inner-city collaboration between legal services and organisations representing particular ethnic populations. Also, the form of joined-up services will be substantially influenced by the preferences of those who fund them, again a mix that will vary from context to context. Where funding for organisations or collaborations comes from multiple sources (aside from clients), these preferences may create awkward tensions within and between organisations in their service delivery, which also have to be addressed and managed.

Thus, no conclusions can be offered as to the appropriate degree or form of joined-up services in the legal domain. Instead, we set out the challenges and facilitators of collaboration, provide examples to illustrate these and explore the question of how to move towards a system of better joined-up services.

Table 4.2: Summary of challenges to collaborative working

<i>Relates to ...</i>	<i>Challenge</i>
Awareness	Awareness of collaborative opportunities
Resourcing	Availability of time
	Availability of funding
	Availability of appropriate staff/organisations
	Geographical distance
Strategy	Differences in objectives
	Differences in philosophy
	Influence of organisational targets
	Achievability of objectives
	Difficulty of evaluation
Relationships	Levels of trust between partners
	Levels of commitment
	Continuity of organisational membership
	Continuity of individuals
	Differences in standing
	Differences in levels of reliance on partners
Professions	Competition between partners outside of collaboration
	Differences in language
	Difference in professional responsibilities/ethics
	Differences in mandated processes
Organisation	Perceptions of relevance
	Differences in ways of working
	Level and quality of communication
	Levels of understanding of partner services/specialisms
	Ineffective inter-service protocols
	Increased institutional complexity
	Domination by a sub-set of partners
	Rigidity of working practices
Sharing of (negative) risk	
User data	Restrictions on transfer of user data
	Privilege
	Separate IT systems
Policy/regulation	Changes to policy
	Changes to regulatory environment
Services delivered	Extent to which user behaviour/wishes mirrored
	Confusion around responsibility
	Inclusion of user perspectives
	Levels of trust in services
	Tensions between overlapping client groups
	Poor or unrecognised outcomes

Challenges and facilitators of joined-up services

Challenges to collaborative working

The literature on collaborative working and our consultations indicate that the challenges to successful joint working are many, considerable and context specific (e.g. Cameron et al. 2000; Moorhead 2000; Griffiths 2002a; Naylor 2002; Huxham & Vangen 2005; Pope & Lewis 2008; Noone & Digney 2010; Wong et al. 2012; Chang, forthcoming). We expand on some of these in the following sections, and provide a summary in Table 4.2.

Awareness

Evidently, some degree of awareness of opportunities for collaboration is essential before it is possible to actively work towards joining up. In the same way that individuals often fail to recognise the legal dimensions of everyday problems, so non-legal human services may not recognise the value of legal services to their users. Furthermore, they may be unaware of locally accessible legal services. Even in well-integrated community-based services that we visited during our consultations with service providers, it was common for staff to suggest that law was peripheral and rarely relevant to the issues they dealt with, even when this appeared (to us, at least) to be far from the case. And while there was general awareness of local legal aid, CLCs and LawAccess (which figured in some service resources/protocols), one community service staff member admitted to having ‘no idea of what legal services are out there’.

Thus, a first challenge in working towards joined-up legal services is to raise awareness of the presence, nature and potential contribution of legal services among potential collaborators. However, as is suggested below, it can take considerable time to raise awareness of services, and engagement in awareness raising fora (such as interagencies) can be quite burdensome to small organisations.

Resources

As just indicated, working collaboratively is a time and resource-consuming process; made even more so in the context of overloaded professionals working with sometimes emotionally draining clients and issues.⁶⁶ Thus, in the context of legal services partnerships, Moorhead (2001, p. 558) has argued that ‘it requires significant political will and resources for organisations to move beyond paper partnerships to genuine joint working where the leading participants cede power or influence to others in the group’.

Where organisations become partners but offer minimal resources there is a danger of ‘seat warming’, described by Pope and Lewis (2008, p. 452) as being where partners ‘[do] not speak to anybody else about the work ... and [do] not, or [can] not, contribute resources’.

Moreover, with cross-governmental interest in bringing services together to tackle complex social problems, public-funded human services can find themselves involved in many partnership activities simultaneously. This can lead to what Huxham and Vangen (2004, p. 195) have described as ‘partnership fatigue’.

One lawyer in a public legal service in Lismore commented that there are ‘too many’ interagencies to engage with in the area, and that, ‘At the end of last year I think I was on six committees and I just blew my stack’. This was said in a context of partnership activity often being undertaken in addition to a full set of daily work responsibilities.

For some human services, such as early years or health related services, the general weight of partnership activity can be substantial (though this weight can be balanced by the presence of dedicated partnership management staff⁶⁷). For more peripheral human services, such as legal services, the plethora of partnership options may instead allow a generous choice of collaborative directions, though during our consultations one informant observed that it can be hard to determine which interagencies are most appropriate for particular types of work/professionals:

It’s a bit like the Dewey Decimal system isn’t it? Which sub-category to put stuff in? It’s really hard.

66 As Noone and Digney (2010) observe, this problem can be exacerbated by services lacking the capacity to deal fully with all matters that clients present, by the challenge of service targets, and by the fact that integration can increase demand.

67 Unusually in the public legal assistance services sector, LawAccess has a Stakeholder Engagement Manager who decides which agencies to engage with.

However, the flip-side of this is that legal services are likely to struggle if they attempt to place themselves centrally within the human services sphere.

Distance

In the Australian context, the distance between services can also pose a significant challenge to collaborative working. Distance presents an administrative challenge to partnerships, and also acts to limit the opportunities for, for example, interaction, learning and effective referral (e.g. Noone & Digney 2010). Distance also operates in tension to consumer behaviour and wishes, through the inherent inconvenience of transitions between distant services and the limiting of opportunities for gaining awareness of services.

Also, not only may some types of service have no permanent presence in a given location, in the case of legal services, restrictions on the ability of services to represent individuals when they already represent an opposing party can require that collaborations involve multiple services of the same type. This can be difficult to arrange.

One public solicitor respondent to Cain et al.'s (forthcoming) study of legal services in RRR areas observed:

Well you've got the one barrister here, but if he's not available, you have to make a referral to Legal Aid. Not all practitioners want to come out here so we often, where there are conflict rules, we often have to stretch that rubber band. If we automatically said "Conflict" we're out of it, the client has no one. So we really do stretch that conflict rubber band. You have to, because if you work like you do in the city, say sorry look, that's it, they would have no one. Because in rural areas the circumstances are very different.

And a Far West NSW public solicitor noted that conflict issues routinely required solicitors to be sourced from interstate:

We refer people routinely to interstate solicitors. The law is different and you do often see that practitioners struggle because there is a difference between jurisdictions. And the court also struggles with the problem of having practitioners that don't really quite know the procedure appearing in front of them. But it's literally this, either they come in and help, or there's no one.

Differences in objectives/philosophies

When suitable partners are identified for collaborative efforts, there may then be tension between their strategic objectives or philosophies. So, for example, in the context of attempts at co-location between Citizens Advice Bureaux and Law Centres in England in the 1980s, Chang (forthcoming) reports one stakeholder as observing:

Incompatible objectives and beliefs of these two organisations were the main reasons for the separation. While CABx's moral objective was to operate a responsive model for every citizens' enquiry, the law centre was committed to do strategic work for the whole community with limited resources. Moreover, a difference in personalities at management levels deteriorated the collaborative relationship.

Tensions between the different strategic objectives of partners were also noted by Moorhead (2000), in his review of the 'pioneer' English and Welsh Community Legal Service Partnerships. For example, he observed that 'some funders place an emphasis on "community" rather than "legal" projects' (p. 24).

Lawler, Giddings and Robertson (2009) have also documented how services with different philosophies can, within the context of the same issue, develop very different services, aimed at different forms of outcome. So, for example, while private service providers 'are not necessarily focused on the empowerment of the legal citizen', and so are generally concerned with solving problems in the most functional and efficient manner, not-for-profit services often look also to build the capability of clients through, for example, 'contextualis[ing] their position within the legal system'. Such different philosophies can introduce significant tension into a collaborative venture. A Lismore-based lawyer also described the tension between rights-based and welfare-based services as being 'the elephant in the room', and attributed 'a strong culture of social justice' as being a challenge to joint-working.

However, while it may be thought that agreement on clearly stated aims may be ideal to avoid this tension, Huxham and Vangen (2005) argue that too much clarity can be problematic. As they explain:

The possibility for collaborative advantage rests in most cases on drawing synergy from the differences between organisations; different resources and different expertises. Yet those same differences stem from different organisational purposes and these inevitably mean that they will seek different benefits from each other out of the collaboration. (p. 82)

They then set out a multidimensional framework for understanding aims in collaboration that separates out explicit aims from implicit and hidden aims, and then categorises these types of aims into those of collaborations themselves, member organisations, individual members and external stakeholders (e.g. funders). Additional dimensions of authenticity, functionality and time are also included, thus demonstrating a complexity of purpose that constitutes ‘an entanglement ... of aims, both real and imagined’ (p. 83). They argue that loosely-stated objectives are most able to accommodate this complexity.

In the context of much collaboration in the public legal services domain this might be achieved through reference to social disadvantage and/or improved coordination, both of which are helpfully indistinct. So, for example, the three main stated objectives of the Cooperative Legal Services Delivery Program are to ensure:

economically and socially disadvantaged people are able to efficiently and effectively access legal services which can help them to understand, protect and enforce their legal rights and interests; consideration is given to legal need and equity in the provision of legal services and resources; and planning and delivery of legal services is approached in a coordinated and cooperative manner between service providers. (Legal Aid NSW 2011a, p. 1)

Trust

A lack of trust between members of a partnership, or of commitment to a partnership, can also act to the detriment of partnerships, through limiting inclination and commitment to engage (and increasing the likelihood of disengagement). Sometimes trust will be lacking because of perceived conflicts of interest between partners (e.g. Huxham & Vangen 2005), or because of worry about ‘cost shunting’⁶⁸ (Hudson & Willis 1995). There may also be a lack of trust because of negative perceptions of other professionals’ (or whole professions’) quality or utility (e.g. Cameron et al. 2000). Also, (relative) lack of trust may simply be a feature of new relationships. This underlines the significance of time and relationship-building in successful collaborative working, discussed in the following section.

As a CLC respondent to Chang’s (forthcoming) study of Australian legal service integration observed:

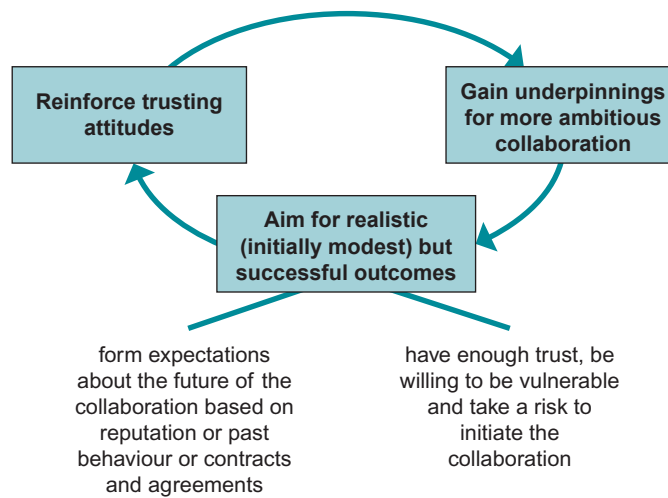
I want to trust the person I refer to ... So, if I’m a doctor and I want to refer to you, a lawyer, I’m more likely to refer to you if I know you and even more likely again if I trust and respect you. You can’t buy that trust and respect. You need to develop that ... [and one way is through] the history of the relationship.

Thus, prior collaboration between partners, which can be expected to have provided a foundation of trust, can improve the likelihood of success in new ventures (Cameron et al. 2000; Noone & Digney 2010). This has been illustrated by Huxham and Vangen’s (2003, p. 12) trust building loop (Figure 4.2), who also recommended the “small wins” approach (Bryson 1988) to trust building within which trust is built incrementally via successful implementation of modest collaborative initiatives’.

However, as noted above, ‘trust is frequently weak (if not lacking altogether), and suspicion is rife’ (Huxham & Vangen 2005, p. 153) within real-world collaborations. The key issue for partners is whether the potential prizes of collaboration warrant the level of risk that is represented by any lack of trust in other partners.

Beyond trust between partners, lack of trust by potential users of collaborative services can limit prospects. This manifests in a number of ways. Lack of user trust in one or more partner

⁶⁸ Cost shunting refers to the transfer of costs from one part of a system to another.

Figure 4.2: The trust building loop (Huxham & Vangen 2003, Figure 2)

organisations influences the likelihood that people will enter the partnership domain. Linked to this, lack of user trust in one partner (either pre-existing or after a partnership is formed) may damage the reputation of other partners and thereby lessen their commitment to the partnership. Also, a cornerstone of the smooth movement of users between partner organisations is the transfer of user trust between services. Trust in the entry point service forms the basis for trusting and using the partner service.

In the context of the co-location of West Heidelberg Community Legal Service and Banyule Community Health, Noone and Digney (2010, p. 98) observed:

Most of the staff interviewed spoke about the important role that trust by the community and clients plays in provision of integrated services. Trust was said to be essential for providing good services to the community, particularly for vulnerable and socially excluded members of the community.

Staff members spoke of the transfer of trust between workers. The trust one worker has developed with a community member is transferred to another worker when a referral is made by a trusted worker. This was [attributed to, among other things] ... workers knowing and vouching for the other service and its staff.

Changes in membership

Changes in the organisational and individual membership of partnerships can also challenge the effectiveness of collaboration. Our consultations suggested that individual relationships are the building blocks of collaborative working in the legal services sector, a point richly made by one of Chang's (forthcoming) English respondents, who suggested:

You can't have a relationship between organisations. It doesn't really exist ... I mean, in the end it has to be about individuals.

More broadly, Huxham and Vangen (2005, p. 74) observed:

The relationships between individual participants in collaborations are often fundamental to getting things done. This makes collaborations highly sensitive to changes in individuals' employment, even if these are simply role changes within one of the participating organisations.

This manifested in those areas and services that had the greatest stability in their staffing appearing to be associated with the highest levels of awareness about service options and collaborative activity. As one Dubbo community service manager stated, 'I mean, it would take years and years to have a good grasp on every service that's available because [of] ... the complexity of [it]'. Collaboration — notably at the coordinating/referral level — also seemed most effective

when individuals had easy and direct lines of communication to their counterparts in other organisations. Where personnel frequently changed, frustration arose around attempts to make contact with individuals who had moved on.

Ultimately, discontinuity of membership can challenge the viability of partnerships, a point made by Naylor (2002, p. 45) in the context of the perceived failure of Community Legal Service Partnerships in England:

Personal contact has been very important in establishing Community Legal Service Partnerships and in some areas the loss of key personnel has threatened the fracture of partnerships.

Another aspect of the centrality of personal relationships to the collaborative process was the observation, made during our consultations, that the weaker the engagement between services, the more likely that 'public' communication routes (e.g. a services switchboard) would be taken. The use of such 'public' routes was described by one legal sector interviewee as making 'a hard job harder'. The same interviewee described how she had built up, over time, personal contacts with the services that she interfaced with. When she needed to, she would 'contact a direct person, you know a straight line to them'. This was a real advantage that could be utilised for clients who might otherwise 'be put on hold on a mobile phone for 20 minutes'. In contrast, a community service worker, with weaker links to the legal sector, described using the main public access number to contact Legal Aid, but suggested that direct lines were of less use in the case of infrequent contact as staff could move on, breaking links.

Also, the importance of personal relationships, particularly in day-to-day engagement, may be less in the case of formalised and protocol driven collaborations between large organisations, delivering less intensive services, where there is less focus on trust transfer.

Competition

Another challenge is where partner organisations are situated in a competitive marketplace in which they are, outside of partnership activities, contending for clients or funding. This may limit the extent to which services are prepared to engage in collaborative activity, and where they are, may influence the nature of their involvement.

Two concerns are of particular note. The first of these is that sharing organisational knowledge with a competitor may lead that competitor to adapt its practices in a way that stiffens competition. The second, a particular concern of smaller organisations, is that successful collaboration may lead to an eventual loss of independence and/or the consolidation of activities and funding elsewhere.

Where funders are involved in collaboration activities, this can create additional tension. As Moorhead (2000, p. 24) explained in the context of English and Welsh Community Legal Service Partnerships:

Many participants (including funders and suppliers) had concerns about the extent to which partnership work would, could or should influence funding decisions which were, in all cases, effectively taken elsewhere.

Differences in professional language, culture and ethics

Where collaboration crosses professional boundaries, as in the case of medical-legal partnerships, preconceptions of professions, along with differences in professional language, culture and ethics can also present a challenge. Cameron and Lart (2003, p. 13) have reported that one of the 'over-riding themes' that has come out of research into joint working is 'the negative impact on any joint activity of professional and organisational stereotypes'. This can involve preconceptions around competence or function, which stem from 'lack of knowledge about the preparation and training of [professionals]' (Cameron & Lart 2003, p. 13). These preconceptions can result in distrust, which 'can lead professionals to feel a sense of alienation and resentment, particularly if asked to change their working practices in line with what they regard as an "alien regime"' (Cameron & Lart 2003, p. 14).

In the case of lawyers, preconceptions about law and lawyers can be particularly problematic. In looking to build legal service partnerships, incorporate lawyers into multidisciplinary partnerships,

or incorporate other professionals into legal led partnerships, prospective partner organisations may be doubtful as to the relevance of legal services to their activities. This may be so, even where such prospective partners are engaged in legal services! As Moorhead (2000, p. 23) noted in the context of English and Welsh Community Legal Service Partnerships, some local government organisations had ‘difficulty in recognising the relevance of the Community *Legal Service*, to work that goes on in their own authority. Several local authority interviewees stated that many local authorities would not see themselves as providing legal services, although they would see themselves as providing welfare rights and other advice services’.

Partners may also share negative public perceptions of lawyers, which will need to be overcome to allow for constructive collaboration.

Of course, professional ethics may create legitimate obstacles to collaboration that need to be recognised and accommodated within partnership arrangements. As Galowitz et al. (2011, p. 157) have observed: ‘Developing a framework for promoting communication and collaboration between medical-legal partnership participants is sometimes difficult ... as ethical rules, laws and related principles sometimes establish barriers against sharing information about the patient’s health or legal developments’. Lawyers are subject to strict rules to prevent conflicts of interests between clients, are not subject to mandatory reporting of client information (e.g. revealing possible child neglect), and have a duty to their client, not their organisational partners, in relation to legal issues that arise in a professional context.

Galowitz et al. (2011, p. 176) therefore go on to explain how lawyers working in US medical-legal partnerships enter into agreements to ‘not represent the [partnership] clients on matters directly adverse to the medical clinic, hospital or other institutional provider of healthcare services’. One lawyer we spoke to, who provided legal services to patients of a medical service in NSW, spoke of an (albeit implicit) agreement that he would not act against the medical service. However, another lawyer, working in a different location stated that collaboration with medical services was not something that he considered, as conflict of interest rules [make] the relationship a little bit hard, because ... you know ... we can turn up and say ‘We’re legal. We’re here to help. We can help your clients’. But at the end of the day, if you’ve done the wrong thing, we’re going to be a pain. We’re going to sue you, you know ... or we’re going to complain about you’.

Less dramatically, Galowitz et al. (2011, p. 176) also point to screening procedures that can be utilised to prevent personal data being passed on to a lawyer by a healthcare service where the lawyer is already representing the other side of a legal matter concerning the patient.

Nevertheless, conflict of interest was repeatedly mentioned as a potential obstacle to collaborative working during our consultations. This was particularly so in relation to more remote locations, where alternative services are less likely to be available.

Of course, conflict rules also limit the extent to which different legal services can collaborate, and how legal services expand the services they provide — particularly in areas with relatively few legal services. For example, one organisation we visited in the central west was considering adding a new area of law to its practice, but was concerned about how to do this given that clients of the new service might commonly be in conflict with clients of the current service. It was suggested that the expansion would require the organisation to physically separate areas of practice, perhaps even onto multiple sites. Thus, integration would paradoxically require a degree of disintegration.

Differences in ways of working

As with differences in philosophy, differences in ways of working can produce tensions within collaborations. Differences in ways of working may, for example, make mutual agreement around processes more difficult to achieve. They may also feed in to suspicions concerning the quality or utility of services. However, within the context of collaborative working, it has been repeatedly emphasised that partners should not expect each other to do things the same way. There may be very good reasons for different working practices. As Huxham and Vangen (2005, p. 37) observed, ‘things that may be easy to do in [one] organisation may ... require major political manoeuvrings in another’.

Thus, as Frost (2005, p. 39) stated, ‘working together does not mean doing away with difference — it can mean living with diversity’. A diversity that was likened by one Broken Hill interviewee to a school yard:

It's like a big school yard and there are the tall bossy kids, there are the athletic kids, there's the grumpy kids that sit alone. It is honestly probably just like a school yard.

Protocols

There is clearly no optimal level of formality for governing the relationship and interactions (such as referrals) between partner organisations, with the appropriate level being dictated by the nature of the partners and the collaboration. Reflecting this, levels of formality vary greatly between partnerships in the legal services domain (e.g. Chang, forthcoming).

However, it is evident that, in individual cases, too much or too little formality can be problematic. At the basic partnership level, our discussions with practitioners revealed that sometimes suggestions of formalising practices (e.g. through memoranda of understanding) upset relations, while on other occasions formality was sought on a mutual basis.

In the case of referrals, where practices develop that are built on professional relationships, understanding of respective services and trust, practitioners can see formality as not just unnecessary, but also obstructive. As one of Chang's (forthcoming) Australian respondents noted: ‘[Making referrals] becomes part of your modus operandi ... You just start to do it automatically, because you know that's how you're going to get the best for your clients’. The same respondent then went on to observe that ‘I don't need to have a million MoUs with everyone to say “Can you work like this?” I don't want to do that, because I'll drown under paperwork’.

Noone and Digney (2010, p. 149) also ‘identified wariness on the part of the West Heidelberg Community Legal Service to embrace formal referral processes and staff stated they would refer to and work with staff they knew and felt they could trust’. They went on to observe that ‘for one lawyer, reservations were expressed about the over-bureaucratisation of processes, which got in the way of developing a relationship with a client’ (p. 177).

However, Noone and Digney also reported support for formalisation, even in the West Heidelberg context:

Another lawyer stated there was a need for a formal process which ensured clients were fully aware of whom and where referral information is going and what might be the positive and negative consequences of sharing information. (p. 178)

They concluded that ‘there could be some benefit to having a formal referral protocol and process, which sets out the organisation's understanding and ethics around referral practice’ (p. 178).

Another concern raised about formalisation is that it can reduce flexibility. Formal collaboration was identified by one of Chang's (forthcoming) English respondents as sometimes acting to limit the range of responses that a practitioner could make to a client's needs. For example, ‘informal and mutual referral’ can provide greater flexibility to explore alternatives than where referral protocols apply.

However, where practices are based less on individual relationships and more on processes (such as the use of a ‘legal health check’ type diagnosis), then formality may be required in order to enable practices to become established. Even more so as the number of people who might potentially refer through such a process increases. However, voluntarily entered into protocols can take some time to conclude (e.g. Moorhead 2000).

Evidently, much depends on the nature of services and collaborations, with size, the centrality of personal relationships and culture being important influences.

Policy change

Collaborations are vulnerable to the turning tides of policy and funding, both at the organisation level and above. The possibility of political and/or fiscal change always provides a backdrop

of uncertainty against which collaborators must steel themselves. But the challenge of doing so increases along with the level of political and fiscal uncertainty. Given the commitment of resources required to gain collaborative advantage, a degree of caution on the part of collaborators is understandable — the more so, the greater the changes required by a particular collaboration.

A vivid example of sudden and disruptive policy change is provided by the reversal of the Community Legal Advice Centres (and Community Legal Advice Networks) program in England and Wales. The Community Legal Advice Centres and Networks program involved joint procurement of integrated legal services at the local level, bringing together generalist and specialist legal services across different areas of social welfare law. As Fox et al. (2010) reported, the different legal services sectors came together in different configurations in different localities to address the particular needs of local communities. In some communities existing providers won the contract, but in others the existing service provision was disrupted through the procurement process.

As Chang (forthcoming) notes, a central concern of those unhappy with the program was that the ‘winner-takes-all’ arrangement risked forcing the providers who lost ‘to close and exit the market due to the lack of funding’. This is, for example, what happened in the case of Leicester Law Centre following the Leicester Community Legal Advice Centre contract being awarded to a partnership of A4e Ltd and Howells Solicitors. If ‘winners’ then exited the market, areas could be left without services. As David Harker, then CEO of Citizens Advice, cautioned: ‘Strong local organisations take decades to build up. If that is then swept away, you cannot instantly bring it back if the contract provider fails’ (Ricketts 2008).

Unfortunately, the cuts to legal aid in England and Wales that followed the global financial crisis saw the Community Legal Advice Centres and Networks program abandoned (from April 2013), thus realising the risk of policy reversal and introducing a second, this time amorphous, market disruption.

Mirroring user behaviour/wishes

While it may generally be the case that users prefer/make fuller use of services that are joined-up, some may be suspicious of efforts towards integration, or hesitant in making use of integrated services. Particularly in the context of efficiency (or cost saving) driven change, citizens may see the integration of human services as a threat to independence, continuity of service or ease of initial access (though this may be balanced by greater ease in then moving between services). There may also be greater concern about privacy (both of data and usage) in the case of integrated services. Some citizens may simply not want (or be ready) to make use of a partner service. For example, in one case we heard about during consultations with service providers, a young man with an acquired brain injury was described as not recognising or accepting that he faced the problems for which his family and local services wanted to provide support for him. In such circumstances, families may not want to risk alienating a vulnerable family member, and services are concerned about the potential escalation of problems for which help is not voluntarily sought.

It is also possible that greater integration of services can add complexity from a user perspective, as well as reduce it. As Dunleavy (2010, p. 14) has noted, ‘the growth of partnerships has tended to add to institutional complexity in the public sector rather than necessarily to simplify it’. This is because partnership can introduce uncertainty (and a lack of transparency) around such matter as accountability and how to influence change.

Thus, it is often stressed that the development of joined-up services should involve the communities to be served. In the context of Community Legal Service Partnerships, Moorhead (2000, p. 3) concluded that ‘partnerships have also shown that greater input from clients in the approach to planning legal services is a useful part of strategic planning work’.

Noone and Digney (2010, p. 217) also argued that:

The manner in which community members connect, or do not connect, with a service is an important ingredient, perhaps the essential ingredient, in the success of integrated legal service delivery. To achieve best possible outcomes for addressing multiple, complex and interconnected legal, health and social problems, community-based legal organisations require an understanding of how their community interacts with services, so that they can adapt and develop holistic services and supports which will engage the community.

Poor/unrecognised outcomes

As Huxham and Vangen (2005) report, attempts to join up services frequently result in ‘collaborative inertia’, with the consequence that they deliver poor outcomes. This can lead to their curtailment. However, even when partnerships achieve collaborative advantage, it can be difficult to demonstrate positive outcomes.

We introduce some of the different approaches that can be taken to the evaluation of joined-up services at the end of this chapter, but here note that there can be a number of reasons for outcomes being unrecognised.

For example, expectations may be set too high, or relate to change that it is difficult to detect/attribute. For example, if there is an expectation that an attempt to join up independent services will rapidly yield a revolution in provision and agreed service protocols, early and foundational partnership activity (such as partners identification and recruitment, issue awareness raising, relationship building, etc.) may go unrecognised. This was noted to be a factor in the loss of support for Community Legal Service Partnerships in England and Wales, with both Moorhead (2000) and Naylor (2002) suggesting that expectations and timetables were unrealistic. Moorhead (2001, p. 6) later suggested:

There is also some benefit in setting some short-term objectives that enable partnerships to demonstrate immediate results (or ‘quick wins’) to partnership participants and wider reference groups.

There may be wider benefits to the approach also. As Griffiths (2002a, p. 54) commented, in the absence of short-term objectives, there is a danger that ‘participants may become immersed in long-term projects which do not necessarily produce results’.

Similarly, if partnerships are directed towards addressing weighty social problems, the contribution of particular partnerships to any (if there is any) measurable progress is unlikely to be demonstrable outside of complex and costly evaluation (unlikely in a legal services context).

Also, where objectives are more modest, the management information systems of partner services may nevertheless not incorporate data that can demonstrate levels of interaction between services. For example, Noone and Digney (2010) identified this as an issue in the context of West Heidelberg Community Legal Service and Banyule Community Health. Here, accurate data on referral between the services is unavailable.

Tensions between client groups

Tensions between client groups can limit the possibilities of collaborative working.

One obstacle to collaborative working noticeable in the culturally diverse South West Sydney region is cultural (or political) suspicion/hostility between particular partner organisations. Legal Aid interviewees in South West Sydney noted that co-location with specific community groups can be problematic. There are so many groups and there can be ‘considerable tension’ between them. Human services agencies in the city are therefore mindful of not appearing to treat any group more favourably:

I can’t be seen as providing specific services to them ... the Chaldeans would say why are you providing an outreach service at the Assyrian group when we’re just around the corner, why don’t you do one here too for the Chaldean community. I can get 20 Chaldean people here. I mean that’s a question, I don’t even want to have the question asked ... I wouldn’t mind a degree in Middle Eastern politics!

Also, organisations that are conceived and/or funded to serve narrowly defined client groups may be legally restricted in what they are able to offer as part of a broader service model. Also, services that assist vulnerable clients may need to restrict their client intake to create an environment in which clients feel safe to come forward. This is common, for example, in the case of services that assist victims of domestic violence.

More broadly, where services become co-located this may see the coming together of differently constituted client groups. This may be unproblematic, but occasionally will lead to either a service

or its clients being uncomfortable with the arrangement. This may be because of real tensions that emerge, or concerns based on assumptions concerning, say, client behaviour.

Facilitators of collaboration

The overcoming of the challenges set out in Table 4.2 is key to successful collaboration. Thus, Huxham and Vangen (2005) have reported that the factors found to contribute to good collaborative performance include: CEO support and skilled convenors; partner selection; shared vision; mutual trust, honesty and reliability; mutual interdependence; appropriate power distribution; good communication; stakeholder inclusion. In contrast, poor performance has been linked to factors that include: geographical distance; personal agendas and individual egos; cultural differences; politicking and poor managerial relationships. Both these sets of factors (among others) have also been reported as being influential in a legal services context (Noone & Digney 2010).

Table 4.3 summarises the facilitators of collaborative working identified in the literature (e.g. Cameron et al. 2000; Moorhead 2000; Huxham & Vangen 2005; Noone & Digney 2010; Wong et al. 2012) and through our consultations.

While many of the facilitators are simply the reverse of the challenges set out in Table 4.2, two merit special consideration: co-location of services and champions.

Co-location of services

While not often a practical solution to challenges to collaboration associated with distance between services in remote areas,⁶⁹ co-location of staff is a key facilitator of effective joint working. As Cameron and Lart (2003, p. 12) have said, ‘many research studies [have] highlighted the significance of co-location as the basis for successful joint working’. Co-location results in greater opportunity for staff contact, trust building and knowledge sharing.⁷⁰ It can also, as Challis et al. (1990) found, increase sensitivity to issues falling within other professional domains. Furthermore, co-location can help in the management of clients from one service to another by, for example, making it possible for staff ‘to walk a client to the [receiving] service or attend an appointment with them’ (Noone & Digney 2010, p. 95). From a user perspective, co-location also provides a more general convenience, in facilitating ‘physical access to support and services ... [and] access for those in the community who are service “wary” or referral “fatigued”’ (Noone & Digney 2010, p. 8).

As Dunleavy (2010, p. 9) notes in the introduction to his paper on *The Future of Joined-Up Public Services* in the United Kingdom:

Almost invariably someone in [a focus group about public services] will remark that it is a great shame that the UK Government cannot be like Marks and Spencer or John Lewis, with their nationally agreed and known policies about returning goods and conveniently located branches in most high streets and shopping centres.

Of course, there are increasing examples of co-located public services evident across Australia. For example, by the end of 2014 all Centrelink, Medicare and Child Support services will be co-located.⁷¹

However, as Noone and Digney (2010, pp. 4–5) pointed out:

Collocation alone does not guarantee integrated services. Collocation of West Heidelberg Community Legal Service and Banyule Community Health does enhance and enable some staff to make referrals, access secondary consultations and work together. However, not all Banyule Community Health and West Heidelberg Community Legal Service staff make referrals, seek

69 As Coumarelos et al. (2012, p. 225) observed, ‘co-located or closely located services may be more feasible in major city areas, regional centres or a largely urban jurisdiction such as the ACT. In more remote areas, however, it is more likely that integrated services will have to rely more heavily on outreach services’.

70 As the CEO of Banyule Community Health said, ‘You don’t have to be located in the one place to establish the relationships, but it certainly helps’ (Noone & Digney 2010, p. 107). Noone and Digney (2010, p. 110) also observed that co-location facilitated in-person communication, which tends to achieve greater accuracy (‘as staff are able to see or access necessary paperwork’), promotes in-depth conversations and better information checking, and facilitates the development of personal working relationships.

71 Within NSW it is also notable that the government is rolling out one-stop shop service centres, where people can complete a range of common transactions.

Table 4.3: Summary of facilitators of collaborative working

<i>Relates to ...</i>	<i>Facilitator</i>	
Resourcing	Availability of time	
	Availability of funding	
	Availability of appropriate staff/organisations	
Strategy	Shared aims	
	Compatible philosophies	
	Objectives are achievable	
	Reflection and continuous evaluation	
Relationships	Willingness and ability to work together	
	Trust	
	Commitment of organisations and individuals	
	Continuity of organisational membership	
	Continuity of individuals	
	Mutual interdependence	
	Minimal competition outside of collaboration	
	Forums for trust to develop	
	Inspirational champions/leadership	
	Professions	Support from professional bodies
		Compatibility of professional ethics
Compatibility of processes		
Use of clear language		
Organisation	Recognition of validity of differences in ways of working	
	Champions	
	Good communication	
	Good understanding of partner services/specialisms	
	Continuous development of staff and processes	
	Effective referral processes	
	Easy access to partner advice	
	Inclusivity, rather than domination by a sub-set of partners	
	Flexibility	
	Sharing of benefits (including recognition)	
	Co-location	
User data	Ability to share user data	
	Shared IT	
Policy/regulation	Supportive policy environment	
	Stable policy environment	
	Stable regulatory environment	
Services delivered	Need for services	
	User behaviour/wishes mirrored	
	User trust in services	
	Users see link between issues/problems	
	Inclusion of user perspectives	
	User centred	
Good and recognised outcomes		

Box 4.1: West Heidelberg Community Legal Service and Banyule Community Health

The co-location of West Heidelberg Community Legal Service and Banyule Community Health in North East Melbourne goes back over 30 years (Noone & Digney 2010). As Noone and Digney (2010, p. 15) detail, 'from the outset in 1978, the West Heidelberg Community Legal Centre and Banyule Community Health (formerly called the West Heidelberg Community Health and Welfare Centre) aimed to offer integrated services'. And while the legal service is tiny relative to the health service (employing five staff, compared to more than 140), there remains a commitment to the ideals of integrated service on the part of both (reflected by the presence of health service senior managers on the legal service's Committee of Management) and the operation of the legal service in its current form is possible only with the support of the health service.

professional advice or work together.⁷² Those staff that did not engage in integrated services often did not know each other or have opportunities to work together.

But, co-location of human services also provides benefits to users that are independent of the fact of collaboration, just as co-location of retail services offers benefits to customers (see Box 4.1). As well as the convenience outlined above, the simple fact that related services are co-located may act to increase both the likelihood that community members will spontaneously present at services and that staff will be aware of co-located services and thus able to point clients towards them. Thus, in the context of the co-location of the West Heidelberg Community Legal Service and Banyule Community Health, Noone and Digney (2010, p. 78) noted that a small but significant number of users of West Heidelberg Community Legal Service (three of 30) stated they knew of the service through being around Banyule Community Health. Elsewhere, the Australian Human Rights Commission (2010, p. 32) also recently noted that co-location of legal and non-legal services is 'a particularly effective way' to reach new immigrant communities.

As a staff member of West Heidelberg Community Legal Service observed (reported by Noone & Digney 2010, p. 81):

Well it's a one-stop shop isn't it? I think people are more likely to attend the other services if they are all in the one building. Generally they are just so happy that someone is actually helping them, they're desperate for an appointment downstairs or ... I think people are more open to it if it is all in the one place. If you start making appointments here there and everywhere, I think most of our clients would probably miss an appointment or they would forget about it or they just couldn't be bothered or it's too far on public transport.

However, while co-location has many benefits, it can also give rise to complications. For example, some clients of some services may deter other clients of other services from attending, and some services, recognising this, may be disinclined to co-locate. For example, services for victims of domestic violence or parents and children may have particular sensitivities as to co-located services. Some clients may also be concerned about being seen accessing a particular service, although in the context of co-located services, the co-location may serve to provide some ambiguity as to the nature of the service being accessed.

Also, one of Chang's (forthcoming) Australian respondents suggested caution in embracing the idea of co-location as a panacea for coordinated service delivery:

Co-location is a good idea, but at this stage I'm not convinced that co-location is the answer to everything ... I think we need more research on it ... I think people are kind of making that the panacea ... There's a lot of talk about it being the medical-legal practice model and I think that's really overrated personally ... partly because ... I think once it's co-located the problem isn't over. I've seen service hubs where they don't talk to each other. I think it is really about the relationships,

⁷² There was, for example, little evidence of collaboration occurring between West Heidelberg Community Legal Service and Banyule Community Health health and medical treatment services, as opposed to counselling and community services.

and a better and a deeper understanding of client need in that region, and who's better to assist that need and how to advocate to get that need met ... and also the commitment to maybe a client-focused service as opposed to a service-focused service.

Co-location in a broader context

The benefits of co-location may go some way to explaining the increased uptake of legal services in inner-regional areas (Figure 2.12 above), which, because of the relatively small scale of their urban centres and relatively high density of services are not dissimilar to service hubs. Indeed, the main centres in the two inner-regional areas visited to inform this report, while in no way service utopias, were notable for the ease of (physical) movement between services, the variety of services available, and the level of awareness between services.

Smaller centres and remote towns also provide good scope for co-location of local services, but these services are likely to be limited, with the full range of human services being dispersed over a much larger geographical area.

Also co-location is not only of interest in the physical world. Governments are increasingly looking to create a unified online presence, with the importance of making services easily navigable being a key concern in this domain also.

Placement: co-location of individuals

As well as whole organisations co-locating, it is also possible for individual staff members to co-locate with partner organisations. This was a phenomenon we witnessed within a number of the organisations we visited during our consultations, and was enabled through the placement of staff into other organisational settings, funding of posts by external organisations and auspicing arrangements. An example of the former is the placement of Legal Aid NSW funded Aboriginal Field Officers in ALSs to link Aboriginal clients to broader legal aid services.

Champions: inspiring change

Champions who inspire change, and serve to drive and mould collaborative activities, are evidently as much a part of successful collaboration as they are of any organisational venture. Noone and Digney's (2010) report on the co-located West Heidelberg Community Legal Service and Banyule Community Health points to the important role of individuals ranging from the author of the 1976 report that recommended the establishment of a Community Health and Welfare Centre (Morgan 1976), to the solicitor who initially provided pro bono services on-site, to the current CEO and board of the health centre who have continued advocacy for the support of the legal centre. During our consultations, also, the role that particular individuals have played in the development of particular initiatives was often evident. For example, the scale, range and cohesion of the services provided by the Lismore Neighbourhood Centre seemed to be a product of the vision of its director and board. As one staff member commented, in the context of the complicated juggling of funding and services, 'She's very strategic thinking'. And there were many other examples also.

It would be unwise to discount the importance of such individuals to the success of collaborative initiatives. Not all opportunities for collaboration are taken, and not all mandates for collaboration are implemented with equal enthusiasm.

Joining up with joined-up services

In addition to the above facilitators of collaboration, it is also important to recognise the temporal dimension of service integration. At any given point in time, some services are already well connected, and already have extended reach to clients and the issues that they face. Thus, it may be more effective and more efficient for services to choose, where possible, to join up with those services that are themselves already joined-up/integrated. Not only can this have networking advantages, but it is also likely to involve joining up to services that have already considered, accepted the benefits of, and operationalised joined-up service delivery. An example of such an approach is the collaboration between Legal Aid NSW and Settlement Services International (SSI).

As an urban Sydney Legal Centre interviewee noted, the value of working with MRCs derives from the fact that 'they have the coalface relationship with a lot [of communities]'.

Case management

As with co-location, a case management approach to clients can act to overcome obstacles users face in moving between services. Case management is here defined as action to actively support clients in navigating, accessing and making use of the range of services that relate to presenting problems. Case management may be particularly suited to those clients who are overwhelmed by their problems or are leading chaotic or marginalised lives. Such people, as detailed in Chapter 6, are poorly placed to locate support, act on advice and stabilise their lives. In general, though, the active management of clients would appear to improve relationships and satisfaction with service providers, increase understanding of services, lessen feelings of isolation and burden, and improve outcomes (e.g. Department of Health 2002).

However, services that undertake case management tend to be those focused on problems recognised as having a severe impact on individual or social functioning, such as mental health, substance abuse, domestic violence, and criminal offending. So, while there are services in the legal domain that undertake case management — such as in the case of the Circle Sentencing initiative we observed in Lismore — it is relatively rare within civil legal services, being highly resource intensive and generally viewed as an inappropriate function by services or funders. Yet, it is evident from the literature (e.g. Karras et al. 2006; Grunseit, Forell & McCarron 2008) and from our discussions with practitioners in the study areas, that substance abuse and mental health problems can (not uncommonly) undermine the ability of services to deliver meaningful or lasting solutions to clients' legal problems. Thus, one domestic violence support worker we spoke to in Dubbo talked about the need to deal with clients' problems according to a 'hierarchy of needs', so that progress could be consolidated. She also suggested that progress could be slow, often requiring many months of support.

Evidently, this type of commitment is beyond the resources of legal services, which are not, in any event, generally focused on the chronic problems that affect people's capabilities to cope.

Integrated services

So far, this chapter has focused on collaboration between separate organisations. But the collaboration continuum ends with services being joined up within single organisations. Many legal and other human service organisations deliver services of multiple types within their core field of operation, and some deliver services across different fields. So, for example, Legal Aid NSW, as well as providing legal services in the criminal, family and civil areas, also has in-house social workers who form part of its Client Assessment and Referral Service (CARS). Many of the challenges to collaboration (such as those concerning trust, understanding, communication, increased institutional complexity) set out above still need to be met even within an integrated service. However the integration of disparate services within a single management and strategy framework creates a solid platform for coordination and cooperation.

The CARS unit comprises eight social workers assigned to divisions or defined practice areas within Legal Aid NSW. These social workers prepare 'psychosocial assessments ... that address the complex range of social difficulties underlying people's legal problems ... [and] also link clients⁷³ to other services that can assist them' (Legal Aid NSW 2012, p. 25).⁷⁴ The early Legal Aid NSW (2008, p. vii) review of CARS noted that 'internal and external stakeholders regard the quality of reports and assessments prepared by CAR consultants highly, particularly the case plans' and recommended extending the scheme in size and in scope, to include referrals from private solicitors (stressing how difficult and time consuming it is for private solicitors 'to locate services for clients, an activity which is not reimbursed'), both of which have happened. The review concluded that 'the skills of the CAR consultant in uncovering history, relating it to behaviour and providing options for solicitors and courts cannot be underestimated' (p. viii).

73 Using the HSNet system detailed below.

74 The 2011–2012 Legal Aid NSW annual report stated that 'social workers assisted 510 clients referred to the unit, mostly by the criminal law practice. They assessed 472 clients, providing 263 psychosocial reports for use in court and making 380 referrals to other agencies. Clients needed assistance with a range of issues, key areas being mental health, intellectual disability, drugs and alcohol, homelessness and parenting' (Legal Aid NSW 2012, p. 25).

As Chang (forthcoming) found, the Legal Aid NSW model of integration has attracted interest among other state legal aid commissions. Moreover, the model is not confined to legal aid. For example, there is a larger history of social workers/allied workers in CLCs, still evident from our observation of a social worker being employed to work alongside legal staff in the Far West Community Legal Centre in Broken Hill.

An example of a non-legal service providing (explicitly) legal services is the Legal Information Access Centre (LIAC, see Box 4.2), a branch within the NSW State Library's Public Libraries and Learning Services Division (jointly funded by the Library and the Public Purpose Fund), which provides information about the law to the population of NSW.

There are also a significant number of organisations that provide multiple human services (of which some have a legal dimension) side-by-side. The size of the organisation and number of services provided can be substantial, generally as a consequence of strong strategic leadership, such as in the case of the Northern Rivers Community Gateway (formerly Lismore Neighbourhood Centre, see Box 4.3) and CentaCare Wilcannia-Forbes.

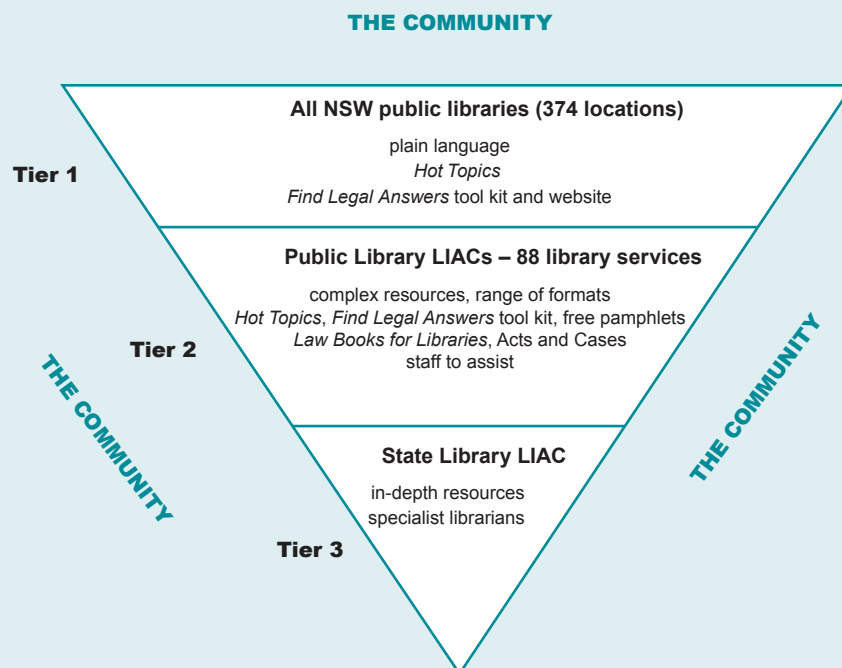
Box 4.2: Legal Information Access Centre (LIAC)

The Legal Information Access Centre (LIAC) was set up in 1990 by the State Library of NSW and Law and Justice Foundation. It provides access to legal information through the public library system, through regularly updated legal resources, including plain-language legal texts, tool kits and specialist librarians.

A summary of statewide provision is set out in Figure 4.3. *Hot Topics*, a series of plain language booklets on recent developments in the law, and the *Find Legal Answers* tool kit are available through all NSW public libraries.

Resources are made available for different levels of user, through the five-step legal information pathway, which incorporates simple summaries, practical guides, specialised resources, lawyers' tools and primary legal materials.

Figure 4.3: The three-tiered LIAC statewide service (figure from McKibbin & Henderson 2011)



Box 4.3: Northern Rivers Community Gateway

The Northern Rivers Community Gateway (formerly Lismore Neighbourhood Centre) is a not-for-profit, incorporated community organisation formed in 1977 and based in its own premises in the centre of Lismore. Its commitment to coordinated service delivery is suggested by its recent name change, its motto, *Many Tracks, One Road, Sustaining Community*, its employment of a full-time volunteer coordinator, its determined positioning as regards tendering for and incorporating new service elements and the breadth of services offered (and variety of funding streams). Services include Budget Counselling Program, Child and Adolescent Trauma Counselling, Community Visitors Scheme, Helping Hands, Home Energy Savings Scheme, Indigenous Money Mentor, Northern Rivers NILS, Reaching Out Sexual Assault Service, StepUP Program, Volunteer Driver Assist Program, Volunteering Resource Centre (and child care services). The 2012 Annual Report details almost 100 staff and over 130 volunteers.

Joining up in emergencies

Emergencies commonly act to bring human services into purposeful collaborative relationships, with the common cause, clear focus and lessened administrative inhibitions smoothing the process.

The response to the bushfires disaster in Victoria during the Summer of 2009 provides an example of such collaboration.

The Victoria Legal Aid (2010, p. 1) report on the Bushfire Legal Help (see Box 4.4) response details how the ‘unique collaboration of the Victorian Legal Profession’s peak bodies ... to provide free legal assistance to bushfire victims and their communities under a single banner’ was operationalised within two days of ‘Black Saturday’. The collaboration went on to respond to over 2165 inquiries and provided ongoing help to more than 800 people affected by the bushfires. Help was provided for a broad range of legal issues (beyond insurance claims, the replacement of lost documents, wills and estate management), and the interconnection of the many problems victims of the bushfires faced led Victoria Legal Aid to argue that the legal help provided assisted government ‘by limiting the burden on other social and health-related resources’ (p.2).

The report pointed to a number of factors that facilitated the collaboration: the ‘creation of a strong single entity’, the adaptation of existing infrastructure (e.g. telephone help resources) and ‘effective and open communication’ (through a project management team provided by Victoria Legal Aid).

The response to the 2009 bushfires also demonstrates how emergency collaboration can form the framework for ongoing emergency-related resources. In Victoria, the peak bodies (Victoria Legal Aid, the Federation of Community Law Centres, the Law Institute of Victoria, the Victoria Law Foundation and the Victorian Bar and Public Interest Law Clearing House (PILCH)) continue to collaborate in the provision of the Disaster Legal Help web and telephone resources.

Building a system: challenges to, and facilitators of, joining up services from the outside

As well as the challenges that are inherent in processes of collaboration, there are also distinct challenges that attach to efforts to join up services from the outside (i.e. to the exertion of political and/or financial influence to join up services in a manner identified by government and other funders/stakeholders as appropriate).

In fact, fully joined-up human services are a fantasy in the context of contemporary Australia, and substantial progress towards them is contingent on overcoming fragmentation of accountability, policy and funding at national, state, regional and local levels. Here, though, the options that are available to government and other legal services funders in looking to move towards greater service and sector integration are considered.

As noted above, physical and human geography dictate that joined-up services must look very different in urban, regional and remote settings. Moreover, the legacy of unique legal (and

Box 4.4: Bushfire Legal Help

Bushfire Legal Help, established in the immediate aftermath of the 2009 Victorian bushfires, provided a broad range of services, provided through a collaboration of the Victorian legal profession's peak bodies. The services included: a 1800 hotline; triage legal clinics at bushfire relief centres; a range of tailored fact sheets and other legal resources for use by the public, lawyers, other professionals and volunteers; a website; ongoing help through CLCs; an Insurance Unit at Victoria Legal Aid; pro bono legal referrals; CLE campaigns to raise awareness of relevant legal issues; and public representation in the 2009 Victorian Bushfires Royal Commission.

other human) service and population profiles in different urban, regional and remote settings dictate that solutions to the challenge to further join services will differ between areas. And the preferences of funders will vary from context to context.

But, whether at a national, state, regional or local level – and whether at a human services or single service domain level – certain basic options are available to those wishing to join up services from the outside: development of infrastructure, incentivisation, compulsion and replacement (Figure 4.4). Development of infrastructure refers to the development of resources that support collaboration between services, but do not constitute services. Examples include service directories, co-location opportunities, fora for networking and regulation/deregulation. Incentivisation refers to the provision of financial or other incentives to increase collaborative activity. Examples include payments and targets linked to collaborative activity. Compulsion refers to collaborative activity being made a mandatory aspect of service provision (in order to enable funding, etc.). Replacement refers to the introduction or replacement of existing services with new services that contain desired collaborative features.

Evidently, the freedom that public and other service funders have to choose between these four options is constrained by such things as the extent of their authority, their budget, the diversity of the supplier base and the reliance of the supplier base (both in part and overall) on their funding. Also, as choices progress towards compulsion and replacement, there is likely to be a trade-off between control over, on the one hand, the form of services and, on the other, market disruption and diversity of supply (Figure 4.4). Thus, as with collaboration, choices present significant challenges as well as potential benefits.

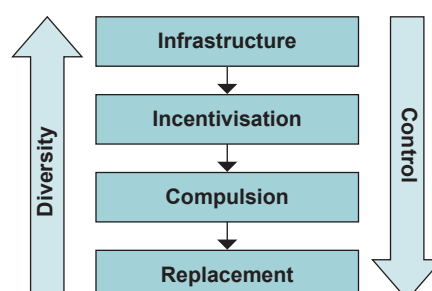
Infrastructure

The first option available to those looking to join up services from the outside is the development of integrative infrastructure, such as the production of issue awareness resources for professionals, the production of service directories for use by the public or service providers, the making available of office space to bring about co-location, or the provision of fora for networking/joint planning.

Issue and service awareness

As discussed in Chapter 3, programs that raise awareness of legal issues and services among front-line human services can act to increase the reach of legal services. This explains why some 21 of

Figure 4.4: Options for joining up services from outside



the 69 projects developed by Cooperative Legal Services Delivery partnerships (detailed below) in 2010–2011 ‘dealt with community legal education (CLE) and mainly targeted community workers’ (Ryan & Ray 2012, p. 3).

Awareness is a prerequisite for even signposting between services (hence recognition is set as the first stage of the collaboration continuum in Figure 5.1). Thus, all efforts to widen the reach of legal services through other professions necessarily have an awareness raising element. For example, the LIAC has legal awareness training as a core activity:

LIAC develops legal information expertise through education and training programs for staff within LIAC and the State Library, in public libraries and for other intermediary groups.
(McKibbin & Henderson 2011, p. 7)

Awareness raising that is integrated more broadly into professional development includes the training that ‘doctors and health professionals in Australia already undertake ... regarding the mandatory reporting of child abuse’ (Coumarelos et al. 2012, p. 218). Evidently, such initiatives are more likely to be successful/cost-effective the closer the legal issues are to the core services provided by the relevant non-legal service (or vice versa).

Domestic violence also provides examples of awareness raising/(non-legal professional) educational initiatives, such as the Ask LOIS service developed by the Women’s Legal Service (see Chapter 3).

Of course, awareness raising initiatives also figure in efforts to better join up legal services. For example, the Cooperative Legal Services Delivery program (along with similar programs, such as the earlier Community Legal Service Partnerships program in England and Wales) itself has an explicit function to increase awareness and understanding between services.

Directories

Given that referrals between human services require professionals to be aware of the presence of related services, the development of service directories has frequently been proposed as a means to facilitate joined-up services. However, the compilation and dissemination of directories is resource intensive. There is a multitude of human (and legal) services, and a constant stream of new entrants and service closures. Thus, compilation and updating can be both difficult and time-consuming. Moreover, the compilation and dissemination of directories by no means ensures their use. Professionals may not see the need for referrals, be unaware of directories, have no or limited access to them, or prefer competing information sources. Thus, while directories are commonly produced, they are also commonly discontinued.

Even at a local level, directories can be extensive and difficult to compile and maintain. For example, the 2012 Dubbo Community Directory, compiled and published by the Dubbo Neighbourhood Centre, contained more than 900 entries listed under more than 30 categories, of which half had a welfare dimension and one specifically concerned ‘law and order’. And the situation is similar for directories of services for particular population groups, such as Aboriginal people. For example, in 2006 the ALS (NSW/ACT) produced a 185-page guide setting out details of legal services available to the Aboriginal and Torres Strait Islander people in NSW and the ACT. The guide detailed 83 civil legal services and 28 criminal legal services (ALS NSW/ACT 2006).

With the increasing dominance of the internet as an information source, directories are increasingly moving online. For example, the Legal Aid Commission of Tasmania website links to a searchable referral list containing hundreds of service entries organised into 36 categories (including advocacy, counselling and support for victims of sexual assault, emergency accommodation for families, mental health, public and environmental health, and young people’s services). Some online services also build on additional functionality to facilitate client movement between services. For example, the NSW Government’s online ServiceLink directory <www.hsnet.nsw.gov.au> provides details of over 75 000 human and justice services, and has an e-referral facility that allows the system to interface with member services’ client management software to enable referrals to be made and monitored. Of course, this form of referral is only possible where services have enabled the facility, and so, in the absence of a universal referral system, multiple methods of referral are employed, which in turn entails that lesser used methods can fall into abeyance.

Opportunities for co-location

As detailed above, there are increasing examples of human services being joined-up through co-location, such as the co-location of Centrelink, Medicare and Child Support services. There is both service and public support for such initiatives (Dunleavy 2010), and both federal and state governments are pursuing policies of increasing the extent of co-location of public services.

There are a number of ways that government and other stakeholders can potentially facilitate co-location through the provision of infrastructure (aside from through offering incentives or compelling services to co-locate, which are dealt with in later sections). One is to acquire/construct appropriate buildings/spaces and make them available to services. An example of this is Geraldton Lotteries House, built with Lotterywest support in Western Australia, which is home to the Geraldton Resource Centre (an integrated legal services provider, see Box 4.5) and a variety of other community services. Another is to use the planning process (using tools such as Voluntary Planning Agreements under the *Environmental Planning and Assessment Act 1979* (NSW)) to build human services hubs into new developments to benefit local communities.

For networking/joint planning

It is evident from the literature and from our consultations that professional relationships are the bedrock of collaboration, and that these require some awareness and interest in professionals' respective roles.

The Community Legal Service Partnerships scheme introduced in England and Wales in the late 1990s had increasing professional networking as one of its objectives. Community Legal Service Partnerships were expounded in the Lord Chancellor's Department's 1999 consultation paper on the Community Legal Service. The consultation paper identified a problem of diverse funders separately engaging with a plethora of (unplanned and uncoordinated) legacy services in a manner that failed to achieve 'the synergistic benefits which complementary funding might give' (p. 1). This entailed duplication and inconsistency of approaches and processes. On the service provider side it was argued that there was a corresponding problem of 'isolated funders plac[ing] them in competition for funds ... [and money being] provided short term, ad hoc, or with too narrow a focus' (p. 1). The consultation paper explained:

Different types of service are distributed unevenly across England and Wales. Despite the fact that nearly 2000 separate agencies are involved, a person may be unable to find the right kind of help for his or her particular problem, within a reasonable distance of home, because:

- *Services have grown up in an ad hoc, unplanned and uncoordinated manner, dependent on discretionary funding from local authorities, charities and central Government.*

Box 4.5: Geraldton Resource Centre

The Geraldton Resource Centre is an integrated legal service provider (delivering support across a range of legal problems as well as for released prisoners). The centre has a base in Geraldton Lotteries House, one of more than 20 Lotteries Houses in Western Australia, built at a cost of over \$8 million with support from Lotterywest.

As well as housing Geraldton Resource Centre, Geraldton Lotteries House also houses Chrysalis Support Services (a domestic violence and sexual assault/abuse support service), Drug Arm (a drugs and alcohol rehabilitation service), Activ (a disability support service), Aiden's Place (a disability support service), Regional Home Care Services (a support service for carers), Silver Chain (a care service), the Association for the Blind, the Neurological Council of Western Australia and other smaller community groups.

At the opening of the building, the Hon. Colin Barnett, State Premier, stated: 'Lotteries Houses are a uniquely Western Australian initiative that house a number of community groups in contemporary professional premises ... The building will provide much-needed affordable accommodation for the tenants and mean they can share resources and learn from each other'.

- *Need is not assessed coherently, as funding for advice is provided by a range of separate bodies without any co-ordination, or common systems.*
- *As a result funding does not consistently follow need, and those running agencies find that far too much of their time is spent dealing with various separate funders who each have their own criteria for funding.*
- *There is no common database of advice providers on which people can draw, nor any standard quality accreditation system on which they can rely.*
- *Cross-referral and networking does not always occur. Therefore, expert advice may not always be deployed quickly on problems needing it, and some of the time of experts may be spent on problems that could be resolved by others.*

Community Legal Service Partnerships were intended to ‘address longstanding problems in the provision of, and access to, quality information, advice and legal services caused by a lack of co-ordinated local planning, a lack of referral between organisations and an absence of generally recognised quality standards’ (Griffiths 2002b). Partnerships, focused on funders but extending to suppliers, were therefore set up across England and Wales, co-ordinated by the Legal Services Commission through regional managers, who provided strategic information to partner organisations (to form the basis of local strategic plans) and administered fora for networking, joint working and joint planning.⁷⁵ Efforts were supported by a modest Partnership Innovation Budget (PIB) to seed fund selected partnership activities.

Looking back on the scheme, one of Chang’s (forthcoming) English respondents observed:

the policy of Community Legal Service Partnerships ... helped to increase the understanding and informal networks between [the profit and not-for-profit] sectors in some areas where participants were enthusiastic to work together ... As a result of [partnerships], people were talking to each other, getting to know what was available, getting to know the individuals who were involved, and that in turn led to ... a trust and greater level of referrals. So, I think that was a helping hand to get people thinking in those different ways.

Naylor’s (2002) post-implementation review of Community Legal Service Partnerships also highlighted success in the promotion of professional relationships and networking.⁷⁶ However, as Chang’s respondent went on to comment, a ‘very mixed picture’ developed around the country, which had a lot to do with the personality of leading partner representatives ‘and how enthusiastic they were’.

This inconsistency, aggravated by limited resources, a too tight timetable for implementation, difficulty demonstrating successes against the heady ambition that partnerships were to be the centrepiece of devolved joint decision making on funding, and tensions between partners (Moorhead 2000; Naylor 2002), ultimately led to the Legal Services Commission withdrawing support for partnership activities.⁷⁷

As Community Legal Services Partnerships were phased out in England and Wales, the Cooperative Legal Services Delivery (CLSD, see Box 4.6) program commenced in NSW. As with Community Legal Service Partnerships, CLSD partnerships are intended to better target the needs of disadvantaged people, improve coordination of legal services and extend regional capacity

⁷⁵ As Moorhead (2000) set out, Community Legal Service Partnerships were given a series of aims when set up: to create a Partnership Forum for cooperation between partnership members (e.g. other funders of legal advice and assistance in the area and suppliers); assess the level and sources of funding in the area; map services; assess need in the locality; identify and address gaps in provision; stimulate joint planning between funders to overcome priority gaps; stimulate referral arrangements between providers; and encourage the development of formal working agreements (or concordats) to be drawn up among partners.

⁷⁶ Moorhead (2000) also reported that the ‘pioneer’ partnerships managed to improve understanding between funders about their processes, sharing of information, planning and coordination.

⁷⁷ Griffiths (2002a) summarised other factors that had inhibited partnership working as including: the varied agendas and interests/focus of partners; tensions between partners (between different tiers of government, between funders, between suppliers, between funders and suppliers, etc.); differences in the scope of funding opportunities between partners; different levels of commitment, and a lack of incentives. He also noted ‘the Partnership Innovation Budget (PIB) was clearly established as an incentive to the development of CLSPs. However, the amount involved in the first round was relatively small and it could not be stretched very far’ (p. 46).

Box 4.6: Cooperative Legal Services Delivery (CLSD) Program

The Cooperative Legal Services Delivery (CLSD) Program was first piloted in 2004 in the Central and Far West and Northern Rivers regions of NSW. Following the pilot, CLSD regional partnerships were set up in the Central West and Northern Rivers, with the program now extending to 11 regions in total. The stated aims of the partnership program are set out in the main text, and these see partners work together to 'network and share information on services, identify and discuss unmet and emerging legal needs' and through discussion, 'coordinate and collaborate on initiatives aimed at meeting those needs and improving referrals and access to legal services' (Lovric 2011, p. 2). The program is centrally managed by Legal Aid NSW, which also provides some funding for partnership projects. There are also 'part-time Regional Coordinators appointed to each region to facilitate coordination at the local level' (Legal Aid NSW 2011a, p. 1). However, in recognition of the very different service legacy and community needs in different regions, each regional CLSD partnership is largely autonomous, and the composition of partnerships varies between regions. Partners meet four times a year 'for around two hours' (Ryan & Ray 2012). Membership generally extends to core regional legal services, those non-legal services that routinely 'assist clients with specific legal issues' (such as tenancy and family violence services), some non-legal services focused on particular vulnerable client groups, and some general information/advice services (Ryan & Ray 2012, p. 16). Partners typically include representatives of organisations such as Legal Aid, CLCs, private solicitors, court registrars, the ALS, Aboriginal Justice Groups, LIAC, pro bono lawyers and, beyond, traditional legal services, Family Relationship Centres, domestic violence services, housing services, disability services, youth services, and other neighbourhood and community centres. In 2011, 171 different services attended CLSD meetings across NSW. Legal Aid NSW works with others to provide up-to-date evidence of service levels and usage in CLSD regions. This evidence is complemented by data and reports from individual partner organisations. Each region has a strategic/action plan, and partnership projects are developed under that plan. Beyond improved networking and referral between services, outcomes commonly include coordinated outreach services and interagency 'roadshows'/clinics. Systematic issues identified through the program are reported to the NSW Legal Assistance Forum.

through cooperation.⁷⁸ And to do this, they are also charged with developing local strategic plans 'to help prioritise and guide' their work (Ryan & Ray 2012, p. 15), and have a modest budget to provide some financial incentive for partners to engage.

Inevitably, membership of CLSDs 'varies across regions' (Ryan & Ray 2012, p. 16). Like most community partnerships, 'membership tends to be created out of existing contacts and evolves in a rather unplanned way as new issues suggest new partners or new contacts become drawn in' (Huxham & Vangen 2005, p. 76).⁷⁹

Some differences in membership can be attributed to the make-up and culture of local services, but some might also be attributable to what Ryan and Ray (2012, p. 44) described as 'the considerable variation among regions in the skills and background of Regional Coordinators, and in the way Regional Coordinators are supported and managed at a local level',⁸⁰ again highlighting the central role that key individuals play in the development of partnership activities.

Nevertheless, helped by modest expectations of level and pace of impact and modest devolved funding (as compared to the lofty ambition and intended role in funding allocation that ultimately

⁷⁸ Within this, better integration of pro bono activities was also an express aim.

⁷⁹ It was also apparent from our consultations that some partnerships have a more extensive active membership than others, and that in regions that have a number of competing centres (such as Northern Rivers) active membership can vary (considerably) between centres. The Northern Rivers CLSD rotates its meetings between the main regional centres.

⁸⁰ This variation led Ryan and Ray (2012) to recommend that there should be clarification of 'the skills required of Regional Coordinators, management and support provided to Regional Coordinators by the local auspice bodies, and recruitment processes'.

weighed down Community Legal Service Partnerships in England and Wales), the CLSD program is proving to be popular and successful. As well as providing an incubator for new collaboration, CLSDs act to counter the historical tendency for collaboration initiatives in the legal services domain to 'have been relatively small-scale projects that have been undertaken on a disjointed or ad hoc basis' (Coumarelos et al. 2012, p. 223).

Ryan and Ray's (2012, p. 37) recent evaluation of the CLSD program found that central agency stakeholders perceive the CLSD program 'as being a high value for money program and a successful model for increasing networking between legal and non-legal agencies, sharing information, improving referral paths, increasing knowledge of non-legal services about legal issues and in providing additional legal services to address gaps for disadvantaged populations'. Ryan and Ray (2012, p. 30) also pointed to evidence that, at the regional level, the CLSD program has:

- *a high level of support from participating partners, who confirm its value as a model to improve access to legal services for disadvantaged people,*
- *delivered improved referrals between agencies, increased partners' access to information and increased contact between partner agencies,*
- *increased knowledge among legal and non-legal agencies about the impact of laws on disadvantaged populations,*
- *assisted in identifying gaps in legal and related services for disadvantaged people in regional areas through cooperative processes,*
- *delivered collaborative projects that have given some disadvantaged people increased legal assistance on specific issues.*

Despite some acknowledged weaknesses,⁸¹ the CLSD program is thus 'viewed as a highly effective program within the constraints of its resource capacity and framework' (Ryan & Ray 2012, p. 5) and there is strong support for its expansion.

Ryan and Ray (2012, pp. 41–46) made eight recommendations for future development: expansion of the program; investigation of potential change in the role of Regional Coordinators to a more developmental one; expansion of the CLSD Central Program Unit alongside expansion of the program; exploration of 'additional approaches' to communication between regions and centralised services; clarification of the role of Regional Coordinator; improved cultural awareness training; increased CLSD 'access to the data/research capacity of the Law and Justice Foundation' and introduction of 'simple measurement tools ... [to] provide an overview of the reach and scope of CLSD activities and provide feedback on legal education activities and regional partnerships'.

There was also a suggestion from some central agency stakeholders that the program might be extended to disadvantaged metropolitan areas, such as Mt Druitt, Liverpool, Fairfield or Campbelltown.

Outside of NSW, similar but newer initiatives are also being developed. For example, Legal Aid Queensland has set up 12 Regional Legal Assistance Forums (RLAFs) in those areas where Legal Aid Queensland has a regional office. Though more restricted in their membership, the Queensland RLAFs are charged with a similar task to CLSDs, namely to:

- *promote cooperation between service providers in the interests of clients to ensure that the legal needs of those clients are met with the best and most effective service available to address these individual needs,*
- *regularly disseminate information and promote communication amongst service providers on issues of mutual concern to enhance the ability of those providers to address client needs,*
- *inform governments and other organisations on the needs of those clients and on issues relevant to the practical delivery of legal assistance and representation services,*
- *assist governments and other organisations in the development of policies to enhance access to justice for people living within our service delivery areas.*

81 Particular issues were identified with the variation in the Regional Coordinator role; the balance between central and regional control; the level of engagement of some partnerships with Aboriginal organisations, and a relative lack of action stemming from some partnerships. Our impression from witnessing a number of partnerships in action is that the Regional Coordinator role is central to partnership activity, and that Ryan and Ray (2012) were right to highlight this as a key focus for improvement and development.

Victoria has also seen the recent development of RLAFs in the Bendigo, Murray and Hume Riverina regions, set up along similar lines.

In each case, these regional partnerships (whether CLSDs or RLAFs) interface with the state level Legal Assistance Forums (LAFs), which, taking the example of the NSW LAF (NLAF, see Box 4.7) have objectives:

- *to improve legal services for disadvantaged communities through improved alignment of planning, program design and service delivery,*
- *to promote cooperative arrangements and collaboration between organisations within the sector for effective service delivery,*
- *to identify and incorporate the best available research into legal service delivery,*
- *to promote dialogue and debate, and*
- *to consult and respond to emerging issues, policy and law reform.* (Roberts, Levitan & Lovric 2013)

So, in the case of the NLAF, the CLSD Program Manager ‘provides quarterly reports on regional unmet and emerging needs to [the] Plenary, systematic issues are considered ... and where appropriate an NLAF Working Group is formed’ (Roberts, Levitan & Lovric 2013). The CLSD Program Manager also sits on NLAF Working Groups. CLSD program partners also ‘have opportunity for input into issues at the NLAF table, including law reform and service planning’.

Regulatory environment

Changes in the regulatory environment for legal services can have profound impact on the form and operation of the legal services market.

England and Wales, albeit operating across a single legal jurisdiction, is seeing wholesale change in patterns of delivery in some areas of traditional everyday legal practice. As a recent article in *The Economist* noted,⁸² the Co-operative Group (a large, nationally present and socially oriented consumer cooperative) ‘hopes to employ 3000 staff, most of them lawyers, within five years, which would make it the largest legal firm in the country’. As the article went on to explain, its foray into the personal legal services market is facilitated by its trusted brand and the fact that the Co-operative Group has 5000 outlets. The Co-operative Group is, for example, ‘Britain’s largest

Box 4.7: NSW Legal Assistance Forum (NLAF)

Over the past decade, Legal Assistance Forums (LAFs) have been set up across Australian states and territories (and nationally) to promote collaboration and coordination of legal services for disadvantaged communities at the peak body level.

The first LAF was set up in NSW (NLAF) in 2005, a joint initiative of Legal Aid NSW, the Law and Justice Foundation and the Combined CLC Group. These organisations had ‘noticed that there was ad hoc contact between organisations working in this area, but no real coordination of activities or strategic approach to issues. That resulted in overlapping programs and non-optimal use of limited resources’ (Seagrove 2008). NLAF then grew to encompass the government agencies with responsibility for policy development, the main government and not-for-profit legal service providers, professional associations and the main pro bono providers.

The current NLAF structure centres on an NLAF Plenary, which interfaces with the CLSD Program Unit, the Legal Information and Referral Forum, a learning and development group, the NLAF executive (CLC NSW, the Law and Justice Foundation of NSW and Legal Aid NSW) and several working groups. Current working groups (which are task oriented, time limited and drawn from the legal and non-legal sectors) are a Prisoners Forum, an RRR Working Group, a Fines and Traffic Law Working Group and a Housing Law Working Group.

82 ‘Supermarket sweep: The cold wind of competition sweeps the legal-services market’, *The Economist* (UK edition), 27 April 2013.

funeral provider and buries a quarter of the country's dead every year, so it is well placed to deal with the legal side of death'. English and Welsh banks and insurance companies are also using their reach to deliver personal legal services, in direct competition with traditional 'high street' legal practice. This is integration of personal legal services into mainstream consumer services.

The lifting of restrictions on ownership of Australian legal practices over the past 25 years, including the introduction of Incorporated Legal Practices (ILPs) first in NSW in 2001,⁸³ has not yet led to such change in the profile of the legal services market for everyday legal problems (Legal Services Board 2011), though there has been significant consolidation of professional services.

Also, regulatory change may have effects beyond those initially anticipated (or hoped for). The impact of deregulation/regulation is not always positive to desired outcomes. For example, several Australian studies have noted the impact of changes to personal injury compensation law⁸⁴ and the deregulation of conveyancing on the economic viability of private legal practices in rural areas (Cain et al. forthcoming; Forell et al. 2010; Mundy 2008). In the words of practitioners:

If you go into private practice in a country firm, conveyancing is the bedrock of the fees you bring in ... all that core area of work is being taken away, personal injury litigation has been taken away ... What do you do? ... Do legal aid work with no training at all ... so the work is getting done badly ... (Private lawyer quoted in Forell et al. 2010 p. 115)

These rural private practices play an important role in the provision of legally aided casework in locations beyond the reach of legal aid offices (Forell et al. 2010; Cain et al. forthcoming).⁸⁵ Sustainable private practices are required, under the current 'mixed model' arrangements, to provide a rural scaffold for public-funded representation services.

Incentivisation

It is clear that joining up services, whether from within or without, is resource intensive. Lack of resources is therefore a common barrier to embarking on a joint working strategy. As Noone and Digley (2010, p. 5) concluded:

The research identified a lack of resources available to CLCs, like West Heidelberg Community Legal Service, to assist in the development of partnerships and referral processes. Additionally there is no systematic support for identification and development of program responses to local community justice needs with other community organisations. In contrast the research identified significant systemic resources provided to BCH [Banyule Community Health] by the Victorian health system.

Thus, the provision of incentives generally figures in attempts to foster partnership from the outside. Accordingly, Legal Aid NSW, as well as providing strategic and administrative support for CLSDs, earmarks funds to assist with CLSD projects. In 2010–2011, project funding amounted to \$20 000 for each CLSD region (Ryan & Ray 2012), and while this falls well short of that required to bring about revolutionary change to local legal (and other human) service provision, it helps to maintain engagement and interest.

It has been argued elsewhere (Naylor 2002) that while substantial funding can entice additional players to the table, and accelerate processes of joining up, an absence of financial incentives to engage in partnership work can bring about inherently strong collaborations. Though the development is likely to be patchy (as it was in the case of Community Legal Service Partnerships in England and Wales and, as noted above, it also appears to be in the case of CLSDs in NSW), owing to reliance on the predisposition, facility and commitment of partners.

83 Under the Legal Profession (Incorporated Legal Practices) Act 2000 and the Legal Profession (Incorporated Legal Practices) Regulation 2001.

84 Between 1999 and 2002 the NSW Government introduced substantial reforms which limited claims that could be made in relation to motor vehicle accidents, workers' compensation and civil liability (NSW Parliament 2005, pp. xvi–xvii).

85 In 2011–2012, private lawyers provided 42.5 per cent of all Legal Aid NSW case and duty services (Legal Aid NSW 2012a p. 33). During the same period, more than 80 per cent of grants of aid provided by Legal Aid Queensland went to private law firms (Legal Aid Queensland 2012, p. 22).

As Naylor (2002, p. 45) explained:

A partnership that is established in the absence of a funding imperative must win over the hearts and minds of its participants. If it is successful it then has an inherent stability and focus, because partners agree on the underlying ideas and not simply the pursuit of a single cash-pot or project outcome. However, where a partnership process has no concrete short-term benefits, such as any immediate injection of cash, the 'hearts and minds' battle is very important.

Compulsion

Government and other funders of legal services are often in a position to compel the services they fund to act in a certain way. However, where collaboration is mandated, for example 'through a threat to withdraw resources or withdraw the opportunity to be involved in future action or resources ... as has been very common practice by governments across the world in recent years ... the collaborative group is unlikely to address the collaborative purpose with ownership or commitment' (Huxham & Vangen 2005, p. 117).

Set against this, though, a requirement that services revisit their place within local service provision and agree with partners a joint approach to delivery in order to win service contracts can provide the impetus for real change in the structure of local services. This was the idea behind the Community Legal Advice Centres (CLACs) initiative in England and Wales, introduced in the wake of the Legal Services Commission's 2006 strategy paper *Making Legal Rights a Reality* (see Box 4.8). It represented, according to a later Ministry of Justice (2009, p. 63) review, 'the logical extension of the integrated services model'.

As Buck et al. (2010, p. 22) described, CLACs were 'innovative, in the sense that they [were] commissioned and funded jointly with local authorities' and were directed to providing clients with 'an integrated and seamless' gateway to legal services. The integration was both horizontal (encompassing a range of categories of 'social welfare' and family law) and vertical (providing services from information, initial diagnosis and advice right through to legal representation in complex legal proceedings). As Buck et al. (2010, p. 7) explained:

Central to CLAC provision is the concept of a one-stop shop: offering advice in a range of categories of law.

Needs analysis was a core part of the CLAC procurement process, with the funding agencies essentially challenging providers to organise themselves in such a way as to be able to provide defined (though flexible) services that met identified legal needs and overcame recognised barriers to access. Thus, service levels were defined from above, and delivery solutions were devised from below. However, considerable effort was required to make this process work. As one of Chang's English respondents observed:

Box 4.8: Community Legal Advice Centres (England and Wales)

Community Legal Advice Centres (CLACs) were introduced in the wake of the Legal Services Commission's 2006 strategy paper *Making Legal Rights a Reality*, and were rationalised with reference to research evidence (concerning problem clustering, referral fatigue, etc.) derived from the English and Welsh Civil and Social Justice Survey. They were jointly-funded legal services one-stop shops, offering the full range of legal services across 'social welfare' and family law categories.

The first CLAC was opening in Gateshead in 2007, on a three-year contract, with more following over the next few years. A 2009 Ministry of Justice report noted that none of the geographical areas in which CLACs had opened had previously contained a single service that offered all the relevant categories of law, and only one area had any service provision across all categories.

[The Legal Services Commission] invested a significant amount of time in dealing with local authorities in this pre-development stage. Due to different geographic environments and political concerns, each of the local authorities had their own interests, focuses and timeframes. Thus, each case could only be processed one by one. Though they learned something from previous successful cases that helped the subsequent negotiation, the great diversity between the local authorities made the successful experiences difficult to reproduce.

Also, every contract was different, relating to different services, provided (generally by different providers) using different means in different areas and to different populations.⁸⁶

Initial indications were that the CLACs were working well. A Ministry of Justice (2009) report pointed to a between 21 per cent and 49 per cent increase in help for social welfare legal problems in the different CLAC areas. And even the 'threat' of opening a CLAC appeared to have had a positive impact, in service integration terms, beyond the initial CLAC areas (Ministry of Justice 2009).

However, concerns were noted around lengthy set-up times, the potential for monopoly service provision, and disruption to some cooperative activities (with external organisations) (Ministry of Justice 2009). As the Ministry of Justice report explained:

Where a CLAC is run by a private company, some private firms supporting pro bono activity by their staff are, apparently, unwilling to countenance pro bono activity 'benefiting' another private firm. Whilst it is unlikely that the contracting firm would benefit financially from pro bono work, they would receive credit for this expansion of their activities. (Ministry of Justice 2009, p. 71)

Also, more recently, one of Chang's (forthcoming) English not-for-profit sector respondents pointed to CLACs acting to disrupt pre-existing inter-service relationships:

Members of the consortium who had worked together for years, stopped referring to each other, stopped helping each other, stopped collaborating because they were under competitive threat and so it did enormous damage ...

Another of Chang's respondents also suggested that the impact of targets on CLAC activities was not always positive:

The target driven nature of those services meant that agencies were forced to concentrate on hitting their targets and delivering them at the start and not doing what mattered for people ... People's problems weren't solved at all, because the focus of the service was on hitting targets.

However, extensive evaluation carried out by the Legal Services Research Centre indicated that CLACs improved advice provision for clients. For example, Buck et al. (2010, p. 10) reported that clients 'regarded [CLACs] as easier and quicker to access than ... other services'. They also found that 'in all of the CLACs there was consistent evidence of advisers exploring and identifying whether clients had multiple issues' (p. 13). Smith and Patel (2010) also found, using administrative data, that clients were able to obtain advice about multiple issues using fewer suppliers in CLAC areas than other comparable areas.

Of course, the evaluations did not disguise the complexity and resource intensive nature of procurement and operation of CLACs, but they did point clearly to the potential of the approach. However, before long, the global financial crisis led to the demise of the initiative (within a package of heavy cuts to legal aid expenditure), with the final CLAC contracts ending in March 2013.

Replacement

As illustrated in the preceding section, the bringing together of hitherto separate services within a single organisational structure has been accomplished in the legal services sector, as has the replacement of existing services with newly constituted holistic services. However, this was a resource intensive process, required the coming together of the major public legal services funders, was achieved in only a limited number of locations and brought about substantial disruption to local legal services markets, the long-term consequences of which may not (at least in some cases) be positive.

⁸⁶ Fox et al. (2010) highlighted the resource intensive procurement process in their process evaluation.

In relation to the option of replacing existing services, three things should be noted. First, that the Australian legal services sector is characterised by diversity of service funders and providers, of purposes, policies and ideologies, of responsibility and accountability, and of social and geographical environments. Second, that the public legal services sector is one in which funding is limited. And third, that in many parts of rural Australia there are currently only few, if any, services to replace.

Thus, replacement of services for the purpose of joining up services would face huge political, practical, existential and economic challenges.

The place of legal services in joined-up services

Legal services cannot be expected to sit at the centre of any widespread human services coordination initiative. They constitute a relatively minor public expenditure item, as well as being seen as peripheral to the main human services programs (such as health and welfare). Generally being smaller in scale than other human services, they are also relatively poorly positioned to commit the resources necessary to bring about successful collaboration. As noted above, legal services struggle to engage with the increasing range of interagencies, a task often taken on by dedicated staff in other human services sectors. Thus, it is sensible for legal services organisations to work on greater collaboration within the legal sector, while engaging with those out of sector interagencies that most closely mirror the needs of legal services' clients. As also noted above, legal services interagencies, such as CLSDs, are apparently well suited to facilitating 'within-sector' joined-up services working in the long-term. They can also provide a mechanism for interfacing with non-legal organisations and organisations to raise awareness of the connection between legal and other human service needs, and for collaboration on discrete projects. However, they will (rightly) remain satellite fora to, for example, the health and welfare sector interagencies that sit closer to the heart of government policy and spending.

Evaluating joined-up services

Joined-up working is difficult and resource intensive. Whether or not it is effective is therefore a matter of interest to all involved.

As detailed above, some attempts to join up services have been set back by an inability to demonstrate outcomes. Many of the 'ultimate' objectives of joined-up services are defined in social terms, meaning outcomes are likely to be diffuse and difficult to attribute to particular interventions. Indeed, in the case of services aimed at tackling 'wicked' problems, demonstration of 'ultimate' effectiveness may be near impossible. Thus, evaluation will generally be more sensibly directed towards change that is centred on the nature of the service innovation, under the control of the services being evaluated, and measurable/observable.

There are a number of approaches to evaluation of joined-up services that meet these strictures, each with a distinct object of focus.

For example, a network approach to evaluation focuses on the connections between individuals and services. As Pope and Lewis (2008, p. 447) explain in the context of Department of Development and Community Planning partnerships evaluation in Victoria:

Network analysis is a method of collecting and analysing information from individuals/ organisations that are interacting with each other (Provan et al. 2005). The unit of analysis is not the individuals or the organisations involved, but the relationships between them ... [with the aim of] examining global network structure, network sub-structures, and the position of individuals within these networks ... Focusing on network structure acknowledges that working together is fundamental to partnership work and should therefore be central to partnership evaluation.

Network analysis can yield measurements and visual representations that can be used to explore the characteristics of networks and demonstrate change.

Another approach sees the focus shift from the degree of connectedness of partnerships, to the range of services provided to individual clients. In the same way that working together is

fundamental to partnership work, so too is the delivery of complementary services to address different aspects of presenting need. Thus, measures of the range of services received by clients within a partnership indicate the extent to which partnerships are seeing coordinated activity.⁸⁷

A further approach centres on the internal characteristics of effective partnerships. For example, the 'Partnership Assessment Tool' developed for the UK Government is 'based on six Partnership Principles which ... research and fieldwork has shown form the building blocks for successful partnership' (Hardy, Hudson & Waddington 2003, p. 2). As the authors explain, the approach is intended 'to ascertain from partners how far they feel that these building blocks are in place'.

The approach sees members asked about:

- recognition and acceptance of the need for partnership
- clarity and realism of purpose
- commitment and ownership
- development and maintenance of trust
- clarity and robustness of partnership arrangements
- monitoring, measurement and learning.

A scoring sheet for each partner involved then determines how well the partnership is working, with low scores indicating that 'detailed remedial work ... is essential' and high scores indicating that 'further detailed work [is] unnecessary' (p. 36).

In the case of each of the above approaches, data for use in evaluation is likely to be drawn from services themselves. However, it is also possible to focus evaluation on the user experience. In the case of establishing the quality of services such an approach can be criticised by reference to information asymmetry between service and user. But in the case of joined-up services the user experience is an essential component of success. Thus, evaluation can usefully explore matters such as users' ease of access to, ease of referrals between and issues dealt with by partner services.

Sometimes, the form of an evaluation (or part of an evaluation) will be prescribed by program/project sponsors, such as in the case of the NSW Homeless Action Plan (HAP) Evaluation Strategy, which requires HAP projects to be self-evaluated in accordance with published guidelines and templates (NSW Government 2012).⁸⁸

Demonstrating quick wins

The value of 'quick wins' to consolidating early support for initiatives aimed at joining up services was noted earlier. Given the time that is often needed to enable partnerships to develop, the above approaches to evaluation may not be suited to the earliest stages of joining up, during which focus may be on putting in place the foundations for collaboration. Thus, during these early stages a more useful approach to evaluation may be to simply establish whether or not developmental/project milestones (such as securing partners, establishing partnership fora, developing strategic plans, initiating partnership projects) are reached.

⁸⁷ Though evaluation in this regard needs to be sensitive to the provision of unnecessary layering of services.

⁸⁸ See, for example, the evaluation of the legal component of the Riverina Homelessness Interagency Project and Reaching Home Newcastle (Porteous 2012).

5. Early intervention: breaking the cycle of disadvantage

Early intervention will prevent legal problems from occurring and escalating. In many situations, early action can resolve a matter or identify the best course of action. However, if a person does nothing, which often happens when there is not enough assistance available, or it is not clear to a person where to turn to for help, it can be much harder and more costly to rectify the problem. (Commonwealth Attorney-General's Access to Justice Taskforce 2009, p. 63)

The terms 'early' and 'intervention' are clearly appealing: implying a proactive approach to problem identification, prevention and resolution. With its growing visibility in the justice sector more broadly,⁸⁹ 'early intervention' gained prominence in the public legal assistance landscape though the *Strategic Framework for Access to Justice in the Federal Civil Justice System*:

The Commonwealth should seek to negotiate a National Partnership Agreement on legal aid that gives greater priority to intervening early to help prevent legal problems from escalating, building knowledge and respect for the law and resilience in dealing with legal issues. (Commonwealth Attorney-General's Access to Justice Taskforce 2009, Recommendation 11.3, p. 144)

Subsequent strategic documents⁹⁰ have reshaped the delivery of public legal service accordingly. In the *National Partnership Agreement on Legal Assistance Services* (COAG 2010, pp. 3–4), early intervention in legal assistance was defined to mean 'legal services provided by legal aid commissions to assist people to resolve their problem before it escalates', with further indication then given of the type of services that early intervention constitutes:

such as legal advice, minor assistance and advocacy other than advocacy provided under a grant of legal assistance.

Preventative legal services were also defined, as:

legal services provided by legal aid commissions that inform and build individual and community resilience through community legal education, legal information and referral.

Notably the National Partnership Agreement identified the strategy of 'early intervention' as an objective in itself, with the agreement requiring a '30 per cent increase in number of early intervention services' delivered by legal aid commissions in accordance with the Commonwealth Government priorities.

Early intervention is also the subject of access to justice policy discussion overseas, for example in Canada, where strategies have been recently proposed to 'help most people in the most efficient, effective and just way at the earliest point in the process' (Canadian National Action Committee on Access to Justice in Civil and Family Matters 2013, p. 11).

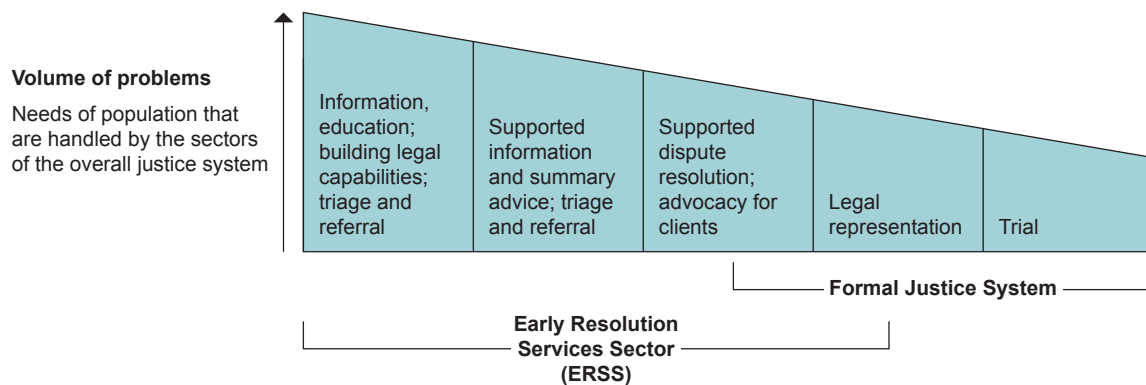
The Canadian National Action Committee on Access to Justice in Civil and Family Matters (2013, p. 11) argued for an Early Resolution Services Sector (ERSS), and used Figure 5.1 to illustrate the place of early resolution strategies, relative to the formal justice system and the volume of legal

89 'Developmental crime prevention programs aim to intervene early in children's lives to prevent later offending' (National Crime Prevention 1999; Homel et al. 2006; Manning, Homel & Smith 2006). Other programs aim to intervene 'early' in the projected offending careers of young people (Smith & Gallacher 2013). In legal processes alternative dispute resolution processes are often discussed as 'early intervention' (Brandis, in Law Institute Victoria, 2013; NADRAC 2011; Ralph 2011).

90 Including the Commonwealth Community Legal Services Program Guidelines (Commonwealth Attorney-General's Department, Social Inclusion Division 2010); National Partnership Agreement for Legal Assistance Services (NPALAS) (COAG 2010) and the National Legal Aid Strategic Plan 2011–2013 (National Legal Aid 2011).

problems experienced. It also describes the types of strategies implemented as early intervention and prevention in the legal assistance sector, indicating they are services which are provided early in the progress of a legal issue, ideally prior to the formal legal processes. They also tend to be less intensive but widely available at the earliest stages, in order to ‘catch’ potential problems in the net as they are forming.⁹¹

Figure 5.1: Involvement of the ERSS and formal justice system in the overall volume of legal problems



Source: Canadian National Action Committee on Access to Justice in Civil and Family Matters 2013, p. 11)⁹²

The remainder of the chapter examines:

- the promise of early intervention as a policy framework for public legal assistance and its role in ‘breaking the cycle of disadvantage’
- notions of ‘early’: in processes, problems and lives
- the nature of early ‘interventions’
- the interface of legal and non-legal assistance in prevention and early intervention
- early intervention as cost-effective justice
- implications for monitoring and evaluation.

The promise of early intervention

Two key tensions provide context to the increasing interest in early intervention legal assistance. The first is an enhanced understanding of (informed by the extensive research described in Chapter 2), and a desire to address the extent and impact of legal problems, particularly on social disadvantage. The second is a tightening fiscal environment in which the availability of legally aided representation has narrowed to assistance for the most disadvantaged in a limited range of matters (Canadian Bar Association 2013a, p. 2; also Brandis 2013).⁹³

A key attraction of ‘early intervention’ in the legal assistance sector, and a rationale for its implementation, is a view that earlier intervention may ameliorate the need for more intensive and expensive intervention (e.g. representation or court processes) later on. This perspective is

⁹¹ This interpretation of early intervention, as early but often broad-based and less intensive assistance, fundamentally differs from its antecedent concept, where, in child development, early intervention tends to describe targeted intensive assistance for specific children in need (e.g. Valentine & Katz, 2007).

⁹² One point of note is that this diagram represents response to legal problems rather than the experience of legal issues. Relevant to the discussion below is the observation, drawn from legal needs research, that a sizable proportion of legal issues do not even make it onto the diagram, because no action is taken for these issues or they are handled (formally or informally) outside the mechanisms described here (see Coumarelos et al. 2012).

⁹³ Another factor often raised as relevant to this discourse is the growing impact of self-represented litigants on court efficiency and process. Early intervention strategies are considered important to this issue first, as a way of reducing the numbers of people coming to the courts for the resolution of their issues and second, as a cost-effective way of supporting those who, despite these efforts, remain in the system (Engler 2012; Richardson, Sourdin & Wallace, 2012; Dreyfus 2013).

informed by an understanding that as legal matters progress, they can become more complicated, can trigger further legal problems and potentially require more intensive solutions to bring matters to resolution:

An unresolved legal problem can trigger further legal problems, resulting in the experience of multiple simultaneous or sequential problems. Thus, early intervention strategies could be used to resolve legal problems before they reach crisis point, by minimising escalation, preventing flow-on effects and reducing the need for expensive court resolution. (Coumarelos et al. 2012, p. 13)

In arguing for an ERSS, the Canadian National Action Committee on Access to Justice in Civil and Family Law (2013, p. 9)⁹⁴ suggested:

the range of services in the ERSS is intentionally designed to facilitate early resolution. Well-designed outreach programs for youth and adults help to build legal capabilities that prevent disputes from becoming problems. PLEI [Public Legal Education and Information] provides information that helps people resolve matters on their own or avoid unnecessary court involvement. Similarly, conflict or dispute resolution projects provide early resolution. Avoiding problems or the escalation of problems, and/or early resolution of problems is generally cheaper and less disruptive than resolution using the courts. To borrow Richard Susskind's observation, 'it is much less expensive to build a fence at the top of a cliff than to have need of an expensive ambulance at the bottom'.

Bolstered by the possibility of stemming the flow of legal problems into the legal system, a second key appeal of early intervention lies in the perceived opportunities to broaden the reach of legal assistance services beyond 'the most essential legal needs of the most vulnerable populations' (Canadian Bar Association 2013a, p. 2) and 'to find solutions that will best alleviate the unmet legal needs of the *most* people possible' (Canadian Bar Association 2013a, p. 7 see also Trebilcock, Duggan & Sossin 2012; Middle Income Access to Civil Justice Steering Committee 2011). This approach responds to a concern held in many, including Australian jurisdictions, that:

Cuts to public funding for legal aid have resulted in continually decreasing financial eligibility levels and increasingly limited services offered by legal aid plans, so even many low income and people living in poverty are now ineligible for the services they need. (Canadian Bar Association 2013a, p. 2; see also Centre for Innovative Justice 2013)

The roll out of early intervention services in this country and overseas is seen as important because:

They help to bridge the gap between no assistance and full representation and allow legal aid programs to assist a greater number of people facing a greater variety of legal problems. (Buckley 2010, p. 77)

Thus the appeal of early intervention is twofold. It first lies in the prospects of early intervention preventing the escalation of matters through the legal system. In the pursuit of this goal, it is secondly anticipated to provide cost-effective justice options for a greater range of clients and issues.

Too good to be true?

Early intervention and disadvantage

Central to the promise of early intervention is the notion that early assistance will prevent the escalation of issues, and in doing so, will reduce dependence on more formal justice mechanisms. To achieve this, early intervention strategies need to reach clients 'early' and provide assistance that makes a difference to those clients.

To then be a cost-effective justice option, these strategies need to be inclusive; reaching and addressing the needs of vulnerable and disadvantaged people who are the focus of public legal (and much of broader human services) programs (e.g. COAG 2010; Legal Aid NSW 2012).

⁹⁴ The work of this committee fed directly into the Final Report of the Canadian National Action Committee on Access to Justice in Civil and Family Matters 2013.

This is a significant challenge, as disadvantaged people are also more likely to have certain characteristics that affect their ability to engage with services and address their legal needs: multiple and intersecting legal and other issues (as illustrated in Chapter 2) and low personal and legal capability (as detailed in Chapter 6).⁹⁵

Thus, it is important to examine whether early intervention services of the types proposed by COAG (2010) and Canadian National Action Committee on Access to Justice in Civil and Family Matters (2013), will meet the needs of disadvantaged people. As the Canadian Bar Association (2013a, p. 7) recently argued:

While [early intervention is] certainly a laudable objective, the Canadian Bar Association has consistently emphasised that efforts to address the legal needs of this significant majority must not obscure or detract from the need and public responsibility to find comprehensive solutions that will also properly address the legal needs of the most vulnerable and marginalised populations.

Who do early intervention strategies best reach?

In arguing for early intervention strategies, the Canadian National Action Committee on Access to Justice in Civil and Family Law (2013, p. 4) suggested:

There are a large proportion of people who either do not recognise their problem as having a legal component or do not know where to go for help. They do not obtain timely and effective advice that could help them manage their legal problems early on. As a result, a proportion of these problems move from problems that could be resolved relatively easily at the early stages to ones that require expensive legal services and court time.

The assumption made here is that if people are informed that their problems are legal problems and are signposted to legal help, assistance can be provided early. For some people this may well hold true and they are ‘caught’ in the early intervention net.⁹⁶

However, evidence from legal needs research has consistently identified the complexity of reasons why many people, particularly those facing social disadvantage, do not necessarily seek out assistance for their legal problems in a timely way. These range from shame, insufficient power, fear, gratitude and frustrated resignation, to having other immediate priorities which take precedence over legal issues, feelings of hopelessness and despair, not recognising or believing the law can work in their interests and simple denial (e.g. Genn 1999; Forell, McCarron & Schetzer 2005; Pleasence 2006; Sandefur 2007; Balmer et al. 2010; Allison et al. 2012). As a result, individuals and communities can be quite disconnected from the law as a tool for resolving issues. For instance, in our consultations, human services workers in a rural area described Aboriginal clients who were:

disconnected from [the legal] process ... We refer clients on ... but there doesn't seem to be an awareness in the community or a willingness to engage that.

Providing insight into this, a provider of Indigenous services noted:

Aboriginal people, because of the history, honestly, don't trust that they're going to get a fair shake of the stick.

A remote area Aboriginal legal support worker observed of her community:

I don't know whether it's just shame or whatever, they just go 'Nup, we'll just keep this in the family'.

95 Legal capability refers to the personal characteristics or competencies necessary for an individual to resolve legal problems effectively (Coumarelos et al. 2012).

96 For instance, Forell and Cain (2010) observed in a review of a mortgage hardship service that early assistance can help clients manage otherwise escalating issues, but notably, also cautioned that the group that accessed assistance early may already have been the more capable clients with the less complex issues.

Similar observations were made by agencies working closely with newly arrived communities in urban Sydney, with one service provider describing a ‘cultural disconnect’ which, together with limited language capacity and awareness of the system, further distances people from the law as a tool for resolving issues.

New analysis from the LAW Survey have explored reasons provided by respondents for taking no action about legal issues they identify, including the reason that they ‘didn’t know what to do’. Importantly, the analysis indicates that not knowing what to do was rarely reported as the *only* reason for inaction.⁹⁷ McDonald and People (forthcoming) conclude ‘the overlap of reasons for taking no action for legal problems suggests that some people are constrained from acting in multiple ways’. They further observe, following an analysis of differences by demographic characteristics that ‘particular types of people are more likely to be constrained from taking action’.

Importantly some of these barriers go beyond the legal domain — and beyond what can reasonably be expected of legal sector strategies that are used to encourage people to seek assistance. For instance, community legal education may not influence someone who is more immediately concerned for the safety of their children than managing a fine debt. Legal advice will not address an underlying mental health issue.

The impact of this range of factors is that, as Forell, McCarron & Schetzer (2005, p. xx) observed of homeless people, ‘when ... people finally do contact a legal service (if at all), the issue has usually already reached crisis point: the eviction is imminent; their benefits have been cut off; the court case is tomorrow’.

Across a range of service sectors, research and practitioner experience has also pointed to the impetus of crisis in prompting help-seeking behaviour (Evans & Delfabbro 2005; Hall and Partners, Open Mind, 2012; Coumarelos 2012, p. 30), noting that the ‘tipping point’ for seeking help is later for some groups than others and that the disadvantaged are over represented in this latter group. This was strongly expressed in our consultations with practitioners across NSW, particularly by frontline workers supporting clients with complex needs. For instance:

we do get a lot of clientele come in in crisis mode. (Aboriginal services worker, rural area)

when the proverbial hits the fan you come in. (Rural community service provider)

In our consultations, a number of providers also noted that clients commonly come to the attention of legal services with multiple legal issues. One provider likened seeking legal help to seeking help from a doctor: where people may wait until they have several problems to report, or until one problem becomes too painful to bear, before they finally seek help. Another noted:

sometimes people have just reached a point where ‘oh, I had better do something about this, now I have two or three things going on, I will call and find out what I should do, Here’s what I have got ... a restitution order, plus I have got this traffic matter coming up, plus I have been sued’. There might be three totally unrelated problems but they could be related in that they maybe suddenly got ill, or lost their job. (Statewide legal service provider)

Practitioners consulted in our meetings further suggested that it is not only an issue of when people seek help, but when people are *ready to act* on the issue. A financial counsellor observed:

we have a lot of issues with retaining clients. So if a client ... makes an appointment, they either fail to turn up or ring and reschedule and we don’t hear from them, probably, for three or four months. And then they ring you when they’re desperate, which is sad because you think if they’d actually attended at the initial appointment, they wouldn’t be in the crisis that they’re in at the moment.

⁹⁷ The analysis focused on only three of the full list of reasons provided for not taking action: ‘didn’t know what to do’, ‘it would be too stressful’ and because ‘it would cost too much’. The data indicates that of those who gave any of the above three reasons for taking no action, only 7.6 per cent gave ‘didn’t know what to do’ as their only reason for inaction. Further analysis will be undertaken of the impact of disadvantage on the number of reasons offered for inaction.

A financial counsellor in another region noted the impetus of crisis in actually encouraging follow through:

we do get them at crisis point. It does mean we can talk to them at a very strong point in terms of getting action because there is a crisis. So the beauty of a crisis is the client is likely to do something.

A public legal service lawyer described this as ‘timely crisis management’.

As the insights above suggest, early assistance may be less effective for some people, because they are not ready to address problems.⁹⁸ There is a risk that if assistance is offered before the client is ready for assistance, it may not be taken as offered, used to full advantage or have the impact expected.

The implication of this is that service delivery focused on *early* intervention — service provision *before* the crisis hits — risks missing those clients who just don’t come in early (Forell & Cain 2012) or who are not ready for help. As socially disadvantaged people feature among this group, it is they who also may not be well served by interventions directed to these earlier stages. Added to this, by the time crisis hits, the legal matter is generally more complex, requiring assistance that goes beyond the forms commonly envisioned for early intervention.

Important also for disadvantaged people, legal problems do not exist in isolation, but often as closely interwoven with other legal (Pleasence 2006; Currie 2007; Coumarelos 2012) and non-legal issues (Forell, McCarron & Schetzer 2005; Karras et al. 2006). In this context, ‘early’ cannot necessarily be understood in terms of a single presenting legal issue. Rather, for these clients, the timing of assistance may need to account for a very complex set of considerations such as health issues (including mental health stability), other legal processes (e.g. criminal and family law), other priority issues such as personal and family safety, and the motivation of the individual to address the issue. Many of these issues transcend the presenting legal issue, and may stretch beyond the domain of legal services more broadly. Recognising limits on the role and expertise of legal services (discussed in detail later in this chapter), timing needs to account for factors beyond the presenting legal issue that may affect a person’s readiness and capability to act, and in turn, the potential impact of any assistance provided.

A financial counsellor consulted in our meetings explained how this complexity affected her service provision:

If I have a client that I know can’t deal with [the financial problem] at the moment or they need ... more mental health support, we will refer them on and we’ll follow up ... with their support worker and just say, look, are they attending appointments or are they ready to return to financial counsellor? ... I don’t close their file off until I know that they either don’t want my assistance any more or they’ve either left town or they’re still in having treatment or whatever.

Similarly, sexual assault workers described to us the number, range and interrelated nature of issues that their clients face, and the sequence in which these issues are most constructively addressed (see Box 5.1). This ‘case management’ approach illustrates the point that just as complex issues are contextual, so too should be the timing of any individual services provided.

These observations take us back to the question of on what dimension is ‘early’ meaningful in the provision of legal assistance services?

When is early?

Early intervention is commonly conceptualised as a stage in the legal process, usually prior to formal court processes commencing (COAG 2010). One example is legal advice provided after the issue of a default notice but prior to the receipt of a statement of claim in a mortgage hardship situation⁹⁹ (Forell & Cain 2011).

⁹⁸ Similar notions are described in relation to health behaviour management as a model of ‘stages of change’ or ‘readiness to change’ (e.g. Prochaska, DiClemente & Norcross 1992, DiClemente & Prochaska 1998).

⁹⁹ In an evaluation of a program which aimed, during the global financial crisis to provide early assistance to people at risk of losing their homes, six ‘stages of enforcement’ were identified (no default notice, default notice, statement of claim, notice to vacate, post-repossession, post-sale of home). ‘Early’ was defined as the period prior to the issue of a statement of claim. ‘Late’ was after this point.

Box 5.1: The sequence of assistance in human services case management

we have person-centred case management ... we have a 12 month time line.

... in three months you may well have only just caught your breath from a trauma. You're probably still in Family Law Court. You might still have an assault charge going through. You don't know if he's in or out of gaol. You're at risk from family of the perpetrator... So it's all about health and basic needs the first three months.

In the first three months our referrals and our focus are about getting children into school, getting children into day care, getting mum into counselling, dealing with the trauma related stuff. Just getting housing stable and children into a routine, sorting out benefits, getting JIRT certificates ...

... So at the nine month mark, our referrals and focus are about rehousing.

However, not all legal issues and processes are so linear, with clear early periods and late periods. In the family law context for instance, there are defined steps leading to separation and divorce, but within this, legal processes (such as those regarding child residence and access) may start, stop, falter and re-emerge at any point up to, during and following this initial process. As observed of the Legal Aid NSW Early Intervention Unit (EIU) duty lawyer service at the Family Law Courts in NSW:

Some clients were assisted as their family law problems were emerging, particularly those who went to the Family Law Courts as a first port of call ... Other clients were assisted as they sought to commence new legal processes. Equally, however, EIU duty lawyers provided assistance to clients whose family law problems had been ongoing, and may have been so for years. They assisted clients who were well advanced in the legal process, but needed assistance to progress or finalise their matters. In some cases, family law processes had been finalised, only for old issues to re-emerge or new ones arise. (Forell & Cain 2012, pp. 34–35)

Equally, some problems are sudden and cannot necessarily be anticipated, particularly by the parties involved (e.g. breach of family court order, retrenchment, arrest, crime victimisation)¹⁰⁰ leaving 'late' intervention (in terms of the legal process) as the earliest possible — and potentially the most efficient and effective — intervention available:

For a contravention application to be brought means that there's been proceedings, there's been orders, but I don't think you'd find it hard to argue that [when a] client comes in having been served — so they've responded in the contravention application — they've been served with it and they come and see us the next day. That's early. (Solicitor quoted in Forell & Cain 2012, pp. 34–35)

The point is that the value and impact of an intervention is not necessarily linked, or only linked, to its timing in the legal process. For instance, the evaluation of the Legal Aid NSW Family Law EIU Duty Lawyer Scheme, from where above examples were drawn, noted that valuable assistance was provided to clients at a variety of different points in the legal process. As one of the duty lawyers in this program commented:

I still see us as early intervention, even when we come in at a really late stage, because for that client it's the earliest intervention that they've had. (Forell & Cain 2012, p. 34)

Indeed, a more inclusive framework may better take this approach — and focus on the timeliness of assistance relative to the experience of the client rather than defining the effectiveness of service delivery (as is the case in the National Partnership Agreement for Legal Assistance Services

¹⁰⁰ That noted, while some problems are sudden and may not be anticipated by the individual(s) involved, the LAW Survey, together with other legal needs research does provide valuable insight into who may be vulnerable to legal problems, the types of problems they are vulnerable to and how the legal problems cluster together. As will be discussed later in this chapter, this information can inform the targeting of service provision such that 'early' identification of issues may be a reality.

(NPALAS)) in terms of what may be an arbitrary point in a legal process.¹⁰¹ While a focus on timeliness may well involve intervening ‘early’ in problems or processes where this is possible and appropriate, it may also take account of:

- how legal issues are experienced by the client (including when timing must take account of complex needs, beyond the presenting legal issue)
- how help is sought (the common experience of crisis driven help seeking, particularly among that core group of priority clients).

There is also a broader interpretation of ‘early’ intervention in the legal assistance sector, in reference to assistance provided early in the formation of a problem before it formally enters the legal domain. Advice about separation and divorce to people who are unhappy in their relationship or experiencing domestic violence is one example:

Early intervention, as I see it ... is a large part of our work, which is being that first point of contact and which is making those appropriate referrals and giving appropriate, very general, very understandable advice. (Solicitor quoted in Forell & Cain 2012, p. 34)

Here ‘early’ refers to a stage within a social process, with the ‘intervention’ timed at a point where the issue could escalate into the legal domain for resolution.¹⁰² Intervention at this point may steer people towards alternative sectors (counselling, financial counselling, housing) or to early resolution options (such as mediation, negotiation) or, where necessary, direct them further into the system (self-help with divorce, legal assistance). However, for very disadvantaged people, problems themselves may have long and complex histories, making it difficult to identify ‘early’ and to disentangle legal from other related issues. As will be discussed later in this chapter, assistance prior to the issue becoming a legal problem potentially also takes legal services into the realm of other sectors.

Looking beyond the legal assistance sector, ‘early intervention’ has yet a broader interpretation, where it refers to intervention early in a life course, to reduce the severity of impact of existing problems, and to protect other problems from occurring (Sharp & Filmer-Sankey 2010). In the child development field, for instance, it commonly takes the form of targeted and intensive assistance provided to vulnerable individuals (e.g. children with disability), as early as possible following diagnosis or identification (e.g. McLachlan, Gilfillan & Gordon 2013, p. 105; Oono, Honey & McConachie 2013).

Similarly, developmental crime prevention strategies aim to intervene early in the lives of ‘at risk’ children, to prevent later offending. These programs focus on key ‘transition’ points in children’s lives (e.g. early childhood, moves to pre-school, primary school and high school) risk factors (such as childhood neglect and exposure to violence) and protective factors (e.g. supportive parents, sense of belonging, positive school environment). (National Crime Prevention 1999; Homel et al. 2006; Manning, Homel & Smith 2006). Manning, Homel and Smith (2006, p. 4) suggest:

Rather than a fixed ‘trajectory’, an individual faces a series of life-phases or transition points. Transition points mark a time when things often go wrong, but they are also the times when interventions are most effective, particularly for children and families from disadvantaged backgrounds.

This observation by Manning, Homel and Smith (2006) echoes a range of observations which have been made across the legal needs research.

First, the statement parallels broad observations that people are more vulnerable to different legal issues at different times of life. Thus, while younger people are more vulnerable to problems related to criminal activity, accidents personal injury and rented housing, people in their late 20s and 30s were more vulnerable to credit and debt and issues related to owning or renting housing. Family related legal issues peak in the 35–44 years age group, while, as might be expected, issues with wills and estates tended to peak at the 45–64 years age group (Coumarelos et al. 2012, pp. 168–173).

¹⁰¹ Of note, a recent report on the ‘timeliness’ of legal processes, Australian Centre for Justice Innovation (ACJI) (2013, p. vii) made a relevant observation that ‘time standards ... tend to be oriented towards the business of schemes, courts, tribunals and others rather than from the orientation of the disputants’.

¹⁰² Or escalate from one legal domain to another. As one public legal assistance lawyer noted in our consultations: ‘civil law is the basis of criminal law because basically if you’ve got no money, you’ve got nowhere to live, you tend to do silly things to survive’.

It secondly reflects findings relating to how legal needs commonly co-occur or ‘cluster’ (Coumarelos 2006; Currie 2007; Pleasence et al. 2004b; Pleasence 2006) and how some problems may ‘trigger’ others (Currie 2007; Genn 1999; Pleasence 2006). In summarising previous research, Coumarelos et al. (2012) observe: ‘Although results across studies are not identical, relationship, injury and employment problems tend to emerge as likely trigger problems’ (p. 14). Manning, Homel and Smith’s (2006) comment finally reflects observations made in qualitative legal needs studies about legal issues surrounding key transition points in people’s lives such as family breakdown (Forell, McCarron & Schetzer 2005, pp. 65–74), sudden incarceration (Grunseit, Forell & McCarron 2008) and sudden illness or disability (Karras et al. 2006 re mental illness). Broadly echoing the theme in a working paper on deep and persistent disadvantage in Australia, McLachlan, Gilfillan and Gordon (2013, p. 21) stated:

Events such as relationship and family breakdowns or the death of a partner can also trigger disadvantage (conversely, the formation of a relationship can be a pathway out of disadvantage). This is particularly the case when a key source of income is lost. Relationship and family breakdowns are the leading trigger for the first instance of homelessness. Young people seeking assistance from specialist homelessness services commonly cite family breakdown and family violence as reasons for seeking help.

Recognition of legal need occurring around transition points is also reflected in examples of legal service practices which aim to reach and assist disadvantaged clients at critical times (see Box 5.2).

Thus, the idea of ‘transition’ points in a life course, or even the life of a problem, adds another dimension to the discussion on ‘timeliness’ of legal assistance. Such approaches allow for:

- responsive and timely assistance at the time and in a place it is useful and ready to be used
- account to be taken of other legal issues likely to cluster with or follow the crisis.

Notably, a court or tribunal hearing may itself indicate a time of ‘transition’: for people facing criminal proceedings, family law matters, tenancy or employment issues and the like. As such, courts and tribunals can be sites for ‘just in time’ assistance matched to the immediate needs of the client (Owen, Staudt & Pedwell 2002, pp. 127–129). Urban legal service providers consulted in our meetings described what they saw as the benefit of timely and responsive assistance, in the form of a tribunal-based duty lawyer scheme:

in terms of bang for your buck advice, to be able to see a lawyer before your hearing at NCAT [NSW Civil and Administrative Tribunal] and for the lawyer to be able to assist you in articulating exactly what your legal need is, giving you advice on what documents you need to support that and in some cases telling you well actually you don’t have a claim at all. We think that’s really targeted advice, and timely. (Urban legal service provider)

Box 5.2: Legal service strategies that respond to transition points in people’s lives

- A strategy of Legal Aid NSW and NSW Consumer Credit Legal Centre’s Mortgage Hardship Service, to target those at particular risk of mortgage hardship following retrenchment and to locate services in mortgage hardship ‘hotspots’. (Forell & Cain 2011)
- Bushfire and other disaster responses, providing a range of legal and other assistance services on-site to people following natural disasters. (Victoria Legal Aid 2010)
- The Cancer Council NSW’s Legal Referral Service, providing legal and financial planning referrals to people diagnosed with cancer. (Cancer Council NSW 2013; Boyes & Zucca 2012)
- Legal Aid NSW, Family Law Early Intervention Unit’s family law outreach to local courts on Apprehended Violence Order list days, and expanded duty service in the Family Law Courts (Forell & Cain 2012, p. 1). Community legal education provided to newly arrived migrants participating in Adult Migrant English Programs.

These services are framed around times and places where the assistance is needed.

Having considered the notion of ‘early’ we turn to the idea of ‘intervention’, and in particular, the question of what types of interventions may be necessary to prevent the escalation of issues, including for the core group of the most disadvantaged people who are a priority for public legal assistance.

What assistance is provided as early intervention?

Susskind (2010, p. 231) used the analogy of a fence at the top of the cliff being preferable to an ambulance at the bottom. For early intervention to be viable as a policy objective in legal service delivery, the services offered early need not only ‘catch’ legal issues as they are forming, but also be appropriate to the task of preventing the escalation of the problem.

Types of services offered as ‘early intervention’ services

As currently defined and implemented, early intervention services in the legal assistance sector tend to involve services, such as ‘legal advice, minor assistance and advocacy other than advocacy provided under a grant of legal assistance’. Prevention services refer to information and education strategies, with the aim of ‘increasing community resilience’ (COAG 2010, p. 3). Notably, as Buckley (2010, p. 77) observes, early intervention strategies are often offered in an unbundled form:¹⁰³

The main trend in service delivery is clearly toward providing limited assistance and representation services which place a substantial onus on the individual litigant (or, in a growing number of cases, accused) to navigate the justice system on their own.

With a focus on service delivery community-wide, this may be both necessary and sensible. It may be necessary because the ‘fence’ (as conceptualised by Susskind) needs to stretch far enough to prevent yet to be identified clients from falling off the cliff. It may be sensible, because for a proportion of the population ‘the fence’ is sufficient to prevent the fall.

However, as discussed in Chapter 6, more of a challenge is identifying and providing assistance which is appropriate or intensive enough to resolve issues, particularly for the core client groups who have more, and more complex issues, but lower personal and legal capability:

One of the most serious concerns is that self-help services, even if facilitated, are inappropriate for individuals who face one or more barriers to access to justice. These clients may include: low-income individuals, clients who have experienced systemic discrimination; victims of trauma; clients with literacy or language issues; clients with physical, developmental or mental health disabilities; and individuals suffering from isolation. (University of Toronto 2011, p. 32)¹⁰⁴

Services also need to be accessible and culturally appropriate to disadvantaged clients. For instance, Ralph (2011) noted the reported underutilisation by Indigenous people of early dispute resolution services in family law (such as Family Relationship Centres). He suggests as one explanation that ‘such services are not accessible or culturally appropriate in responding to the needs of Aboriginal people’, many lacking Indigenous staff, and in particular, Indigenous dispute resolution practitioners (p. 51; see also National Alternative Dispute Resolution Advisory Council (NADRAC) 2006).¹⁰⁵

¹⁰³ Where assistance is provided for particular tasks but clients generally retain carriage of their matters.

¹⁰⁴ Also, see Chapter 6 for literature on the appropriateness of unbundled legal services for clients with lower personal and legal capability.

¹⁰⁵ The challenges to, but central importance of, building trusting relationships between legal services and culturally diverse communities — particularly for communities where trust of government, services or authority may be low — was a consistent theme in our consultations. An Aboriginal service provider further noted that, for Indigenous communities ‘it’s all very well to talk about being culturally appropriate but you’ve got to be culturally appropriate for that actual location and that’s why the local field officer [is] best often recruited from the community in which you’re going to serve ...’

In an examination of an expanded duty lawyer service in the Family Law Courts in NSW, Forell and Cain (2012, p. 35) note:

These are clients who may require more intensive support than information or advice only – at whatever point they are up to. If early intervention services focus on providing less intensive services early, is there a risk that these services will not be enough to prevent the escalation of issues for disadvantaged clients and later services will also be required by this target group.

Importantly, if the assistance provided cannot, for whatever reason, resolve the issue, it becomes not a replacement for later assistance, but an adjunct to it. Thus, returning to the example above, Indigenous people not accessing family dispute resolution services may still require access to assistance through the family law court to resolve complex family law disputes.



The question of just what types of help are necessary to prevent the escalation of legal issues is complex. To return to Susskind's analogy, how high and wide does the fence need to be, and how much of a fence is within budget? Does the low fence we can actually afford (to make it stretch further) risk making little difference to those who would not fall in any case, but not be high enough to stop those heading blindly for the cliff?

At an individual level, the assistance required to prevent the proverbial fall will be both issue specific (type and urgency) *and* client specific (relating to personal and legal capability). So, while unbundled legal services offered through websites, telephone hotlines and self-help kits may suit some clients with certain problems, these individual service types may not match the needs and/or capabilities of others, typically the most disadvantaged minority with high legal need (Chapter 2) and lower capability (Chapter 6). These types of assistance may not provide enough of a fence to prevent the need for the ambulance.

Also relevant to this discussion is the way that different strategies most effectively 'dovetail' together to best meet client needs. For instance, in our consultations, workers noted that, for some people, information about where to get help will have little impact without reassurance that taking action can actually make a difference. Similarly, non-legal caseworkers cited the value for their clients of legal advice being made available to their clients directly after broader community legal education (CLE) sessions. Legal services further noted the value of CLE to caseworkers on problem identification and referral pathways, when provided in support of a regular outreach service.¹⁰⁶

Outreach services with direct links to casework where this additional assistance is required, will again help match assistance to the needs and capabilities of the client.

Important also, the type of assistance required and the options for resolution may not just be legal solutions. However, (as will be discussed later in the chapter) it may take personalised legal assistance to 'rule the law out' as the solution. For instance, in a duty lawyers program in the Family Law Courts, solicitors reported that:

Sometimes clients think that coming to court is the best way. But really, what they need perhaps is some therapeutic counselling, or they need mediation or some other support services to help them cope with the dynamics of whatever is happening to them. (EIU duty lawyer 3 in Forell & Cain 2012, p. 22)

¹⁰⁶ In a recent review of Legal Aid NSW outreach legal services, an outreach solicitor noted that 'CLE is just absolutely vital as a way of promoting the clinics ... [to] ... build the profile, develop a little bit of enthusiasm, little bit of buzz in the community' (Forell, McDonald et al. 2013, p. 55).

As this example suggests, for some clients and some issues, access to professional and personalised legal advice and assistance (early or late) may in fact be the most efficient and effective way to resolve an issue and prevent its (further) escalation.

The role of triage in early intervention

The types of skills required to identify varying client capability, to prioritise legal need and to triage accordingly (see Chapter 6) would indicate the value of skilled legal assistance as an early intervention option. However, triage also requires services having the scope and capacity to undertake or access a broad range of assistance tasks. This enables the assistance provided to be primarily driven by the needs of the clients rather than the remit of the service. This was observed of the expanded family law duty lawyer scheme already discussed.¹⁰⁷ In the words of one of the duty solicitors:

being able to broaden what we do has really allowed us to take a more holistic approach to the work that's done in the duty scheme. (Forell & Cain 2012, p. 31)

Of note, the role of triage and referral was highlighted at the earliest points in the proposed Canadian ERSS model (Figure 5.1). The Canadian Bar Association (2013b, p. 15) specifically stressed the value of early access to lawyers where this is necessary:

Given the current ideal of a spectrum or continuum of delivery options, the challenge is to match clients' needs at the earliest possible stage with the most appropriate service option, and in that way tailor the services to the individual client. As lawyers remain essential for a just result in some cases, the spectrum of available delivery offerings must include legal representation when necessary and to the extent necessary ... The danger to be avoided is that less costly innovations be put in place at the expense of providing access to lawyers, regardless of the circumstances.

This leads to the critical issue of how services identify who is in need of more intensive assistance and who has the capability in that particular situation to progress the matter alone. These are decisions made both at the systemic level — through the targeting of service to particular client groups or around particular issues, and at the individual level, through triage.

The National Partnership Agreement on Legal Assistance Services highlights 'more appropriate targeting of legal assistance services to people who experience, or are at risk of experiencing, social exclusion' (COAG 2010, p. 4). Chapter 3 describes outreach legal services as one way of targeting services to groups identified as having high legal need and lower capability. In a recent review of outreach legal services for Legal Aid NSW, Forell, McDonald et al. (2013) stress the importance of outreach services clearly articulating who their client groups are so as to provide legal assistance services which are appropriate to identified client needs and capabilities.

Other examples of targeted services are those described earlier, as relevant to transition points in people's lives (see insert, above). Footscray CLC's multiservice 'bring your bills day', targeted to refugee and newly arrived communities is another example (Curran 2013, p. 40). Notably, targeted services may facilitate the earlier provision of services, as services can be taken closer — in a directed way — to where legal issues are experienced (see Chapter 3).

The Canadian National Action Committee on Access to Justice in Civil and Family Matters (2013, p. 14) describes 'triage' as:

the practice of responding to and 'sorting' the problems of individuals based on their degree or type of need, in order to determine the appropriate type of service/approach within a context of limited resources.

¹⁰⁷ The evaluation of the Legal Aid NSW EIU family law duty lawyer scheme identified features of the service important to its effectiveness. Relevant to triage were accessibility at a time and place of high need, the broad scope of the service (allowing assistance to be matched to each client), the high level of staff skill and experience, strong relationships with the court and quick and warm referral to casework as required (Forell & Cain 2012, pp. 30–33).

Chapter 6 argues that assessing the capability of the individual to pursue and resolve a legal issue is another key aspect of triage. As discussed there, triaging can occur before clients reach legal assistance services (e.g. by welfare services who may prioritise the legal problem relative to other issues facing the client and refer the client to legal help) or by legal services when a client reaches them.

Targeting and triage not only facilitate service provision which is appropriate to the needs of the client (or client group), but through a more nuanced assessment of need, may increase the sustainability of the legal assistance sector. Targeting and triage take account of the reality that resourcing full public legal service provision for all citizens is both unnecessary and unsustainable.

The place of legal services in prevention and early intervention

The purpose of the legal system is to provide ‘solutions to certain problems and disputes within social and economic life’ (Canadian Bar Association 1992, p. 53). It is a separate and reactive instrument, with the formal court process a tool of last resort. And yet legal problems have their roots in the arrangements and agreements of everyday life: in family, employment, housing, consumer or contractual relationships to name a few. For disadvantaged people in particular, a range of further underlying issues such as mental health, disability, low or a sudden loss of income, family violence and/or a coalescence of legal and other needs may be relevant to these disputes. As has been observed elsewhere:

The so-called ‘legal’ problem of the poor is often an unidentified strand in a complex of social, economic, psychological, and psychiatric problems. (New York City Bar Association, Committee on Professional Responsibility 2013, p. 4)

A central challenge to prevention and early intervention as a public legal service delivery framework is that some of the activities required to prevent the escalation of legal issues for socially disadvantaged people fall well outside the legal domain, and it is work ‘beyond the law’ which may best prevent legal problems from occurring or prevent problems from escalating. So, for instance, the most effective way to assist a homeless person to focus on and address their legal problem may not be signposting to legal assistance, but providing a place to live:

I am sick of turning up to places run down and filthy dirty, sick from not eating, I just don’t have the energy to do it. I want to help myself but I don’t have the energy to help myself. I need somewhere I can settle in for a week and put my affairs in order. (Homeless respondent in Forell, McCarron & Schetzer 2005, p. 115)

Further, it is generally understood that legal services should work within their mandate and their expertise. Thus, while legal services may work as part of a holistic response to client needs (Forell et al. 2013), it is beyond their remit and capacity to themselves resolve clients’ issues beyond the legal. This assumption underpinned Chapter 4 in the discussion of joined-up services and is central to the practice of referral.

However, the boundaries between complex and intertwined legal and non-legal issues — and legal and non-legal solutions — are not always clear cut. In some service environments, such as remote areas or in working with people with very complex needs, they may be even less so. Examples were provided in our consultations where legal services went the ‘extra mile’ — arguably beyond their remit — because there were no other options available to their clients who were vulnerable and in distress:

I was really concerned that this man had a one year old child. I was trying to keep this child out of child protection [due to lack of accommodation]. In the end, the legal centre fronted the money for him to be accommodated over [the weekend] — we can’t do that as a regular thing, but we had no choice ... He’s from an outlying community where there are next to no services. We had to keep him here because the magistrate was on circuit and wasn’t back until Monday. (Public legal assistance lawyer)

Our consultations further indicated that, on the front line of public legal service delivery, the lawyer may in fact have a role in defining the line between legal and non-legal issues and solutions. A remote area lawyer observed:

I'm trained as a lawyer. I'm not trained to do social work, I'm not trained to do psych, I'm not trained to do counselling. I do that, that's my job ... Because sometimes a problem that a person comes with isn't a legal problem, or there's not a legal solution to their problem. They still need a solution and that's the thing about being a good lawyer ... my job is to give them a solution to their problem even if it is just to say to them 'Look in these circumstances the law will do this. If you go down this track, these are the pitfalls. Have you thought of doing this? Have you tried this? Have you done this? What about this?'

Another remote area legal service provider more clearly drew this line:

With children ... we're only involved in [non-legal issues] to the extent that we try and get them going to school to try and get their criminal matters sorted out. And with mental health, we're involved only to the extent that we can get them into treatment to try and sort their criminal matters out. Again, drug and alcohol issues, we try and get them into a program or rehabilitation but, again, our involvement ends with the criminal matter.

Recognising the challenging context in which frontline legal services with disadvantaged people operate, a series of questions arises:

- Where in efforts to prevent issues becoming or escalating as legal problems are the appropriate boundaries of legal service work, recognising the remit, specialist skills and limited resources of the legal sector, relative to other sectors?
- Recognising that the very disadvantaged clients of public legal services are often, and more immediately, the clients of other services, how do legal services best interface with other service sectors to address the escalation of issues?
- What are the opportunities for joined-up services, which enable legal services to be part of a holistic, multidisciplinary response to clients?
- What part do legal assistance services play, as 'problem noticers', in facilitating a 'no wrong door' approach to government services more broadly?

The particular challenge for legal assistance services seeking to address legal issues before they become 'legal', is defining the boundaries of their remit and expertise.

Legal and non-legal assistance in the early life of a legal problem

The movement of legal service delivery closer to the sites of legal problems shines light on the range of legal and non-legal tasks involved in the early resolution of issues. It has been noted that at this point, much of the work may not be strictly 'legal work', even if the problem at hand is a legal issue. In a study on Indigenous Legal Need, Allison et al. (2012, p. 141) quoted an Indigenous legal service provider who observed:

A lot of the work that we do is not strictly legal work. It's administrative work — the superannuation, the 'victims' comp', the motor accidents claims. If someone had a degree of literacy they could do that themselves.

Similar observations were made in our consultations across NSW:

a lot of our work is basic legal work, it's actually a lot of stuff that paralegals could do I reckon. And yet we don't really have that kind of support. (Legal service provider, urban area)

This raises a further question about the range of 'non-legal' tasks in prevention and early intervention legal assistance — particularly in helping to address the needs of the most socially disadvantaged who are less likely to have the personal and legal capabilities associated with the early resolution of legal issues. Related to this is the question of who is best placed to provide the various

forms of ‘non-legal’ assistance (see also New York City Bar Association, Committee on Professional Responsibility 2013). Speaking of completing administrative forms and accessing documentation, particularly for clients with low capability, some urban legal service providers reflected:¹⁰⁸

Work like that is incredibly intensive, it's not actually work that we do, it's not our core work and yet it's extremely important for that particular client base. We just have to push back and try and refer them to community workers, sometimes an interagency or speak to a particular community worker and say ... do you know who [the client] can speak to ... Unless somebody assists our client with those literacy skills, it's not going to happen.

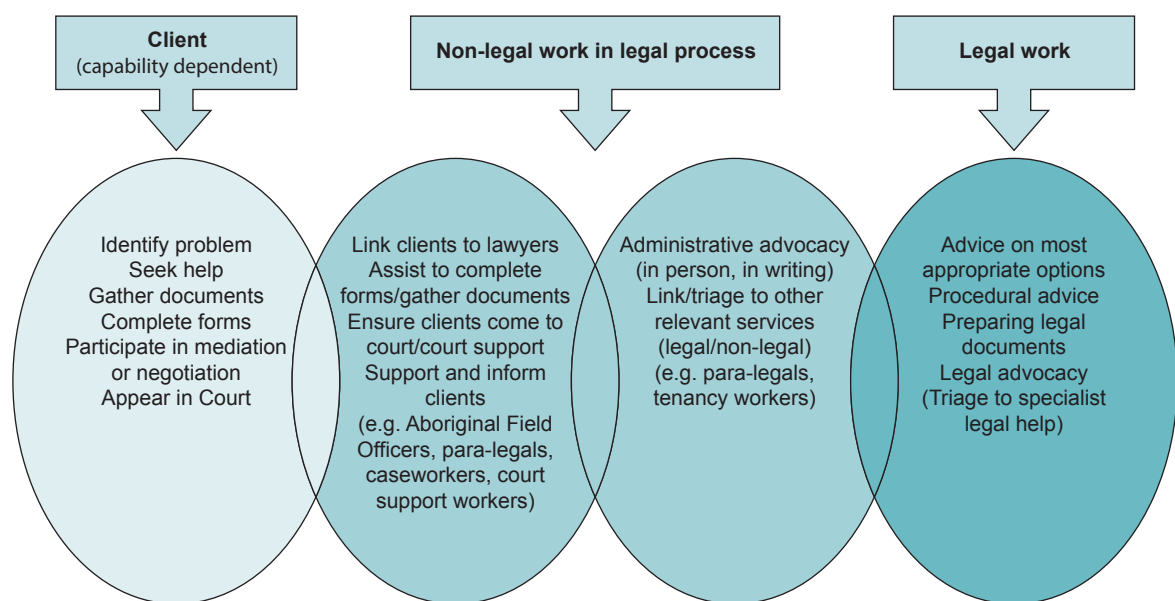
There is a range of ‘non-legal’ tasks that can be essential to the resolution of legal problems. To begin with, there is the vital role, described in Chapter 3, often played by non-legal players in linking people with legal problems to legal assistance services (Coumarelos et al. 2012; Scott & Sage 2001; Clarke & Forell 2007). Second, non-legal assistance may be required to progress or resolve a legal issue because there are basic functional tasks for which people with low personal and legal capability may require additional assistance (see Chapter 6). Third, in the pre-court space occupied by administrative processes and alternative dispute resolution options, there is a wide range of specific paralegal and specialist advocacy tasks that can be, and are, undertaken by specialist non-lawyers.

Finally, there is strictly legal work only undertaken by qualified lawyers. However as Figure 5.2 indicates, there is overlap between these tasks.

The balance and structure of legal and non-legal tasks in prevention and early legal intervention is far from straightforward, and will vary from case to case. While Figure 5.2 shows a range of intersecting tasks starting from the client and ending with the work of the lawyer, these tasks should not be conceptualised as linear – rather they are issue and client specific.

Moreover, the type of assistance required does not correlate directly with the stage to which a matter has progressed through the system. In some cases intensive or specialist legal assistance may be required early on to prevent escalation (e.g. representation provided through the expanded duty lawyer services in the Family Court), while in others, non-legal or paralegal assistance (e.g. completing forms, submitting correctly assembled documents) may be most appropriate, even though the issue has advanced. As the earlier example illustrated, there may be cases where a lawyer is required to identify the difference.

Figure 5.2: Legal and non-legal tasks in the legal process



¹⁰⁸ When we visited a key local community organisation in the same area, there were signs in the foyer indicating that assistance could not be provided in completing these same administrative forms, including applications for legal aid.

The legal sector also has an important role to play in supporting the role of non-legal workers who assist clients in the legal process. Strategies currently employed include: community legal education to ‘problem noticers’ about legal issues their clients may be facing and options for legal assistance (e.g. Legal Aid NSW 2013b); and community worker ‘hotlines’, where workers can seek advice relating to their clients’ needs (e.g. the Consumer Credit Legal Centre, dedicated financial counsellor hotline).

Systemic prevention: the key role of law reform and strategic litigation

Given the complex genesis of legal issues for the most disadvantaged people, the capacity of legal assistance services to directly prevent problems from occurring at the individual level may be limited. Involved in this complexity are:

a set of ‘wicked social problems’ — experienced by many individuals and groups identified as being disadvantaged and socially excluded — [which] are difficult to deal with because they have unclear underlying structures or causes, or raise matters involving competing priorities (Bridgman & Davis 2004, pp. 43–44). (Nheu & McDonald 2010, p. 14)

However, an important way that the legal assistance sector may prevent (escalating) legal need for disadvantaged people is through systemic work: strategic litigation (Curran 2013) and facilitating law and policy reforms to prevent or alleviate legal problems that particularly impact on disadvantaged people (Nheu & McDonald 2010). With few areas of social, public or economic life not now affected by some form of legislation (Gleeson 2008, p. 3), and the lives of the most disadvantaged particularly regulated (Nheu & McDonald 2010; Forell, McCarron & Schetzer 2005):

Systemic advocacy to reform laws, regulations and institutions is often the only effective way to eliminate recurring problems because they address the root causes that give rise to repeated and often routine legal issues. (Canadian Bar Association 2013a, p. 8)

Through their day-to-day work with disadvantaged clients, witnessing the legal issues which most impact on their lives, legal assistance services are in a strong position to take the lived experience of their clients to the law reform process and to advocate for law reform which can make a meaningful difference not just to one client but to many. One example of a law reform advocacy which has seen changes to address hardship disproportionately experienced by disadvantaged people, is in the area of fines enforcement and the interaction between fine debt and driver licences (see Box 5.3).¹⁰⁹

Similar benefits may be accrued through strategic litigation and related education. Curran (2013, p. 12) cites example of the Kleenmaid action related to linked credit, as work which ‘can create a precedent to compensate other consumers, prevent poor practices and inform other debtors’. Curran (2013) also describes how cases run by Footscray CLC exposed systematic problems relating to ‘taxi clubs’ failing to indemnify their own members and drivers (pp. 37–39).

These examples point to the value of funding and supporting strategic advocacy and law reform work by front line legal services that work with disadvantaged clients. It is these services that see the sometimes unintended impact of the law on their clients and who, informed by this, can identify and advocate for change to improve the position, not just of individual clients, but disadvantaged people more broadly.

¹⁰⁹ Research based on a sample of 300 Indigenous people from urban, regional and remote locations in NSW reported that 52 per cent indicated that their licence had been suspended and/or cancelled at some point in the past, and 60 per cent of those due to unpaid fines or outstanding SDRO (State Debt Recovery Office) debt (Elliot & Shanahan Research 2008). In October 2013 Victoria Legal Aid published a submission to a Sentencing Advisory Council inquiry (Victoria Legal Aid 2013a), which ‘has drawn upon our substantial experience in helping people who struggle within a complex and often unfair fines system’ (Victoria Legal Aid 2013b).

Box 5.3: Law reform advocacy and changes to fine enforcement

In 2006, the Public Interest Advocacy Centre drew upon examples facing its clients of the Homeless Persons Legal Clinic to demonstrate that:

the fines system in NSW impacts disproportionately on people living in poverty, children and young people, and people who are otherwise socially or economically disadvantaged. (Galtos & Gollidge 2006, p. 1)

These and similar findings made by the NSW Sentencing Council (2006) and the NSW Legislative Council Standing Committee on Law and Justice (2006) built upon a growing concern about, and contributed to a body of evidence to support, changes to the *Fines Act 1996* (NSW). The resulting *Fines Further Amendment Act 2008* (NSW) sought to ‘address these concerns and mitigate the impact of the fines and penalty notice system on vulnerable groups’ (NSW Department of Attorney General and Justice 2011, p. 15).

One of the strategies proposed to mitigate the impact of fines was the Work and Development Order scheme, which enables vulnerable clients to clear fine debt through unpaid work, courses or treatment under the supervision of an approved organisation or registered health practitioner (NSW Department of Attorney General and Justice 2011, p. 6). The scheme was made permanent following its two-year pilot (NSW Department of Attorney General and Justice 2011).

More recent legislative change has seen a reduction, for young people in remote NSW, in the number of learner driver hours required to receive a provisional (P1) licence (from 120 to 50 hours). As was discussed at a regional CLSD meeting attended as part of our consultations across NSW, this change is in response to the particular challenges faced by young people in remote areas in building up learner driver hours, and the disproportionate impact on them of not having a driver licence.

Early intervention as a cost-effective justice option

A central driver to the ongoing interest in early intervention service has been the prospect of this as a framework for cost-effective justice. However, as the broad discussion above has highlighted, there are several challenges to the assumptions underpinning early intervention (in terms of less intensive assistance early in a legal process) which challenge the prospect of ‘cheaper’ justice.

The first issue relates to who is best served by these early intervention strategies, and a concern that while early intervention services may broaden the availability of legal assistance, they may not capture the commensurate proportion of legal need.

This is because a higher proportion of legal problems are experienced by a disadvantaged few, and it is these few who, if services are not targeted and appropriate, may not be so well served by early intervention strategies. As findings of the LAW Survey indicated, 9 per cent of the population account for 65 per cent of the legal problems (Coumarelos et al. 2012).

Further, if early intervention strategies systematically miss these few, with a disproportionate number of the legal problems and lower capabilities, it is this group who may seek assistance when the crisis inevitably hits. The result is that support at this later point remains critical.

The remainder of the population are less disadvantaged people with potentially fewer, and less complex legal problems and potentially more capability to deal with these problems. As we are also looking at potential problems at this point (problems to be prevented), a proportion of population-wide strategies will also fall on infertile ground — that is, cater for a percentage of people with no or few current legal problems, people who are not ready to address their problems and people who may resolve their issues with no assistance.

A consequence of prevention and early intervention strategies potentially missing more disadvantaged clients (and thereby a relatively high proportion of legal problems) is that early

intervention strategies must be considered in addition to more intensive assistance, rather than as an alternative way of spending this pool of resources. Care needs to be taken that, within the reality of limited resources, an increased focus on serving the broader population may be at the cost of more intensive service provision for the highly disadvantaged few:

While most of the innovative strategies have proven beneficial, they have had a tendency to shift the energy and focus away from the need for actual legal representation as part of the legal aid spectrum. (Buckley 2010, pp. 77–78)

Equally, if the assistance provided is not enough, or is actually beyond the scope and capacity of the legal assistance sector to prevent the escalation of matters, matters may continue to consume as much (and indeed additional) resources.

Finally, at a wider level, public sector resource use may increase if early intervention strategies are successful at promoting awareness of legal rights and remedies, which in turn leads to greater use of legal services. This may become a concern if the primary group for whom these strategies are effective are the less disadvantaged and more capable — as, through a process of net widening, it may further stretch already stressed resources (University of Toronto 2011, p. 32).

Implications for monitoring and evaluation

At the core of this chapter has been a critical question, which was well articulated by a legal service provider in our consultations:

with someone [who] might have a cultural disconnect and where their language capacity is limited and their awareness of the system is limited it ... obviously takes more time, more resources. Then the question becomes, what do you do? Do you plough more resources into helping fewer people more, or do you help more, less? I think that is the biggest challenge actually for the legal service: where do you strike that balance?

The National Partnership Agreement identifies the strategy of ‘early intervention’ as an objective in itself, with the agreement requiring a ‘30 per cent increase in number of early intervention services’. As currently defined, ‘early intervention services’ include advice and unbundled minor assistance services. Prevention services include information. However, without attention to their appropriateness to the client, these are not *necessarily* the types of services which will prevent or prevent the escalation of issues. Indeed, some of these service types better suit clients with higher capability and less complex problems. As a result, without tighter definition around what is meant by ‘early intervention’ (in short, a more targeted, client-focused approach to timeliness), there is a risk that early intervention services may be skewed away from the most disadvantaged. If ‘early intervention’ becomes a goal in itself, it risks losing sight of the importance of *who* services should be reaching and what assistance is needed to make a meaningful difference to these clients.

This is because a performance measure based on the total number of ‘early intervention services’ risks encouraging services to focus, consciously or not, on low hanging fruit: assistance to clients who proactively seek help or are responsive to offers of assistance, with the least resource intensive problems, which by their nature may be the problems least likely to escalate.

To retain a focus on the most disadvantaged, appropriate service delivery to this group needs to be commensurately valued. More sophisticated targets and measures of activity need to take account of the clients assisted (capability, other complex needs) as well as legal needs addressed (complexity/most likely to escalate without assistance). This, however, requires a clear articulation of who legal services aim to reach and assist or particularly prioritise.

Evaluation then entails identifying whether these target clients were reached and the types of services provided to them.¹¹⁰ Further work would be required to better identify ‘target’ clients in monitoring and evaluation, and in turn, to monitor how services are targeted.

¹¹⁰ Such an approach has been suggested in a planning, monitoring and evaluation framework being developed in work undertaken by the Law and Justice Foundation on outreach legal services. The framework argues for the clear identification of those whom outreach is intended to reach and measurement of activity relative to those target clients.

Critically, however, this is no easy task and has considerable implications for service level data collection. Any additional monitoring and evaluation must be balanced with the reality of an already stretched service environment and cannot be considered without appropriate skills and resourcing. As one service provider warned:

there's a big trap in it and I can sit here and reel off it'd be really great to have the complete degree of [client] complexity and the degree of legal breakthrough involved in the decision but then actually you realise that you're just making a rod for your own back of having to report all that stuff.

Equally, the collection of data for monitoring is only of value if there is scope for it to inform decision making and to refine practice. Thus, if an organisation or service has a tightly defined mandate, with little scope or resources for a varied approach, the collection of additional data may add stress to a service environment, but not value.

In sum, at first sight, early intervention is appealing as a policy objective for the legal assistance sector: providing less intensive assistance early, before problems escalate and become more difficult and costly to resolve. However, taking account of the distribution of legal need and associated disadvantage, together with the place of legal services in the broader service context, this chapter has suggested that a client centred approach to timeliness may be more beneficial to help 'break the cycle of disadvantage' and addressing associated legal need.

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6. Personal capability: appropriate services

Legal needs surveys and other access to justice research make clear that legal problem solving varies across the community. It is patterned by people's circumstances and capability, as well as the nature of the problems. For individuals facing legal problems, the essence of access to justice under the rule of law is the ability to solve those problems quickly and fairly (Roy 2013).

Notwithstanding formal equality under the rule of law, citizens do not resolve legal problems, or come to and make use of the justice system, as if on a level playing field. Some (generally those who are socially advantaged) are able to deal with legal problems more easily than others. And where they do, quicker and/or more effective dealing with legal problems may help to minimise adverse consequences and prevent escalation. Consequently, advantage and disadvantage are entrenched. Research makes clear that unresolved legal problems disproportionately affect the socially disadvantaged and 'tend to cluster, overwhelm and blight their lives' (Robins 2013, p. 4).

As described in Chapter 2, recent empirical research has established capability as an important influence on legal problem solving (Balmer et al. 2010; Coumarelos et al. 2012). Ignoring problems is common, particularly for some disadvantaged groups, and inaction due to a wide range of knowledge, skill, personal and systemic constraints has been identified through legal needs surveys and other empirical research (Balmer et al. 2010; Coumarelos et al. 2012; Currie 2007; Pleasence 2006). And when people do act to resolve problems, legal capability is again evident as a constraining factor (Balmer et al. 2010; Buck, Pleasence & Balmer 2008; Coumarelos et al. 2012; McDonald & People forthcoming; Pleasence 2006; Pleasence, Balmer & Reimers 2011; Pleasence & Balmer 2012).

Capability has therefore become an increasing focus in the development of legal (and other human) service policy and practice.

From standard to personalised services

Significant economic and demographic shifts, as well as widespread change in citizens' expectations and behaviours, are reshaping the demand on, and expectations of, public services. Greater empirical evidence affords more sophisticated understanding of people's needs, access to public services and outcomes. Analyses of systematic, aggregated data now provide an increasingly nuanced picture of differentiated needs across the community.

Public services are predicted to significantly reshape, with one fundamental shift being change from 'standardised' to 'personalised' services (Accenture 2012). Standardised services, or a broad-brush 'one-size-fits-all' approach to services, have been identified as inefficient¹¹¹ as well as creating access to justice barriers, particularly when they fail to take account of the heightened needs and lower capabilities of certain groups in the community (see Balmer et al. 2010; Buck et al. 2010; Coumarelos et al. 2012; Genn & Paterson 2001; Pleasence 2006; Nheu & McDonald 2010).

Personalising services involves 'tailoring public services around the needs of citizens' and holds out the promise of being able to 'drive better outcomes at sustainable costs' (Accenture 2012, p. 6). The findings from the LAW Survey led Coumarelos et al. (2012) to conclude that a new wave of access to justice reform is needed in Australia — a holistic approach to justice. One defining feature of a holistic approach to justice is that justice is 'made to measure' according to the varying legal needs and capabilities of people and groups across the whole community. Movement towards made to measure services puts a focus on capability.

¹¹¹ The shift to more personalised services is predicated on fiscal and service benefits to be derived from harnessing improved information communication technology.

Public legal services in Australia

Public legal service provision in Australia occurs largely through a mixed-model of unbundled services. Services are both fragmented and siloed (see Coumarelos et al. 2012). To make the most of increasingly scarce resources relative to demand, the optimal mix of unbundled services — that is, what type of needs and people should be served via what form and mode of service — needs to be determined.

As noted in Chapter 5, a number of recent reports caution that the policy challenge of further access to justice reform is determining precisely how to make the most of limited services by seeking to help more people in proportionate and appropriate ways, without depleting public resources away from aiding the most disadvantaged (see Canadian Bar Association 2013a).

On the one hand, service innovations such as websites, hotlines, public legal education and information, self-help tools and other forms of unbundled legal services have been made widely available. On the other, these types of services may be ill-suited and ill-matched to the legal needs and capabilities of some groups, typically the minority of people who comprise the most disadvantaged and marginalised members of the community who tend to suffer most from the burden of legal problems and have least capability to deal with them (see Coumarelos et al. 2012; Currie 2007; Pleasence 2006).

Unlocking a new wave of access to justice reform: legal problem solving and capability

Design of effective, responsive, client-centred, legal services that mirror and appropriately match legal need and capability, requires greater theoretical and empirical understanding of personal legal capability. Greater understanding and rigorous evaluation of ‘what works’ — that is, what form and mode of service provision is effective for what type of legal problem, and what groups of people, and in what circumstances — is critical to unlocking the next wave of access to justice reforms to better realise a holistic approach to justice.

Better meeting legal need across the community via better matching of legal capability provides one rationale for the more appropriate services that characterise a more holistic approach to justice. Appropriate services match client need and capability. They are targeted and tailored to meet the heightened needs of limited capability groups.

The concept of ‘legal capability’ is increasingly important in the access to justice domain. Left theoretically underspecified and underdeveloped, ‘legal capability’ can, however, appear circular and too simplistic to use in a practice setting.¹¹² On the one hand, legal capability is an easily understood concept — people typically have different knowledge, skills and attitudes that will invariably affect their legal problem-solving behaviour. Conversely, how to operationalise legal capability in a legal service setting is challenging.

This chapter explores the concepts of capability and, in particular, legal capability, and how legal capability shapes legal problem solving and affects appropriate service provision. The following sections begin by first reviewing the link between personal capability and disadvantage. The concept of legal capability, its multidimensionality, and what sort of knowledge and skills might underpin ‘foundational’ or rudimentary legal capability, are then outlined. Then, research evidence concerning what forms and modes of unbundled legal services might be more appropriate for what types of needs and capabilities is discussed. The final section explores ways that legal services might be better matched to client need and capability, notes important implications for evaluation, and suggests key areas in need of further research.

¹¹² For example, legal problem solving depends on a person’s level of legal capability, while legal capability is the sum of the qualities that are necessary for a person to resolve legal problems effectively.

Capability approach

Extensive scholarship in the ‘law and society’ and socio-legal traditions demonstrates how law and society are intertwined.¹¹³ Access to justice research also makes clear that legal and other social needs are often intertwined and clustered. For example, extensive quantitative and qualitative research on the legal needs of specific disadvantaged groups — including homeless people, people with disability or chronic illness, people from culturally and linguistically diverse backgrounds, prisoners, marginalised children and young people — has demonstrated complex and multiple legal and other social needs. Heightened legal needs also tend to be associated with heightened health, education, financial and other social welfare needs (see Buck et al. 2010; Coumarelos & Wei 2009; Coumarelos, Pleasence & Wei 2013; Coumarelos et al. 2012; Currie 2007; Pleasence 2006; Pleasence et al. 2004a; Pleasence et al. 2004b).

One characteristic common to the people and groups that typically fall within various categories of ‘social and economic disadvantage’ is that they tend to comprise people with lower capabilities across a broad range of social indicators (e.g. lower levels of education, poorer health and fewer financial resources).

In addition to classic socio-legal scholarship, which suggests that personal capability is critical for understanding patterns of legal problem-solving behaviour (see Box 6.1), understanding of what it means to be capable in a legal context can be informed by Sen’s (1999, 2002, 2010) highly influential capabilities approach to disadvantage.

Capability approach to disadvantage

The capability approach to disadvantage is a normative framework for the evaluation of individual freedom and well-being. Sen (1999, 2002, 2010) describes poverty and disadvantage as deprivation of key capabilities. His capability approach concerns what people are effectively able to ‘be or do’ (termed ‘functionings’) and what freedoms or opportunities they have to achieve particular functionings (termed ‘capabilities’) (Robyns 2003). The distinction between functionings and capabilities is the difference between what someone manifests, and what is substantively possible. Sen’s approach explains how and why disadvantaged people generally have lower capabilities, which limit their substantive freedom to participate in social, economic and political life.

The Australian Social Inclusion Board (ASIB) (2012, p. 12) defines capabilities as an individual’s ability ‘to use resources and opportunities to achieve the outcomes they wish’.

For example, what a person can be and do may be affected by a wide variety of factors, such as whether or not they are healthy, are literate, have a well-paying job, live free from violence, have personal efficacy, have trust and confidence in institutions, etc. Having a substantive opportunity to do certain activities — such as acting to effectively resolve legal problems — may in turn depend on having capability in one or more domains. Importantly, capability can also be undermined in multiple ways (e.g. through ignorance, illiteracy, poverty, oppression, starvation etc.).

The capability approach has been widely operationalised and applied for evaluation and the measurement of well-being and quality of life in fields such as the social sciences, economics, development studies, philosophy and legal theory (Alexander 2008; Nussbaum 2000, 2011; Sen 2010; Robyns 2003).

One strength of the capabilities approach is that it can be used to help identify factors which contribute to inequality across the community in terms of ability to make use of opportunities that are formally or substantively open to all (see Nheu & McDonald 2010).

The capabilities approach has recently been used to help explain legal problem-solving behaviour, and whether people are able to recognise and deal with law-related issues (Collard, Deeming, Wintersteiger, Jones & Seargent 2011; Coumarelos et al. 2012; Jones 2010; Parle 2009).

Conceptually, following Sen’s capability approach, determining the factors that affect ‘legal capability’ requires consideration of what capabilities are required for an individual to have an effective opportunity to make a decision about whether and how to make use of the justice

¹¹³ It is common to note how the points of interface between legal and other social institutions are socially constructed, and how behaviour is patterned along sociodemographic and other lines.

Box 6.1: Capability in classic socio-legal research

Capability has also been employed in socio-legal research to help explain legal problem-solving behaviour and outcomes. Galanter (1974) famously depicted ‘repeat players’ compared to ‘one shotters’ as having greater relative strength in legal disputes because of their greater interest in knowing and using law for matters of concern, knowledge of legal institutions and processes, and ability to act strategically to pursue longer term interests. Repeat players are also generally more able to hire lawyers to represent and act for them. Galanter (1976, p. 936) later developed a more nuanced and dynamic distinction between disputants based on party capability, also termed ‘competence’, which he characterised as being fundamental to access to justice:

the fundamental problems of access to legality can best be visualized as problems of the capability of parties. That is, that lack of capability poses the most fundamental, as well as the most neglected, barrier to access and that, correspondingly, upgrading of party capacity holds the greatest promise for promoting access to legality. Party capability includes a range of personal capacities which can be summed up in the term ‘competence’: ability to perceive grievance, information about availability of remedies, psychic readiness to utilize them, ability to manage claims competently, and seek and utilize appropriate help.

Felstiner, Abel and Sarat’s (1981) well-known model of disputing behaviour also identified certain attributes and abilities necessary for an individual to use the justice system to resolve problems. They must recognise the situation as problematic (naming), attribute fault or responsibility to someone else (blaming), be aware of a potential legal remedy and be prepared to seek such a remedy notwithstanding any perceived risks or negative consequences of doing so (claiming).

Genn and Paterson (2001) credited Galanter with highlighting the critical role of party capability in explaining legal problem-solving behaviour. They argued that individual need for help in acting to resolve a legal problem depends upon their capability and resources, as well as certain characteristics of the problem. Personal capability, in particular, has important consequences for whether or not a person can act to resolve a legal problem on their own. Genn and Paterson (2001, pp. 259–260) concluded:

people’s capacity to tackle such problems on their own varies considerably. Some individuals are predisposed to ‘lump’ problems, some to seeking help. Some have the knowledge and self-confidence to proceed on their own, perhaps with a minimum of information and knowledge. Others are so traumatised by their problems that they simply cannot help themselves ... we found some individuals who were so paralysed by the problems confronting them that they wished to be saved, not helped.

The individuals ‘paralysed’ by their problems were typically those who had low levels of capability in terms of education, income, confidence, verbal skill, literacy skill and emotional fortitude.

system to try to resolve a problem. Where they do not have such an opportunity, they do not have substantive access to the justice.

Personal capability in context

The ASIB (2012) spotlights not only the important role personal capability plays in disadvantage and social inclusion, but also how it interacts with other factors that affect participation in society. As is illustrated in Figure 6.1 (adapted from McLachlan, Gilfillan & Gordon 2013, p. 96), the risk of experiencing disadvantage is a product of capabilities, life circumstances, events and opportunities. People with greater personal capabilities are more resilient to, or are more able to make their way out of, disadvantage. This includes resilience to legal problems.

However, capability, in being related to environment and opportunity is not static. Capabilities change over time. Personal capability can therefore increase or diminish throughout the life course

as new activities are undertaken, new knowledge and skills acquired, and new life events and problems encountered.

Indeed, systematic gaps in capabilities stemming from socioeconomic disadvantage, and broadening over the life course, often start in early childhood (McLachlan, Gilfillan & Gordon 2013).

McLachlan, Gilfillan and Gordon (2013, p. 95) described personal capability as including:

access to financial resources (including those provided by families), educational qualifications, physical and mental health, social networks and intangible characteristics such as life goals, aspirations, self-motivation, confidence and behaviour. Capabilities are what equip people to take advantage of opportunities (and deal with challenges) presented during life.

Some life events (many of which have a legal dimension) have a substantial impact and can limit personal capability. For example, one interviewee from our consultations explained how relationship breakup can not only cause further legal problems but dramatically change personal circumstances, such as financial resources and emotional stability, and affect problem-solving ability:

there are things out of their control, like they've had a marriage breakup so they're going through a messy property settlement, things like that. They've had a breakdown over it so they can't get their head around how am I going to pay this, have suicidal tendencies, that sort of thing which is another thing that you deal with quite often ... [it's] quite hard to deal with sometimes when they're constantly crying.

Victims of domestic violence were also identified in our consultations with practitioners as clients who have 'got 100 things on their mind' that affect how they are able to deal with their legal problems.

Research has also repeatedly shown how legal problems contribute to illness (e.g. Coumarelos, Pleasence & Wei 2013), and illness can diminish personal capability. Away from empirical legal research, the Holmes and Rahe Stress Scale provides a measure of the risk of illness associated with 43 life events. It is notable that the life events with the highest impact include many that involve legal issues including, in descending order: death of a spouse, divorce, marital separation, imprisonment, personal injury or illness, marriage, dismissal from work.

Illness of another can also affect capability, as another interviewee illustrated:

I can take an example of my case work yesterday ... we had a client come to us five years ago, small business man, massive tax debt and we negotiated a deal with the tax office to repay ... He came back three years ago ... a bit of trouble, renegotiated [his debts] ... Came back yesterday, completely changed situation. He's now a carer, his wife has terminal cancer. He's not working anymore. His levels of ability to deal with that situation have now changed dramatically.

Public legal services thus provide services to socially and economically disadvantaged people. As the following interviewee from a public legal service explains, they often see disadvantaged clients with complex intertwined legal and non-legal problems and limited personal capability:

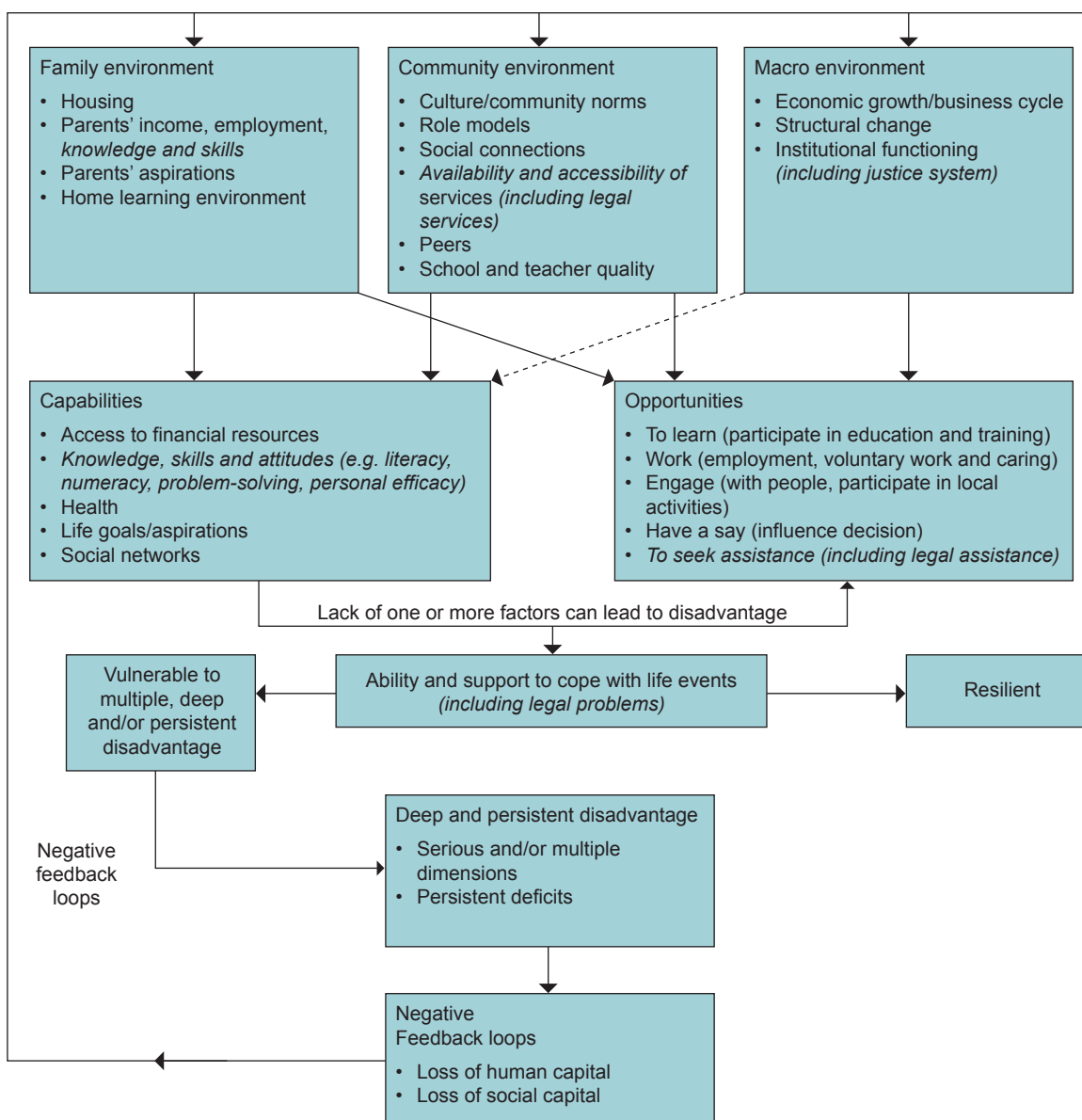
a lot of our clients are people of socially disadvantaged backgrounds, so a lot of the people are in poverty and those situations. We have a high percentage of Aboriginal clients that we see. We also have people with mental illness and intellectual disabilities ... we're often dealing with people who have got some crisis in their life, so a lot of it is about debt — court fine debt, but also commercial debt. We have people who might be at risk of losing their home, either because of mortgage stress and [they have] defaulted in their loans, or residential tenancy type situations where they're being evicted.

In our consultations a number of interviewees cited the example of people who had been in and out of prison as a group who tend to have limited personal capability, or as one interviewee characterised it, lack 'everyday living skills'. A range of other people were identified by a cross-section of our interviewees as tending to have low capability, including some Aboriginal people, people with disabilities, people with a mental illness, homeless people, young people, seniors,

people with drug or alcohol addictions, people unable to get work, humanitarian arrivals, victims of domestic violence and sexual assault, and people living in poverty. A cross-section of interviewees also pinpointed particular communities in the local area as being particularly disadvantaged, and it was common for interviewees to identify local Aboriginal communities as the most disadvantaged communities (e.g. educationally, financially, legally, medically etc.).

Figure 6.1 also depicts how personal capabilities affect vulnerability and resilience to deep and persistent disadvantage and how, in turn, experience of disadvantage can create a negative feedback loop, affecting family and community environment, personal capability and opportunities. Legal problems frequently have consequences that exacerbate disadvantage, diminish capability and increase vulnerability to further legal problems (Coumarelos et al. 2012; Currie 2007; McDonald & Wei 2013; Pleasence 2006).

Figure 6.1: Personal capability and other factors influencing experience of disadvantage



Adapted from McLachlan, Gilfillan & Gordon (2013, p. 96). Modifications indicated in italics.

Beyond the social

As available opportunities (e.g. to learn, earn, participate, seek assistance etc.) and services (e.g. education, legal, health etc.) vary by location, the local environment is a key factor affecting access to services.

Limited personal capability can be compounded by gaps in legal service provision, and result in a lack of awareness of available services. For example, as the following interviewee from a public legal service explained, low capability people are quite often oblivious to available services that might be able to assist them to resolve legal problems:

looking at communities that have very limited and quite often no local legal service provision occurring in that town, and also looking at people who normally would not access or don't access services – so we're looking at people with low literacy levels ... [who] don't believe they can access a service, are completely unaware that they have access ... people who haven't got access to computers – so we're looking at a group that probably doesn't know that there's something that they can do.

Aspects of capability

Access to resources

As indicated in Figure 6.1, resources are a key component of capability. For example, financial resources, access to communications technology, social capital (e.g. networks of family, friends and community groups) and human capital (e.g. having family, friends, employees available to perform tasks for you) all increase personal capability. Their absence is also associated with social disadvantage.

Chapter 2 showed how income level is related to acting to resolve legal problems and lawyer use. Growing evidence demonstrates that people with higher incomes are more likely to instruct lawyers to resolve legal problems. Gramatikov and Porter (2010) found that money is a fundamental resource that affects how people think about solving legal problems. Those with money tend to think that they can use it to solve legal problems, those without tend to be more pessimistic about their ability to use law to solve their problems.

Being time-poor can also undermine the personal capability of disadvantaged people. They typically face significant additional constraints to making use of social institutions given they usually have to expend a disproportionate amount of time and resources meeting their primary needs, such as food, safety and shelter (Forell, McCarron & Schetzer 2005; Nheu & McDonald 2010). So, someone who has to work long hours to make enough money to meet basic clothing, shelter and food needs is likely to have reduced capability in terms of being able to act to resolve, or successfully obtain information and assistance to help resolve, a legal problem.

Knowledge, skills and attitudes

Knowledge, skills and attitudes affect individual ability to act on opportunities and cope with life events. And again, disadvantaged people and groups tend to have lower literacy, numeracy, problem solving and personal efficacy, which manifests in lack of participation in various aspects of society: education, employment, legal and political institutions.

Lack of personal efficacy is associated with fear of shame, stigma and embarrassment, a sense of powerlessness, helplessness and frustrated resignation, and contributes to marginalisation from institutions such as the justice system (see Buck et al. 2010; Forell, McCarron & Schetzer 2005; Nheu & McDonald 2010; Sandefur 2007). It can also vary by circumstance and context, such as in times of personal or family crises – including many types of legal events commonly experienced – when coping and decision-making skills are at a premium.

Attitudes, beliefs and experience shape problem-solving behaviour and expectations. They are affected by cultural factors as well as the dominant social norms of communities and social groups. Cultural factors can marginalise people from mainstream human and social services and present access to justice barriers (Family Law Council 2012a, 2012b). In our consultations with practitioners Aboriginal and Torres Strait Islander people and people from culturally and linguistically diverse backgrounds were highlighted as groups facing access barriers. Cultural factors can inhibit help-seeking where available services are not appropriate to the local community, as illustrated by interviewees from public legal services:

many Arabic speaking clients, they often are very reluctant to talk about family breakdown. I mean, lots of Anglo people are reluctant to talk about family breakdown, but there are a lot of strong cultural issues that stop Arabic, especially Arabic women, speaking about family breakdown.

[Aboriginal] people need to know that they're going to get the culturally appropriate service that they need ... you've got to be culturally appropriate for that actual location.

Understanding of and attitudes towards the utility of law and the wider justice system are notoriously difficult to change.

Literacy, numeracy and problem solving

Literacy has long been identified as a vital personal capability, without which awareness of opportunities and pursuing one's rights and entitlements may be severely undermined (see Coumarelos et al. 2012; Maddox 2008; Nheu & McDonald 2010; Nussbaum 2000; Sen 2003). Literacy is a foundation for lifelong learning, essential to social and human development, and an instrument of empowerment that has the ability to improve health, income and transform lives (see UNESCO 2013). In the Australian context, lack of English literacy skill is a fundamental barrier to accessing and using law and legal assistance services to solve problems.

In recent decades there has been a move away from describing literacy and numeracy in terms of years (or levels) of schooling, to a functional approach focused on skills and competencies (see John Howard Society of Canada (JHSC) 1996). The functional approach to literacy stems from a world-wide survey of the teaching of reading and writing undertaken for UNESCO. A 'functionally literate' person was characterised as having acquired knowledge and skills in reading and writing which enable them to engage effectively in all the activities in which literacy is normally assumed in their culture or group (Gray 1956, p. 24).

Since the mid-1990s successive international comparative studies have operationalised the functional approach to literacy through national surveys designed to assess the literacy, numeracy and problem-solving skills of the adult population in participating countries, including Australia.¹¹⁴ The most recent wave of these surveys — the Programme for the International Assessment of Adult Competencies (PIAAC), co-ordinated by the Organisation for Economic Cooperation and Development (OECD) — was undertaken in Australia in 2011 and the first wave of results has recently been released.¹¹⁵ The competencies measured through the PIAAC include literacy, numeracy and problem-solving skills, with a particular focus on the cognitive and workplace skills needed to participate in society and prosper in the information age.¹¹⁶

Literacy is defined in PIAAC as:

the ability to identify, understand, interpret, create, communicate and compute, using printed and written materials associated with varying contexts. Literacy involves a continuum of learning in enabling individuals to achieve their goals, to develop their knowledge and potential, and to participate fully in their community and wider society.

The PIAAC definition embraces the notion that literacy involves a range of skills underpinning broader personal capability to function in society. Functional literacy encompasses a set of information-processing skills that together mean that a person is able to find, interpret and apply information in a goal-directed and instrumental manner to achieve a particular purpose (see Nheu & McDonald 2010).

¹¹⁴ The Survey of Aspects of Literacy (SAL) was conducted in Australia in 1996 as part of the world's first internationally comparable survey of adult literacy skills — the International Adult Literacy Survey (IALS) — coordinated by the Organisation for Economic Co-operation and Development (OECD) and Human Resources Development Canada (HRDC) (see ABS 2009, 2013). A follow-up international study, coordinated by Statistics Canada and the OECD, the Adult Literacy and Life Skills survey (ALLS), was also undertaken in Australia in 2006 (see ABS 2008).

¹¹⁵ The first wave of results has recently been released. See <www.oecd.org/site/piaac>.

¹¹⁶ The PIAAC will also support an online assessment tool — Education and Skills (EandS) Online — that will provide individual level results for measures of literacy, numeracy and problem solving in technology rich environments. EandS Online will provide descriptive and summary information for individuals that can be benchmarked against the results of the PIAAC survey, both for their country and internationally. See <www.oecd.org/site/piaac>.

The 2006 Adult Literacy and Life Skills (ALLS) Survey found that a significant proportion of the Australian population have relatively basic literacy skills. About half of all Australians aged 15–74 years can be expected to have considerable difficulties reading and following instructions found on many printed materials encountered in everyday life. A similar proportion is likely to lack the knowledge and skills required to effectively locate and use information in various formats. More than two-thirds (70%) of the population can be expected to have difficulty using information in a goal-directed way to solve a problem (ABS 2008).

The ALLS Survey also found that literacy skills were socio-demographically patterned. Again, disadvantaged people were disproportionately more likely to have poor literacy skills. Literacy skill, and use of the internet, was found to be higher amongst people with more years of formal education, the employed, and those with higher levels of income (ABS 2008).

The legal system demands an even higher level of literacy skills than does daily work and life, and high proportions of people will have trouble comprehending and applying legal terminology and concepts (JHSC 1996).

Qualitative research has identified poor literacy and comprehension as fundamental barriers to using and participating in the legal system (see Grunseit, Forell & McCarron 2008; Forell, McCarron & Schetzer 2005; Nheu & McDonald 2010; Scott & Sage 2001). For example, people with poor literacy may be unwilling to seek legal assistance or inform advisers that they can't read or write out of fear of shame or stigma:

unless people are given it [information] verbally, in lots of cases because they have such low literacy skills, (a) they can't read it, or (b) they like to cover up the fact that they can't read it so they won't contact anybody. (Nheu & McDonald 2010, p. 153)

clients have no problem telling me about their criminal history, they have no problems telling me about their drug and alcohol issues but the thing they find most shameful, and they will barely whisper it to me, is the fact that they can't read and write. They will do anything to cover up the fact and even ignore things that lead them into jail rather than ask for assistance, because of that shame factor. (Forell, McCarron & Schetzer 2005, p. 123)

Research has also identified clients with low literacy skills as a group from whom it can be difficult for legal advisers to obtain information and provide assistance (see Buck et al. 2010). For example, advisers often have to adapt how they provide assistance, such as having to spend time reading clients' correspondence, where available, so as to determine the nature of their problems.

A recurrent theme in our consultations with a cross-section of legal and non-legal service providers was how poor literacy limited the personal and legal capability of clients, and in turn, affected how services are able to provide assistance. In some regions, such as areas of urban Sydney, people from a non-English background constitute a high proportion of clients. Practitioners in such areas described how many of their clients have no or very poor English literacy and some who are not literate in any language:

the stuff around literacy issues is really bad, a lot of our clients may have only been to school for two or three years. Some of them have received no formal education.

The following interviewee described how limited literacy skill affects how legal services are able to provide assistance:

A reasonably high percentage [of our clients] would have not advanced English — put it that way. I think that's one of the challenges for us, is that in a different sort of area you could probably give some cursory assistance or more truncated assistance ... and say, 'Go and do that and you'll be okay'. But with someone ... where their language capacity is limited and their awareness of the system is limited — it's very difficult to do that. Obviously it takes more time, more resources ... If you give someone some cursory advice and give them a pat on the back are you really helping them? How much are you helping them? How much of a difference to their problem is that going to make?

Health

Health is also an element of personal capability. Ill-health and long-term disability can have cumulative, intergenerational and spiralling adverse effects and reduce capabilities (Headey 2006). Again, health tends to increase with each step up the socioeconomic ladder (see Australian Institute of Health and Welfare (AIHW) 2012). Health and well-being have bidirectional relationships with a number of interrelated factors associated with socioeconomic status, including education, workforce participation and income (AIHW 2012). Poor health due to illness and injury leads to socioeconomic disadvantage in some cases, and equally, disadvantage can lead to poor health (AIHW 2012; McLachlan, Gilfillan & Gordon 2013).

In their study of the early implementation of Community Legal Advice Centres in England, Buck et al. (2010) noted a prevalence of clients with ongoing health problems that limited their capability, including their ability to participate in advice sessions and act on advice. In particular, they noted how learning difficulties and complex physical and mental health needs (e.g. chronic brain disorders and injury, medication, substance misuse etc.) often interfered with clients' recall and memory. Some clients seemed to be caught in a cycle of despair and it seemed unlikely that they would be able to carry out any steps to resolve or ameliorate their problems themselves.

Health problems, particularly cognitive impairment or mental disorders (e.g. brain injury, foetal alcohol spectrum disorder, developmental disorders etc.), were frequently cited by interviewees as impeding client capability and making service provision more challenging.

Legal capability

Notwithstanding formal equality under the rule of law, citizens do not come to and make use of the justice system as if on a level playing field. The concept of 'legal capability' therefore appears to be increasingly important for understanding legal problem solving.

The relationship between personal and legal capability

The concept of legal capability can be conceived of either as a subset of broader 'personal capability' or as necessarily encompassing those elements of personal capability a person requires to be capable in the domain of the law and its institutions. For example, literacy skill is an important aspect of personal capability, and legal capability will typically be enhanced by greater literacy skill. In fact, illiteracy is a fundamental access to justice barrier that can limit understanding of and ability to assert legal rights (Maddox 2008; Nussbaum 2000; Sen 2003). Legal capability therefore also necessarily encompasses literacy skill.

Legal capability defined

Coumarelos et al. (2012) observed that conceptual approaches to legal capability typically span three areas – knowledge, skills and psychological readiness – and defined legal capability as the personal characteristics or competencies necessary for an individual to resolve legal problems effectively (Coumarelos et al. 2012). Parle (2009) and Balmer et al. (2010) also characterised legal capability in terms of knowledge, skills and confidence.

Similar definitions of legal capability have been proposed by others who have suggested that legal capability comprises the abilities a person needs to recognise and effectively deal with law-related issues, and what a person might be expected to know and be able to do when faced with legal problems.

In qualitative research to measure the legal capability of young people, Parle (2009) outlined six legal capability domains affecting ability to resolve basic legal problems: knowing rights and remedies, spotting a legal issue, knowing where to go for help, planning how to resolve the issue, communicating effectively and managing emotions.

Collard et al. (2011) developed a legal capability matrix comprising a mix of skills and personal attributes across 22 components of the following four domains: recognising and framing the legal dimensions of issues and situations, finding out more about the legal dimensions of issues and situations, dealing with law-related issues, engaging and influencing. The first three of these four domains can be summarised in terms of being able to 'perceive', 'seek' and 'apply or use' law.

The fourth domain might be termed ‘affect or change’ law and covers similar issues as Nheu and McDonald’s (2010) depiction of law reform capability.¹¹⁷

The dimensions of legal capability are not independent. Greater or lesser ability in any dimension is likely to interact with other dimensions and manifest in qualitatively different problem-solving behaviour.

Legal knowledge, skills and attitudes

Legal knowledge is an essential component of legal capability. Just how little or how much legal knowledge is required to be ‘capable’ will depend upon the wider context. For instance, knowledge required to effectively self-represent in litigation will be higher than the knowledge required to seek information or advice from legal services. The Canadian Bar Association Task Force on Legal Literacy developed a functional approach to legal literacy which led to the conception of a continuum of functional legal literacy across the community (see Box 6.2).

Box 6.2: Legal capability and the functional approach to legal literacy

The Canadian Bar Association Task Force on Legal Literacy (Canadian Bar Association 1992) defined legal literacy as the ability to understand words used in a legal context, to draw conclusions from them, and then to use those conclusions to take action. This is an applied or functional approach to literacy. Legal literacy has been conceived in terms of a continuum or spectrum of functional skills within the legal domain (see White 1983; Bilder 1999).

For example, senior appeal court judges might be placed at one end of a legal literacy continuum, with the ‘lay’ public at the other. Legal practitioners typically have expertise within certain areas of law. They also typically have the competencies necessary to find, interpret, analyse and acquire legal expertise in other areas of law. Bilder (1999, p. 51) suggests:

a certain degree of legal literacy is required for effective participation in modern society, but it is not necessary for the average citizen to reach the professional standard of ‘thinking (and writing) like a lawyer’.

Like personal capability more broadly, the functional approach to legal literacy is person-centred. It seeks to identify the knowledge and information tasks that a person may have to perform in order to successfully use the legal system to solve a problem or conflict. The Canadian Bar Association (1992) argued that the purpose of the legal system is to provide solutions to certain problems and disputes within social and economic life. Following the general Felstiner, Abel & Sarat (1981) model of disputing, the Canadian Bar Association (1992, p. 53) contended that people need to successfully guide themselves through an information search process, which depends upon being able to:

- recognize they have a legal right or responsibility, in order to exercise or assume it;
- recognize when a problem or conflict is a legal conflict and when a legal solution is available;
- know how to take the necessary action to avoid problems and where this is not possible, how to help themselves appropriately;
- know how and where to find information on the law, and be able to find information that is accessible to them;
- know when and how to obtain suitable legal assistance;
- have confidence that the legal system will provide a remedy; and
- understand the process clearly enough to perceive that justice has been done.

The types of information tasks outlined above presume or require certain a priori or foundational knowledge and understanding across multiple domains, as well as certain skills and attitudes.

¹¹⁷ Similarly, from focus group study Gramatikov & Porter (2010) described four dimensions in which legal empowerment is impaired: resource deficiency, lack of personal skills and/or abilities and knowledge, power imbalances in important relationships, and institutional failures.

Rudimentary legal knowledge is required to perceive, frame and characterise law and the justice system as a potential solution to a problem (see Ewick & Silbey 1998; Pleasence, Balmer & Reimers 2011). This necessitates basic awareness of the role of law, knowledge of rights or entitlements and when they might have been violated. For example, our consultations with public legal services in urban Sydney indicated that more established migrant communities have a higher awareness and understanding of legal assistance services and that they therefore ‘use us a lot more rigorously’ than do more recently arrived and less established communities.

To obtain legal help, people need to know about possible sources of legal assistance, and where and how to obtain that assistance (Balmer et al. 2010; Coumarelos et al. 2012; Jones 2010; Kirby 2011; Pleasence et al. 2004c; Pleasence, Balmer & Denvir 2013). Lack of legal knowledge and awareness can therefore manifest in lack of recognition of legal problems, their severity, the need for action and how to seek and obtain legal assistance.

As the following interviewee from a public legal service indicated, this is the rationale that underpins community legal education that is targeted to recently arrived migrants:

our goal at the end is to get them to identify what a civil law problem [is], what a family law problem is and what a criminal law problem is and what they would do if they had a problem like that. Where they would go and how they would come to see [us] ... [They] need to know more about just really basic stuff – that we work for the government, that we can help people who have legal problems, these are some of the legal problems, if you have these legal problems you can come and see us, and what you tell us is confidential and we can’t tell anybody.

As discussed in Chapter 2, legal needs surveys indicate that when people do not frame problems as ‘legal’ and seek advice from an inappropriate source they may not be referred to a more appropriate adviser, and even when they are, may not arrive at that destination.

In our consultations it was common for interviewees to describe the challenge of providing services to clients with little understanding of the law or legal services, and who are often unable to identify the nature of their problem or issue or navigate the justice system.

Interviewees also indicated that clients could be fearful and actively seek to avoid the ‘law’ and lawyers. One legal service provider highlighted the difficulty people often have trying to navigate the justice system:

we know that people need assistance to navigate that system. It’s not simple. It’s not easy and for people who struggle to use phones and other technology, it’s an additional barrier. Especially for people who’ve experienced trauma.

A LIAC librarian explained how a person first has to be able to frame an information need before they can be assisted:

Often [they don’t] have the capacity to ask the in-depth question that actually answers their information need – without having a bit of knowledge first. So sometimes, some research, some reading, will then develop their question.

LIAC librarians use the ‘reference interview’ technique that is a part of the professional training of librarians to assist clients to meet their information need (see Box 6.3). Such an approach might be useful in other contexts where people lack the ability to express their needs, such as reception desks.

Similarly, an interviewee from a public legal service described how a central part of the work they do is identifying the legal aspects of client problems:

sometimes the clients don’t always identify the issue. They might know that they’ve got a problem, but they can’t identify the legal issue to deal with it, so we have to do that for them.

Where a client is ignorant of their legal rights and entitlements, research suggests that legal needs are often crisis driven. Lack of understanding of rights and awareness of legal services is a barrier to obtaining information and assistance in a timely manner. Balmer et al. (2010)

Box 6.3: LIAC reference interview

In our consultations librarians who operate LIAC libraries identified the ‘reference interview’ as a systematic process to diagnose and meet differentiate client information needs. The reference interview aims to first clarify client information needs and then determine what resources may be appropriate to meet those needs (see Bopp & Smith 1995). Just like legal capability, various social and psychological barriers may prevent the client from adequately meeting their needs.

For example, one LIAC librarian described how they seek to meet clients’ information needs as:

Whatever the patron needs ... It’s our role to work out what their needs are and help to answer their question in the way that they need it answered. However that may be ... We have what we call a reference questionnaire on how we ask questions and that will develop what they need as well... ‘Who is the information for? How soon do you need it? What level of information are you looking for? Something really in depth or just an overview?’.

An important aspect of the reference interview is follow-up to check whether the client has obtained what they required, or whether other resources may be more appropriate. In the context of local public libraries, this is more achievable where service providers are able to engage clients they have referred to information resources before they leave the library.

The reference interview process is potentially one systematic approach that could be used to inform the design of systematic diagnosis and follow-up.

drew an important distinction between informed and constrained inaction. The former means correctly deciding that taking action is unnecessary, the latter that an individual wants to act but is constrained from doing so by factors such as a lack of legal knowledge. As outlined in Chapter 2, recent analyses of the LAW Survey dataset suggest that reasons for inaction are patterned by legal capability (McDonald & People forthcoming).

Legal problems sometimes dramatically escalate before people with limited capability take steps to obtain legal assistance. As noted in Chapter 5, clients are typically motivated to look for advice when they feel that a problem is reaching crisis point. As such, they may not appreciate the wider legal implications of their circumstance and may not act appropriately or ‘rationally’ (or how a person with greater legal capability might be expected to act).

Knowing ‘how to’ go about resolving the problem is an important aspect of legal capability. For example, knowing how best to go about resolving a particular type of problem, such as what and when particular steps should be taken, is indicative of higher legal capability (see Engler 2009; Sandefur 2010). Sandefur (2010) found that when lawyers make a difference to the outcomes of litigation (compared to people who are not represented by legal counsel), it does not stem from their greater substantive or doctrinal legal knowledge, but rather their greater ability to successfully navigate procedural complexity. For instance, lawyers will typically have greater expertise concerning the mechanics of different dispute resolution options, the pros and cons of different courses of action, and what terms of settlement might be a ‘fair’ or ‘good offer’ given the particular circumstances. In some circumstances it might also be more prudent not to take particular legal actions.

In their evaluation of the duty lawyer service operated by Legal Aid NSW’s Family Law Intervention Unit, Forell and Cain (2012) found that the service assisted self-represented litigants to progress their matters through the Family Court and also diverted inappropriate matters out of the judicial system (see Box 6.4).

Complexity in the relevant law and legal process, coupled with lack of practical experience, poses key legal capability challenges in terms of figuring out, first, the legal aspects of the legal problem, and secondly, how to use the legal system to pursue or resolve the problem (Giddings, Lawler & Robertson 2013; Sandefur 2010). Even where people are able to successfully search for and obtain plain language information about their rights and entitlements, they still have to interpret, apply

Box 6.4: Legal Aid NSW's Family Law Intervention Unit Duty Lawyer Scheme

Forell and Cain (2012) found that the duty lawyer service assisted self-represented litigants by providing advice on how to proceed, explaining processes and implications of different courses of action, drafting and amending documents, negotiating with the other party, and supporting clients to reach agreement by providing a 'reality check' concerning the terms and implications of agreements and orders. Forell and Cain (2012, p. 27) cite a judicial officer who articulated the benefits of the service for both the client and the integrity of the court and its processes:

sometimes litigants-in-person come to an agreement. So it's absolutely crucial that they've got a lawyer who can go through the agreement with them so it's not unfair. Because although I've got to be there, I can't draft it for them as such. Also it's important, very important for people, which we get a lot of here, from other cultures, for whom English is the second language, who may not actually understand what's going on and I may not work that out. [Also those] suffering from a mental illness [or if] there's a disability and that may not be apparent ... so the issue of fairness and that sort of stuff, I think, is where the duty lawyers are great, because they actually see the people about their case, which is different to what I do.

Forell and Cain (2012) found that duty lawyers advised clients against commencing an 'inappropriate action' in the Family Court in more than one-third of matters in the period studied. For these matters clients were likely to be advised to change orders or process, dispense with documents they were seeking to file or use, or that legal action was not recommended at the current point in time. The service also redirected clients to alternative pathways, and made onward referral to another legal or non-legal service that clients may not have been aware of.

and act on that information to pursue resolution. For sizable proportions of the population, a combination of barriers, such as not knowing what to do, and believing that acting would be too stressful and costly, appear to constrain legal capability (see McDonald & People forthcoming).

Knowing when, what and how to successfully obtain legal information or assistance is a basic component of legal capability. Critically, Balmer et al. (2010) found that a person's lack of knowledge of legal rights had no effect on outcomes achieved provided they were able to successfully obtain legal advice.

Psychological readiness and willingness to act, persistence, resilience and personal efficacy also all affect legal capability. To act, to seek and successfully obtain legal information or advice, to follow through on that advice, and to make a claim against the other side requires self-confidence, determination and emotional fortitude (Balmer et al. 2010; Coumarelos et al. 2012; Genn & Paterson 2001; Jones 2010; Pleasence 2006).

Preparedness to act is affected by both personal and systemic constraints, such as shame, a sense of insufficient power, fear, gratitude, and frustrated resignation (Sandefur 2007). Lacking psychological readiness to act may stem from belief that taking action is pointless because it will be too difficult or the other side is too powerful. Pleasence observed (2006, pp. 86–87) that the types of problems people are less likely to attempt to resolve are striking in the degrees to which they consist of:

problems associated with either substantial imbalance of knowledge, standing and institutional support, or inter-personal conflict. Thus, people facing such problems might be expected to be particularly uneasy in taking action to resolve them. This is reflected in the high levels of concern over the consequences of acting to resolve problems concerning neighbours, unfair police treatment, employment and domestic violence and the uncertainty and pessimism over how problems concerning employment, discrimination, domestic violence and mental health might be resolved.

Pleasence's (2006) observation suggests that people might need to believe they have a level of personal efficacy, and power to achieve resolution, before they will bother to try to act. Fear of consequences of acting, such as further damaging the relationship with the other side, has been identified in survey research as a common reason for inaction (Coumarelos et al. 2012; Genn

1999; Pleasence 2006). Personal efficacy may be particularly important in the context of problems arising out of interpersonal relationships, such as domestic violence and disputes with neighbours and work colleagues where people may feel powerless to effect change in another's behaviour. Gramatikov and Porter (2010) identify the perceived lack of power as a substantial barrier to resolving legal problems. The power a person feels capable of exerting is often situational (see Lukes 2005). An individual who perceives that the other party has more power will be less likely to take action and resolve the problem, just as a person who has more belief in their own capabilities, and self-efficacy in the situation, is more likely to act (Gramatikov & Porter 2010).

Also, attitudes to the legal system may affect people's propensity to use legal resources and mechanisms. Considerable research evidence has demonstrated declining public confidence and trust in governance institutions in Australia and similar countries since the 1970s (Blind 2007; Brenton 2005; World Economic Forum 2002). When surveyed, Australians are satisfied and proud of 'Australian Democracy', but relatively mistrustful of its institutional bodies: parliament, politicians, courts and the legal system, and the public service (Brenton 2005). These surveys further show that mistrust and disillusionment is socioeconomically patterned, and that disadvantaged groups have even lower levels of trust and confidence in institutions, such as the institutions that together comprise the legal system (see Box 6.5).

Disadvantaged people commonly experience governance institutions as remote and daunting (see Nheu & McDonald 2010). Social and historical marginalisation of some groups of disadvantaged people means they may be less confident in their ability to obtain successful outcomes from justice institutions, which can further reinforce their disadvantage.

Previous experience can affect legal capability. Repeat players with knowledge of how the system works may have heightened confidence, or a lack of fear or apprehension of acting. Previous negative experience, such as failing to obtain assistance or failing to obtain a satisfactory outcome through self-help, however, may erode self-efficacy concerning ability to use the legal system to resolve disputes, resulting in 'learned helplessness' or 'frustrated resignation' (see Nheu & McDonald 2010; Sandefur 2007).

It is in knowing what and how to best act that legal capability puts the 'haves' ahead of the 'have nots' (cf. Galanter 1974). The legally capable person will possess sufficient ability and resources to meet their legal needs as and when they arise. And critically, a legally capable person will know their limits, and when and how to obtain legal help. Typically this will be through seeking and successfully obtaining information or advice, or otherwise acting with the benefit of advice.

Box 6.5: Confidence in the legal system

Nheu and McDonald (2010) found that where participants' expectations of law reform consultation and processes are not met they may not only lose confidence in their ability to participate effectively in law reform, they also lose trust and confidence in the law, law-making institutions, and the justice system.

Other qualitative research has also shown that many disadvantaged groups, such as homeless people, Indigenous people, people with a mental illness, prisoners and ex-prisoners, tend to view the 'justice system' negatively, based on prior experience of the justice system working 'against them', not 'for them' (see Cunneen & Schwartz 2008; Forell et al. 2012; Grunseit, Forell & McCarron 2008; Karras et al. 2006).

In Canada, Currie (2007) found that perception of fairness of the justice system declined as the number of legal problems a person experienced increased (Currie 2007). He noted that this was of particular concern given that the vast majority of respondents had not sought to use the justice system to try to resolve their problems. This may be a matter of further concern given that, as noted in Chapter 2 and elsewhere (e.g. McDonald & Wei 2013), vulnerability to multiple legal problems has been found to increase with level of disadvantage.

Legal capability framework

Table 6.1 outlines a legal capability framework pinpointing knowledge, skill and psychological elements that a person might require to be able to successfully perceive and characterise a legal problem or need (name), seek and obtain help or assistance (seek), and apply or use that information to act to try to resolve a legal problem (claim) (cf. Felstiner, Abel & Sarat 1981).

The framework indicates that knowledge of the law, in itself, is unlikely to be sufficient to prompt a person to try to use the justice system to resolve their legal problems. Deficiency in one or more of the other elements is likely to undermine legal capability. Recognition of the multidimensional nature of legal capability has a number of important implications. For example, community legal education initiatives may not be a sufficient strategy to enhance legal capability. It may be necessary to consider how skill and psychological factors also affect legal capability, and to consider how strategies to address these factors may need to be tailored to the needs of particular participant groups.

The framework indicates that a range of capabilities is likely to be required for an individual to be able to successfully ‘self-help’. Successful self-help is more likely where there is a greater ability to:

- find, comprehend and apply information
- determine and follow a strategy to resolve the problem
- make and follow-through on a claim
- successfully complete any procedural steps
- determine the terms of a favourable or satisfactory settlement or outcome.

Crucially, the framework also suggests that legal services may have to be personalised to be accessible and appropriately matched to diverse legal need and capability across the community.

Table 6.1: Legal capability framework

<i>Perceive and characterise (name)</i>	<i>Seek and obtain appropriate help or assistance (seek)</i>	<i>Apply/use (claim)</i>
Perceive legal dimensions of problems and situations	Aware of sources of appropriate legal information or advice	Able to comprehend and follow information or advice
Recognise that may have a ‘legal’ right or responsibility (i.e. characterisation)	Able to find specific information relevant to problem or situation	Able to determine relevance of information or advice to situation, and apply it to circumstances
Aware of the basic justice system, and of potential to use law and dispute resolution processes to solve some problems	Willingness to seek assistance from an adviser (e.g. family or friends, colleague, community service, legal service)	Assess, determine and follow a strategy to resolve the problem
Psychological readiness to act, personal efficacy; confidence in (broader) justice system	Know when and how to obtain appropriate or expert legal assistance	Able to complete required procedural steps
Able to frame a ‘need’ (i.e. describe a problem, or recognise what it is that need help with)	Resources, time and ability to seek and obtain appropriate information or advice (e.g. make and keep appointments etc.)	Personal efficacy in ability to make a claim, deal with problem or situation
Able to communicate and explain the ‘need’		Personal attributes and resources to see through to resolution (e.g. plan, manage, emotional fortitude, persistence, etc.)
Know to act in a timely manner to comply with procedural requirements		Communication and negotiation skills; prepared to have and resolve a dispute
Able to perceive a just outcome		Able to determine a favourable or satisfactory settlement or outcome in the circumstances

Foundational legal capability

As discussed above, rudimentary legal knowledge is required to perceive, frame and characterise law and the justice system as a potential solution to a problem (see Ewick & Silbey 1998; Pleasence, Balmer & Reimers 2011). For the purposes of this paper, foundational legal capability might be defined as the minimum level of capability required to be a legally capable and active citizen in contemporary Australian society.¹¹⁸

If legal capability is conceived of as a spectrum, with senior judges and senior legal practitioners at one end, and people who are incapable at the other, then foundational legal capability might be the level at which — using Balmer et al.’s (2010) terminology — the general public tips over from constrained inaction to informed inaction, and the point at which they are sufficiently equipped to recognise and meet legal needs as they arise.

To have legal capability people do not need to be ‘experts’ on every aspect of the justice system, but (by Sen’s capabilities approach) they do require enough foundational capabilities to have a substantive opportunity to determine whether or not they want to act to resolve a legal problem.

Foundational legal capability is therefore what a person might require to have the option of deciding whether or not to try to use the law and the justice system to resolve a legal problem. This implies rudimentary and sufficient knowledge, skills and attitudes. Table 6.2 outlines a framework of foundational legal capability. It notes minimum knowledge, skills, attitude and resources that might be required. It also indicates that specific capabilities might also be required given the particular circumstances of the problem. In particular, because the nature of the legal problem as well as the available mechanisms of dispute resolution vary across substantive areas of law, having specific knowledge or experience in resolving a certain type of legal (e.g. consumer rights) problem will not necessarily transfer to other types of legal problems (e.g. family law). However, survey research indicates that the strategy employed for one problem (e.g. do nothing, seek advice, self-help) tends to also be adopted for subsequent problems.

The foundational legal capability framework suggests the minimum capabilities that might be necessary to have a legally capable citizenry, and raises an important question for policy makers, service providers and researchers: are strategies to instil foundational legal capability better targeted towards the broad community or towards particular groups identified as being deficient?

Table 6.2: Foundational legal capability framework

	<i>Knowledge</i>	<i>Skills</i>	<i>Attitude</i>	<i>Resources</i>
Foundational capabilities	Basic knowledge of legal system, areas of law. Basic awareness of rights and responsibilities. Sufficient knowledge to characterise problems as potentially ‘legal’ and that law and the (broader) justice system might provide a solution. Basic awareness of sources of legal information and advice (i.e. public and private).	Basic cognitive, communication, and functional literacy skills to seek and obtain appropriate legal information or advice.	Willingness and preparedness to act. Personal efficacy. Trust and confidence in the (broader) justice system. Psychological preparedness to have and resolve a dispute.	Available time, financial and other resources to expend on problem-solving.
Situation specific capabilities	Rights and responsibilities in the particular situation or area of law. Options and implications of different courses of action for that problem.	Comprehend, apply and follow appropriate specific information and advice.	Resilience and emotional fortitude to see problem through to resolution.	Resources necessary to obtain assistance or take procedural steps (e.g. fees etc.).

¹¹⁸ By comparison, Nheu & McDonald (2010) suggested that foundational law reform capability required the following: functional literacy skills, basic understanding of the law and law reform system, and basic knowledge of the political process and how it affects law reform.

Broad strategies may help the general public to self-help, particularly amongst those with greater personal capability and resources. Other groups may require more intensive interventions to increase foundational legal capability.

Mackie (2013) found that, among disadvantaged people, intensive public legal education successfully improved recognition of the legal dimension of common legal issues. It also led to greater confidence to tackle legal issues or seek appropriate help when necessary. Public legal education has sought to close the gap in access to justice by better supporting people to gain the knowledge and skills necessary to handle basic legal issues and engage with the legal market (Roy 2013). Indeed, to enhance legal capability of low capability groups, strategies to improve foundational legal capability need to be backed by access to appropriate services, particularly given that a crucial aspect of foundational capability is the ability to perceive and ‘express’ legal need by seeking appropriate legal assistance.

However, such an approach is likely to be neither simple nor cheap. For example, Roy (2013) draws comparison to the level of investment made in public health campaigns, and the cost of raising awareness of resources such as websites designed to deliver basic advice and signposting — getting people to recognise resources and how they can help is a significant and often expensive challenge. Thus, the costs and benefits of public legal education must be further investigated to better inform how it fits into the public legal assistance system.

Legal capability and service delivery

The multidimensionality of legal capability makes the design of effective legal services and policy interventions challenging and complex. One-size-fits-all public legal assistance initiatives are unlikely to be sufficiently tailored to different levels of knowledge and skill, and personality across the community (Coumareloes et al. 2012; Nheu & McDonald 2010).

For instance, the Canadian Bar Association (2013a) characterised the middle class as typically having a greater financial ‘safety net’ and greater resources, in terms of education, literacy and health, to address legal problems. This segment of the population may have greater capability to consider the full range of available legal assistance options (e.g. self-help, private legal services), and then ‘choose what they can best afford’ to effectively address the situation (Canadian Bar Association 2013a, p. 5).

Client-focused services need to be mindful of how client knowledge and expectations affect whether and how clients seek and follow legal assistance (see Buck et al. 2010; Coumareloes et al. 2012; Genn 1999; Pleasence 2006). People with limited awareness of legal problems, available legal services, or limited knowledge about the type of assistance provided by different types of advisers, may not recognise how legal assistance services can and cannot help them; hence the importance of outreach initiatives, discussed in detail in Chapter 3.

Even when people successfully make it to legal advisers, a range of factors can impede legal problems being disclosed or identified. Buck et al. (2010) found a number of features of the legal advice-seeking dynamic affect legal problem identification. These features included client demographic characteristics (e.g. age, gender, language spoken, literacy, physical and mental health conditions), demeanour (e.g. vagueness, responsiveness, challenging behaviour, emotional state and degree of preparation), knowledge and expectations, and confidence in advisers.

Client confidence in advisers has also been shown to be crucial to their disclosing or concealing information (Buck et al. 2010).

In our consultations a cross-section of service providers cited how they first had to build relationships of trust and confidence before many disadvantaged clients with low capability would make full use of the services available. A number of interviewees explained how establishing trust and confidence is crucial to fostering advice-seeking from Aboriginal communities (see Box 6.6). Having the trust of culturally and linguistically diverse communities, such as recent humanitarian arrivals, was similarly identified during our consultations as being vital for their advice-seeking (see Box 6.7). Many disadvantaged people will not disclose their circumstances and reach out for assistance until they feel secure doing so. The following non-legal service provider explains how

Box 6.6: Trust and Aboriginal communities

A range of studies report how the experience of historic marginalisation from mainstream public services means that trust and rapport typically needs to be established between legal service providers and many Aboriginal communities before they will make use of the service (see Allison et al. 2012; Coumarelos et al. 2012; Cunneen & Schwartz 2008; Forell, McDonald et al. 2013; Hunter 2009; Joint Committee of Public Accounts and Audit 2005; Schetzer & Henderson 2003).

A cross-section of our interviewees similarly identified the Aboriginal community as a client group where having good rapport and relationships of trust are vital, especially in regional and remote areas where the 'word of mouth' reputation amongst local communities is often strong. An interviewee in a regional area explained how their first service goal was building trusted relationships:

I guess our first main goal was establishing rapport and building a relationship with the community, which is obviously predominantly Aboriginal people, predominantly those with very low socioeconomic status, unemployment, high alcohol substance abuse rates, truancy...

Box 6.7: Trust and migrant and refugee communities

Fear and mistrust of government agencies stemming from negative experience with government agencies prior to arriving in Australia has been identified as a barrier to help-seeking from migrant and refugee communities (Family Law Council 2012b). In our consultations with practitioners, suspicion and mistrust was identified as being a fundamental barrier to migrant and refugee communities accessing and using legal services:

With this particular group it's a real issue because a lot of them come from countries with enormous political unrest and countries [where] when you say you work for government they will just never talk to you again ... our biggest barrier is that we're government lawyers and we work in communities where people have come from countries where they can't trust the government.

Interviewees explained how they had to build trust and rapport with clients and explain to clients that when they seek assistance from public legal services what they say is 'confidential and we can't tell anybody'.

Of particular concern is research suggesting that refugee arrivals who try but fail to obtain assistance from public legal services may experience a 'fresh trauma' that leads to a general belief that the Australian justice system will not or cannot help them (Hunter, De Simone & Whitaker 2006, p. 205).

their clients need to have trust before they will disclose the nature of their needs to assistance services:

It's the kind of situation where when they walk in the door they may not tell you exactly what's going on in their life. They may just say, 'I need to talk to someone because I need some help'. Then it comes down to, I guess, the skills of the worker that they're working with to engage and find out exactly what's going on with them. A lot of times a client won't declare sort of straight off what's going on. It's all creating a trust and that type of thing.

Problem characteristics also affected problem identification, such as the need for urgent action, and the complexity of the issues. Other identified barriers included the physical service environment (e.g. comfort, privacy, safety, the presence of others), and insufficient time to identify all of a client's problems.

More recently, Smith et al. (2013) have shown that clients' perception of the legal service environment can affect legal problem-solving. They found that clients who were aware of funding constraints faced by public legal services sometimes 'self-censor' what legal problems they seek help for. This is a particular concern given that such a perception may be incorrect, and assistance available.

Lack of legal knowledge and understanding may often lead a client to seek advice for a 'symptom' rather than the 'cause' of a problem. Research demonstrates that low capability clients are likely to have multiple legal needs, some of which they may not realise. While clients often prefer to focus on the problem that has led them to seek assistance, they may lack the necessary knowledge and skills to identify and prioritise their most important underlying legal problem (Buck et al. 2010). In such circumstances, a broadening or integration of services response (as discussed in Chapter 4) is called for. For example, a client who presents with a problem concerning a bank having cancelled his or her credit cards may not appreciate the wider cause or legal consequences of not being able to make credit payments. Buck et al. (2010, p. 116) reported an adviser who explained how they needed to adopt a holistic approach to assisting clients with debt problems:

you have to ask questions about a number of areas, you can't just say 'Tell me what your debts are and I'll tell you what to do', you have to ask them about their housing, their income, their benefits, family relationships, all kinds of things because it all interlinks and it's about trying to identify the cause not the effect ... i.e. somebody's got rent arrears but the reason they've got the rent arrears is they haven't claimed housing benefit so you need to know what's causing the problem rather than just saying 'Well, just go and make an agreement to pay your rent arrears' and then you discover that they're not getting housing benefit and that's what's causing the problem so you need to know that.

More generally, obtaining information about the problems and circumstances of clients is more difficult when clients have less legal capability. Not all clients are equally prepared to meet with advisers. Those with lower capability are less likely to have thought about what they might need to do, such as collect relevant documents.

Capability also bears on whether clients act on advice; meaning that follow-up or additional assistance may be more important in the case of lower capability clients.¹¹⁹ For example, a client may be unwilling or otherwise not yet psychologically ready to follow a recommended course of action, or may lack the skills, abilities and self-efficacy to do so. For example, in Forell and Cain's (2012) duty lawyer evaluation, some self-represented litigants may nevertheless have proceeded with actions lawyers had advised were inappropriate. Buck et al. (2010) also reported how some CLAC clients did not follow the advice they had received because they did not have confidence in the adviser.

Appropriate services

This section reviews empirical evidence concerning the appropriateness of various forms and modes of legal service provision. How unbundled legal services can potentially match legal need and capability is outlined first. Then, limits of the appropriateness of unbundled legal services indicated by research evidence are discussed, including how legal capability demands increase as the form of service descends the ladder of unbundled legal services.

Providing better access to justice is likely to depend upon having legal services that are tailored to appropriately match people's legal needs and capabilities. For some problem and people characteristics, appropriateness is likely to depend upon services being sufficiently targeted, timely and integrated.

As discussed in Chapter 3, some people, particularly disadvantaged people with low legal capability, who do not express their legal needs, might require targeted services, such as outreach services.

People with multiple and complex legal and other needs might require integrated or joined-up legal and non-legal services to successfully negotiate barriers to justice associated with disadvantage and low legal capability. Joined-up services, as discussed in Chapter 4, may help

¹¹⁹ This is an area that requires further research.

overcome low legal capability stemming from poor legal knowledge, not knowing how to obtain legal assistance and difficulty coping with other primary and priority needs which undermine psychological readiness to act.

Because people with limited legal capability may not be ready to act until the problem escalates and crisis moves them to act, as considered in Chapter 5, they might require provision of timely services. This may manifest as a need for duty services or on-call advice services. Marking pathways to legal assistance via ‘problem noticers’ and other non-legal gateways at points that coincide with when a person may perceive a problem or become psychologically ready to act may also be a feature of the more holistic approach to access to justice (see Coumarelos et al. 2012; Genn 1999; Pleasence 2006).

Appropriate legal services are ones that match client legal need and capability. They are accessible and mirror the behaviours of people with legal problems (Pleasence et al. 2004c). They are tailored and personalised in form and mode for the individual in need of help.

As a rough rule of thumb, the more unbundled the legal service, the more dependent outcomes are on concomitant personal and legal capability. Thus, the more unbundled a form of legal service, the less appropriate it is likely to be for people with more limited legal and personal capability.

Conversely, a person with higher personal capability may be able to become legally capable with a less intensive form of legal services, such as the types of self-help kits and websites that are intended to assist people to self-serve.

A key question for policy makers is: how much public legal assistance support should be provided for people with differing legal capabilities?

Unbundled legal services

Unbundled¹²⁰ legal services, introduced in Chapter 5, also variously called ‘discrete task assistance’, ‘*à la carte* legal services’, ‘limited scope services’, ‘decomposition’ and ‘disaggregated legal services’ are not a new phenomenon. They have long been provided by public legal services in Australia as a means of stretching scarce resources to reach and assist more people.¹²¹ Steinberg (2011, p. 454) described unbundling as:

a piecemeal lawyering model in which a lawyer provides assistance with a discrete legal task only and does not perform the full range of services expected from traditional legal representation.

Unbundling involves separating legal services into discrete components so that clients can use self-help to complete some tasks but still obtain some form of legal assistance for other tasks (Balmer et al. 2010; Coumarelos et al. 2012; Giddings & Robertson 2003b). Private legal services may be unbundled as a strategy to reduce costs (Mosten 1994).

Most typically, a recipient of unbundled public legal services receives circumscribed help in the form of legal advice and minor assistance, and then handles the remaining aspects of resolving their problem themselves. They might apply for a grant of legal aid, engage a private legal service, seek pro bono legal assistance or self-help. Successfully resolving the legal problem, however, will often require that they take certain actions.

A broad array of legal resources and services fall within the cloak of ‘unbundled legal services’. These services vary in terms of the form of legal assistance (i.e. information, education, advice,

¹²⁰ Some authors argue that the term ‘unbundled’ is misleading as it suggests that there is an alternative of ‘bundled’, ‘full service’ or ‘unlimited’ legal services (see Renouf, Anderson & Lovric 2003). Mosten (1994) described the full ‘bundle’ of acts performed in traditional legal representation in the context of family legal services as including gathering facts, advising the client, discovering facts concerning the opposing party, researching the law, drafting correspondence and documents, negotiating and representing the client in court. The use of the term ‘unbundled’ in this paper recognises the currency of the term within public legal services and emergent research.

¹²¹ Reaching more people is not equivalent to resolving more legal need. In terms of resources, there appears to be a linear trade-off between providing more ‘intensive’ forms of assistance — such as casework representation in complex matters — to fewer people, and providing ‘lighter’ unbundled forms of assistance for more people. More intensive forms of assistance consume more time and resources. Thus, the more intensive the form of assistance provided, the less resources there are to go around. In terms of resolving legal need, more intensive forms of assistance may be more effective in terms of successfully resolving legal need.

Box 6.8: Self-Help Centres (SHCs) and Family Law Information Centres (FLICs) in Canada

In 1996, the Canadian Bar Association (CBA) recommended that every court provide point-of-entry advice to members of the public on options for dispute resolution within the civil justice system as well as available community services (CBA 1996). A number of provinces have since established various forms of court-based SHCs that provide access to legal information and coordinate referral to existing services. In her recent review of legal needs research and innovations, Buckley (2010) highlights reports identifying advantages and limitations of SHCs. An important limitation of SHCs reported by Stratton (2007) was that they will only be able to help those people with sufficient skills to help themselves.

Similar to SHCs, FLICs are an area in family court houses where free information about family law issues, alternative dispute resolution processes and community services is available (see Buckley 2010). Court staff operate FLICs and in many locations legal aid lawyers are available to provide advice and assistance to those who satisfy eligibility criteria. Mamo, Jaffe and Chiodo (2008, p. 58) found that FLICs ‘allow for greater access by those individuals who face barriers related to culture, language, literacy, and poverty’.

A number of challenges to the effectiveness of FLICs were also identified, including insufficient staff and space constraints (Mamo, Jaffe & Chiodo 2008). Effectiveness was also limited by the inability of those clients above financial eligibility criteria to receive public legal advice. Trebilcock (2008) similarly found that while FLICs were effective and beneficial, they were quite limited in some jurisdictions and were insufficient to meet the demand. He suggested that FLICs could be significantly enhanced by the availability of lawyers to provide legal advice and assistance to a wider range of clients.

case representation) and mode of assistance (e.g. written, online, telephone, video-conferencing, face-to-face).

The range of unbundled legal assistance services varies across jurisdictions, and includes legal information kits, pamphlets, libraries, self-help guides, community legal education, telephone advice hotlines, websites, outreach services, drop-in clinics, CLCs, computer kiosks in court houses and duty assistance schemes (see Banks, Hunter & Giddings 2006; Kimbro 2013; Mosten 1994). Private or public legal services may also provide various forms of unbundled legal services including: document preparation and drafting, legal form preparation, limited appearances, and coaching and on strategy, negotiation or dispute resolution processes (Beg & Sossin 2012; Kimbro 2013). Canada has instituted Self-Help Centres and Family Law Information Centres attached to courts (see Box 6.8). Various other ‘how to’ initiatives, such as classes and ‘lawyer-for-the-day’ schemes, are provided in some jurisdictions to assist self-represented litigants (see American Bar Association 2003).

In NSW, Legal Aid NSW provides unbundled legal services in fulfilling its service mandate (see Box 6.9). Another NSW initiative is the LawAssist website provided by LawAccess NSW that is intended to help people who are dealing with legal problems in NSW without a lawyer (see Box 6.10).

While unbundled services vary in both mode and form, a particular mode of service can vary in terms of the form of services provided. For example, one telephone hotline might only provide one-off legal information or advice, whereas another telephone service might provide ongoing legal advice for a matter and also provide minor forms of assistance such as document review, letter writing, make phone calls and negotiate with the other party.

As discussed in Chapter 5, policy and resource tensions underpin support for unbundled public legal services. There is a policy choice between using scarce resources to provide full representation services to a fraction of disadvantaged clients (and zero services to the remainder), or to provide some assistance services to a broader range of people.

As an approach to service provision, unbundling is widely propounded to provide some legal assistance to people who may otherwise have no access to justice (see Beg & Sossin 2012; Engler

Box 6.9: Legal Aid NSW

To fulfil its role of helping people to understand and protect their legal rights, Legal Aid NSW (2012) provides services to disadvantaged people and communities in a range of forms, including advice, advocacy, representation and education services. Unbundled legal services in the form of legal advice and minor assistance are most common within the civil and family law areas of practice of public legal services. For instance, a higher proportion of all services provided to criminal law clients by Legal Aid NSW (2012) are legal representation and duty services. By comparison, legal advice and minor assistance services comprise a higher proportion of all services provided to civil and family law clients.

The greater provision of representation services for criminal matters reflects the greater severity of the consequences of the outcome of criminal cases, and the right of the accused to a fair trial. In *Dietrich v The Queen* (1992) 177 CLR 292 the majority in the High Court found that although there is no right at common law to publicly provided legal representation in all criminal cases, in most circumstances representation will be appropriate to ensure a fair trial.

Box 6.10: LawAssist

LawAccess NSW's *LawAssist* website <www.lawaccess.nsw.gov.au/lawassist> provides information and practical guides to help people who are dealing with a legal problem or representing themselves in a court or tribunal matter. The website provides information about the law and procedures, including practical step-by-step guides, instructions for filling in forms, sample forms, checklists, frequently asked questions, case studies and a dictionary of legal terms. It includes information about dealing with common matters such as debts, motor vehicle accidents, employment rights, apprehended violence orders, fines, neighbourhood disputes and recovery of goods, as well as information about dispute resolution processes and alternatives to court. Information on how to obtain free and low cost legal information, advice and representation is provided, as well as information about accessing assistance from financial counsellors. The website also has an interactive guide to step users through the process for self-helping for a number of common matters. A series of closed-response questions leads users through decisions about handling their problem. The interactive guide uses the 'A2J Guided interview' information technology software developed by the Centre for Access to Justice and Technology at the Chicago-Kent College of Law, Illinois Institute of Technology.

2009; Kimbro 2013; Steinberg 2011). Unbundled services are a way to 'soften the harshness of the "all or nothing approach" between full representation and no representation' (Beg & Sossin 2012, p. 199).

Unbundled services are therefore a key access to justice policy response to bridge the gap between the legal services used by the well-off and those available for the most disadvantaged. Unbundled forms of legal assistance underpin what has been envisioned as sweeping change in the way consumers obtain services from the legal profession caused by disruptive internet-based technologies which afford unprecedented access to legal knowledge and services (Gilbert 2013; Kimbro 2012; Susskind 2010).

Change in information technology and consumer behaviour has reshaped, and will continue to reshape, the production and delivery of legal services (Gilbert 2013; Kimbro 2012). The spectrum of commodified legal services is predicted to range from traditional fee-for-service one-on-one problem-solving, through to off-the-shelf (potentially low-cost) packaged solutions personalised via process checklists and substance templates (Susskind 2010). Technological innovation continues to make it more efficient for private and public legal services alike to offer unbundled services, and provide a suite of online self-help resources and guides to supplement and complement other services (see Kimbro 2013). On the one hand, this innovation is predicted

to drive the cost of legal services down, while on the other, people may be more willing to pay for bespoke or ‘wrapped’ legal services (Gilbert 2013).¹²²

As discussed in Chapter 3, enthusiasm for information technology as the means of appropriately providing services that match the legal need and capability of all people should be tempered. The utility of technological solutions is undermined by a lack of legal capability (see Hunter, Banks & Giddings 2007). Smith and Paterson (2014, p. 13) have further cautioned that certain situations and individuals may require ‘the bespoke services of a “warm body” lawyer or legal adviser, rather than a hot-line or the internet’. In some cases, technological solutions might be more appropriate as one way of supporting advisers to provide legal assistance services to people with low legal capability, rather than using them to help clients help themselves.

How to resolve tension between access to legal assistance on the one hand, and the appropriateness of that assistance for diverse clients on the other, is a key question for policy makers. Answering it might also depend on having further and better research and collating evidence of ‘what works’ in service provision and ‘for whom’ from evaluation studies.

It also depends on the ability of legal services to diagnose and triage clients on the basis of their legal need and capability, and their ability to provide a differentiated or escalated level of service that is appropriate to the individual’s legal capability.

For instance, deriving efficiency, effectiveness and access to justice benefits from the provision of various forms of unbundled services therefore appears to depend upon determining how to help more people in a way that ‘is proportionate and appropriate to their individual situations’ (Canadian Bar Association 2013a, p. 7). Providing legal services that are proportionate and appropriate to problem and personal circumstances in turn appears to depend upon being able to appropriately match legal assistance to client legal need and capability.

Buck et al. (2010) found that to appropriately tailor public legal services it was necessary to ‘sift’ clients and assesses their capability at an early stage. Although potential benefits for clients and services from sound assessment were evident, Buck et al. (2010, p. 19) warned:

Misjudgments about capability could result in a false economy because clients might simply have to return to the service or, worse, simply give up on CLAC advice, limiting the value of their attendance in the first place.

Unbundled forms of service can therefore be not only inappropriate and ineffective, but also inefficient for some clients.

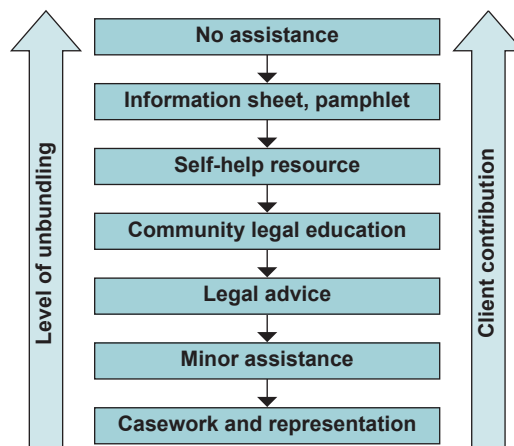
Limits of unbundled legal services

Limits of unbundled services are widely identified. They are not appropriate for all types of legal matters, nor suited to all people. Notwithstanding policy setting public legal service eligibility criteria, in general terms, as legal capability reduces (in people or in the particular problem circumstances), to obtain successful outcomes, clients are likely to require a form of service becoming more akin to full service representation. Those people most likely to obtain benefits from increasingly unbundled legal services are most likely those with enough literacy, education and skill to handle their share of the work that comes with unbundling (Smith & Paterson 2014).

Figure 6.2 ranks various forms of legal service by their level of unbundling. As the form of service becomes increasingly unbundled, the contribution a client has to achieving successful outcomes increases. The greater the client contribution to obtaining successful outcomes, the greater the level of legal capability they are likely to require.

A wide body of research studies signal the limits of various forms of unbundled legal services, including: legal information and education services (Collard et al. 2011), plain language resources (Assy 2011), online legal information (Hunter, Banks & Giddings 2007; Smith & Paterson 2014); self-help services (Giddings & Robertson 2001, 2002, 2003a, 2003b; Giddings, Lawler & Robertson 2013; Lawler, Giddings & Robertson 2009, 2012); telephone advice hotlines (Banks, Hunter & Giddings 2006; Pearson & Davis 2002); and library services (Noel 2013).

¹²² As the sands shift Gilbert (2013) foresees a transfer in the ‘value’ of legal services, with more value being ascribed to the ‘service package’, and the quality of the transaction interaction, and less to the expert knowledge and advice that service is based on.

Figure 6.2: Ladder of unbundled legal services and client contribution to outcomes

Also, unbundled legal services may not accord with client expectations of what legal services should do for them. Buck et al. (2010) found that some CLAC clients expected that the centre should be able to provide instantaneous advice, quickly make a problem disappear, get embroiled in a battle on their behalf, or provide them with full case representation. Some had hoped that someone would ‘sort out all their troubles for them’ (Buck et al. 2010, p. 140).

Clients thus may not expect to receive an unbundled form of assistance, or to have to action some or all of the information and advice that they receive themselves. Consequently, they may be frustrated and despondent, and feel that a service has not been able to help them. For example, in our consultations, some non-legal services cited the example of clients who felt that no-one could or would help them. The following interviewee described how, in turn, this:

makes it very difficult for that client to then explain to you what their needs are because they get in the mindset, ‘Well, you can’t help me’.

Where they have been referred, they may also lose trust and confidence in that person or agency due to what they think was an inappropriate referral.

A number of studies caution against self-help services being used as cheap ‘substitute services’ to replace more expensive and intensive forms of legal services (Coumarelos et al. 2012; Giddings & Robertson 2001, 2003b; Hunter, Banks & Giddings 2009; Lawler, Giddings & Robertson 2009; Pleasence 2006). Legal tasks that are non-routine and which require greater judgment and discretion are argued to be ill-suited to self-help services (Barendrecht 2011; Giddings & Robertson 2003b; Lawler, Giddings & Robertson 2009). Lawler, Giddings & Robertson (2012, p. 85) found tension between the needs of consumers for basic process and solution-oriented resources, and the objectives of service providers to ‘impart sufficient legal knowledge, information and skills’ to assist people to resolve the problem themselves. They further found that self-help resources often do not meet the needs of clients driven to act by crisis.

Self-help services may be particularly ill-suited to people with poor legal knowledge, literacy, language and communication skills, and people with multiple and complex legal and non-legal needs (Balmer et al. 2010; Coumarelos et al. 2012; Genn & Paterson 2001; Giddings, Lawler & Robertson 2013; Lawler, Giddings & Robertson 2009). They may be more viable when targeted to certain problems and people — particularly more knowledgeable, educated, skilled and articulate people — and when used to supplement other services (see Balmer et al. 2010; Coumarelos et al. 2012). Indeed, some people with higher levels of legal capability may potentially benefit from quick access to self-help resources that further enhance their ability to solve legal problems that they may be unfamiliar with, particularly when they have been able to successfully self-help in the past.

Based on the findings of their case study research, Giddings, Lawler and Robertson (2013, p. 53) cautioned against assuming the utility of self-help initiatives without first questioning:

- *whether a self-help product will be enough, on its own, to enable the user to complete the task in question. The user may well require at least some further support;*
- *whether self-helpers will be supported by the agencies they encounter in seeking to handle their own work. Court and agency staff can easily undermine attempts at self-help;*
- *what self-helpers need to know to handle their own legal work. Explaining the context in which legal work is to be attempted may be a distraction for self-helpers who only want to know 'what they need to know' to complete the task, particularly where the required steps can be explained in a directed, economical manner;*
- *what self-helpers already know about the legal issues they face and the potential downsides of handling their own legal work. If the self-helper does not understand the instructions provided, this increases the likelihood of them acting to their own disadvantage;*
- *whether legal training enhances the ability to convey law-related information to people who do not have legal training. Self-help products developed by lawyers were not rated highly by the product users we interviewed; and*
- *[whether] some self-help support is better than nothing. Where there is potential for adverse consequences, the self-helper may have 'only a fool for a client'.*

Some modes of legal service delivery, such as telephone services, online services, and printed legal information, also appear ill-suited to people with low legal capability. People with poor legal knowledge, literacy, problem solving and communication skills can be expected to face difficulty finding, following and actioning legal information, advice and self-help services irrespective of mode (see Balmer et al. 2010; Barendrecht 2011; Buck, Tam & Fisher 2007; Buck, Pleasence & Balmer 2008; Coumarelos et al. 2012; Forell, McCarron & Schetzer 2005; Forell & Gray 2009; Genn & Paterson 2001; Giddings & Robertson 2003a; Hunter, Banks & Giddings 2007; Lawler, Giddings & Robertson 2009; Lawler, Giddings & Robertson 2012; Nheu & McDonald 2010; Pearson & Davis 2002; Pleasence 2006; Smith & Paterson 2014). For example, research indicates that some young people and some older people lack the skills necessary to identify and use appropriate forms of online assistance (see Balmer & Pleasence 2012; Denvir, Balmer & Pleasence 2011; Duffy, Basu & Pearson 2012; Smith & Paterson 2014).

A number of the practitioners consulted for this study indicated that while technology-based modes of assistance can work well for some higher capability clients, and 'do a great job' at filtering out inquiries and clients that can be assisted through those modes, they may have less utility for many other clients. As the following practitioner in urban Sydney who predominately serves a culturally and linguistically diverse community observed:

We talk about, 'let's improve our website and let's get some instructional videos up on the website so people can be better able to represent themselves or advocate for themselves or whatever. That's all well and good ... and a lot of resources like that are available. But they're not necessarily going to help our clients.

Interviewees also indicated that technology-based modes of legal service are not a good fit for clients in search of legal help, rather than information and advice. Interviewees explained how some clients may not be even be willing to try to make use of a telephone service or online self-help resource because they perceive it as being unable to provide the type of assistance that they want or think that they need. As the following practitioner noted, some people seeking assistance may avoid telephone services that are perceived as only being able to provide information and advice rather than forms of assistance that will help resolve their problems:

I think people get concerned about getting advice from a phone service because it is advice. It's not someone on the other end who actually can do something for me.

Others identified during our consultations as ill-suited to telephone advice include people who have difficulty communicating, who are unable to describe the content of documents, who are uncomfortable speaking on the telephone, and who want to know that they can trust the adviser.

Practitioners explained how some people specifically seek out face-to-face assistance in the hope that 'by seeing someone in person they may be able to do more than just tell me something' and how:

clients don't necessarily want to be referred to another agency for more advice. Often they're looking for someone who can actually do something for them. So if you refer someone to an agency and they say, 'You should do this', has that really assisted the person or have you just given them more advice, because people are looking — a lot of clients are looking — for someone to actually do something for them or to help them, not just give them advice and say, 'Go away and do it'.

A practitioner from a public legal service that provides telephone advice as part of its mixed-mode services similarly explained that:

a very high proportion of people that we speak to during phone advice want to come in to have a face-to-face. It's just not feasible. So I'm sure that they feel somehow that they've been short-changed.

Clients with limited capability may become disillusioned and give up on their search for assistance when they are referred on to yet another advice service that will not help them.

Smith and Paterson (2014, p. 83) identified technology-based services as having access, skill and cultural barriers which mean that they cannot be expected to be a 'complete or nearly complete substitute for face-to-face services'. They found that telephone hotlines:

work best for better educated, more settled clients and worst for those who have complex problems, communication difficulties, mental problems or are otherwise vulnerable or lead unsettled lives. (Smith & Paterson 2014, p. 85)

Balmer et al. (2012, p. 23) also identified situations where outcomes depend on the nature of the personal relationship between adviser and client as instances where telephone assistance 'may be an inadequate substitute for face-to-face services'. A common theme was the importance of disadvantaged people establishing trust and confidence in advisers before they become willing to disclose problems and seek help.

Because they may have greater difficulty understanding phone advice and accessing and using internet-based services, some people may therefore require supplementary individual assistance to action information and advice. Others may require face-to-face assistance (see Buck, Day, Collard, Smith & Patel 2009; Buck, Tam & Fisher 2007; Buck, Pleasence & Balmer 2008; Coumarelos et al. 2012; Forell, McCarron & Schetzer 2005; Forell & Gray 2009; Genn & Paterson 2001; Giddings & Robertson 2001; Giddings, Lawler & Robertson 2013; Grunseit, Forell & McCarron 2008; Hunter, Banks & Giddings 2007; Karras et al. 2006; Moorhead, Sefton & Douglas 2004; Pearson & Davis 2002; Pleasence 2006; Scott & Sage 2001; Smith & Paterson 2014).

For example, in their assessment of telephone hotline services, Pearson and Davis (2002) found that callers who understood what they were told and followed the advice they were given tended to prevail. However outcomes were worse for those callers who appeared to have low legal capability, namely those who failed to comprehend and act on the advice received. Critically, Pearson and Davis (2002) found that the callers who reported worse outcomes were poorly educated, members of ethnic minority groups and those separated from partners. They suggested that callers for whom telephone assistance is ill-suited may need additional services to promote and support appropriate action, such as referral to more intensive forms of legal services. Conversely, those who rated their outcomes most favourably were significantly more likely to be white, English-speaking, and educated to at least the eighth-grade (Pearson & Davis 2002). Of course, assessment of the appropriateness of telephone hotline services lacks the further counterfactual of those who do not call because they were either unaware of the hotline or have already determined not to even try and obtain assistance in that mode.

Other research examining technological modes of legal assistance such as telephone hotlines and video-conferencing have observed a lack of reliable evidence examining and demonstrating effectiveness (Balmer et al. 2012; Banks, Hunter & Giddings 2006; Forell, Laufer & Digiusto 2011). Smith and Paterson (2014) caution that while evaluation studies consistently find telephone hotline services receive high satisfaction ratings from clients, there is remarkably little assessment of their substantive value and utility. Accordingly they highlight the need for more research using objective assessment criteria.

Unless also teamed with access to other forms of assistance, technological solutions are therefore likely to be less transformative for people experiencing deeper-set disadvantage and characterised by low capability across one or more life domains.

Proponents of unbundled legal services also acknowledge that they are not appropriate to all types of matters or clients (Kimbrow 2012, 2013; Moston 2000; Renouf, Anderson & Lovric 2003; Rhode 2009). For example, Renouf, Anderson and Lovric (2003) noted that there are undoubtedly situations where unbundled forms of legal service are not appropriate. This included certain people and problem circumstances. Discrete legal services were particularly ill-suited to people who lack the 'appropriate language, educational, material or motivational resources to access or use' them (Renouf, Anderson & Lovric 2003, p. 55).

Moston (2000, p. 24) argued that unbundled services are not appropriate when, to ensure the best outcome for the client 'the client's case requires continuous legal representations from start to finish'. Moston (2000) also identified systematic client intake practices and 'legal wellness check-ups' as a necessary part of the client management systems for unbundled legal services. Kimbro (2012) also argued that private legal services offering unbundled services should conduct thorough client intake to understand the client's legal needs, identify any collateral issues and determine whether or not unbundling is appropriate given the client's circumstances and abilities — specifically:

Does the client have the necessary level of education, experience or sophistication?

The appropriateness of unbundling will also depend upon certain features of the legal problems, such as the complexity and urgency of the matter. She also identified particular matters, such as criminal law, complex tax law, and complex child-custody matters, as being unsuited to unbundling (Kimbrow 2013).

To assist practitioners make decisions about whether and how to unbundle services, Kimbro (2012) proposed developing checklists and educational materials to be used as part of client management systems. Of course, in practical terms, it must be recognised that in some circumstances, and for some types of legal problems, a thorough assessment of client capability will be out of portion to the scale of assistance required.

Where unbundled forms of legal services are inappropriate, Kimbro (2013) pinpoints the need for more intensive and integrated services, such as multidisciplinary services involving collaboration or partnership between legal and other services to assist client's to resolve their legal problems. Rhode (2009) similarly noted that some clients, such as homeless people who may require not just legal assistance but also housing, education, health and substance-abuse programs are more suited to holistic, multidisciplinary services. She suggested that 'one-stop shops' would be beneficial for elderly, rural and disabled clients who cannot readily shuttle between multiple agencies.

Just because some forms and modes of unbundled legal services are ill-suited to some people and particular circumstances does not mean that traditional face-to-face legal assistance from lawyers should be the only form and mode of assistance. However, there is a need for greater understanding of how outcomes are affected by particular models (i.e. form, mode, purpose, target problem and client type etc.) of service. Better specification of the limits of unbundled legal services and of the appropriate role of particular forms and modes of service within the legal assistance system as a whole, may be necessary to achieve efficiency returns from unbundling. This might involve both the identification of the 'irreducible minimum' of face-to-face service provision as well as in what conditions unbundling can effectively deliver services (see Smith & Paterson 2014, p. 89).

Nor does the fact that unbundled forms and modes of legal services appear be ill-suited to clients with limited legal capability mean that unbundling is inappropriate. It does, however, present service challenges that require legal service providers to pursue particular strategies to overcome capability limitations. Where clients are unable to make an effective contribution to achieving outcomes from increasingly unbundled legal services (i.e. services that are higher up the ladder in Figure 6.2) then capability needs may have to be met through other avenues. In our consultations

we found public legal services that were working in conjunction with private legal services and non-legal services in order to ‘stretch’ their limited resources to more appropriately assist a greater number of clients. One strategy involved the unbundling of tasks between public and private legal services, through either low-cost fee-for-service arrangements or pro bono relationships. An example is provided by the following interviewee from a CLC:

Another thing that we do, which I think has a lot of scope for the sector is to work with private law firms ... to try and fill that [capability] gap we would do all the front end work. So, for example, we would take a statement from the client. We would get any supporting evidence ... Then basically hand that over to a private law firm like a brief. Because all the front end work was done and because nine times out of ten they were in court anyway for a similar matter, they were able to do it for a really nominal fee; something the client could afford.

Another strategy involved the unbundling of tasks between public legal services and non-legal services able to provide support services to limited capability clients. For example, practitioners described working in conjunction with human services and of ‘skilling-up’ caseworkers to assist with some of the tasks associated with resolving legal problems:

it would just augment our reach by three, four, five fold if you’ve got ... vicarious paralegals out there so to speak.

Both of these strategies suggest that joining up services, as discussed in Chapter 4, is a way of spreading the legal and non-legal tasks outlined in Chapter 5 (see Figure 5.2) across agencies. Such approaches may potentially overcome capability limits, narrowing the ‘justice gap’, and be necessary to achieve efficiency returns from the unbundling of legal assistance services for disadvantaged and low capability clients (see also New York City Bar Association, Committee on Professional Responsibility 2013).

In terms of legal services achieving efficiency returns, research points to a trade-off between the level of unbundled service provided and the outcomes clients achieve. Provision of inappropriate unbundled legal services is wasteful and has consequences in terms of either ineffective service and unmet need or the client having to seek and successfully obtain more appropriate services. The key to unlocking efficiency returns through unbundling may be greater legal service capability to tailor services to provide the minimum level of assistance that adequately meets client needs.

Matching legal need and capability

Differentiated legal need and capability provides a rationale, and a framework, for developing a more holistic approach to justice. It is also a key practical challenge in terms of operationalising effective and efficient service provision. Services will be more ‘appropriate’, and potentially more efficient from funder, service provider and client perspectives, when sufficiently ‘personalised’ to match legal need and capability.

In the context of the suite of unbundled public legal services, those services can be targeted and tailored at an individual client and/or group level. For example, homelessness outreach clinics are targeted and tailored at a group level (i.e. homeless people at a particular location) and also tailored in terms of type of assistance to individual clients. In contrast, general gateway points of entry, such as LawAccess NSW, are targeted at a wider group and ‘sift’ callers based on need and priority criteria.

One key strategy to match need and capability therefore is through the model of service. As noted in Chapters 3 to 5, this may be achieved through different models of legal service that aim to match the need and capability of particular target client groups through outreach, joined-up and timely services. However, where there is a mismatch between individual client need, capability and the model of service, effective delivery can be achieved by referral to a more appropriate service (in the case of insufficient capability) or greater unbundling (in the case of excess capability).

This section outlines some challenges and opportunities for appropriate legal services that take account of client needs and capability at different points of the legal assistance process. From problem recognition, first ports of call and outreach, through legal triage and referral,

to unbundled service provision, and follow-up, client need and capability potentially shape advice-seeking and problem-solving behaviour.

As discussed in Chapters 3 to 5, the extent to which services may have to be targeted, integrated and timely depends on the nature of the legal need and capability, given particular problem and person circumstances. ‘Light services’ may suit people with basic legal needs and high legal capability with respect to certain types of problems. More intensive services — that reach out and are integrated — will often be required to provide access to justice for demographic groups with heightened legal need and low legal capability, and for more complex and serious legal problems.

Understanding of ‘what works, and for whom’ in legal service provision may be enhanced by taking a systematic approach to legal diagnosis, triage, referral, unbundled service provision, and follow-up. There is much to learn about what is effective in tailoring legal services. First, about what can be done to better support tailoring services to need and capability. And second, which forms and modes of legal assistance are more effective in what circumstances. Clearly, such questions presume a model of legal service provision in which a mix of unbundled legal services is available.

In the context of public legal service provision, how to appropriately tailor services to meet need and capability entails consideration of how services are targeted and integrated, as well as service eligibility criteria. Particularly so given scarce resources, existing infrastructure and the continuously changing service environment.

Systematic diagnostic triage and tailoring might be better supported by having standard tools and procedures in place to help identify client need and capability. Similarly, services may be more appropriate with standard assessment and follow-up procedures in place that can enable escalated services for some people. Standard approaches to practice may also facilitate the type of administrative data collection necessary for ‘what works’ evaluation and learning.

Systematic client intake, diagnostic triage and referral

Smyth (2013) recently observed that a long-standing challenge of legal service delivery has been how to signpost people in need of legal advice to appropriate services in a sufficient and timely fashion. He further noted that effective triage and referral requires not only sufficient legal knowledge to determine the urgency of the matter and to identify the appropriate expertise required, it also requires an understanding of the local service environment.

Chapters 3 and 5 noted the key role of triage and targeting in meeting legal needs. Gateways to legal services have to be simple, well-signposted and accessible, whatever their form. They must be able to provide legal triage services, either through comprehensive client intake, diagnostic triage and referral to appropriate legal services, or at least a preliminary legal diagnosis (or screening) followed by referral to suitable services for more complete legal diagnosis. Generalist legal services are well placed to provide systematic diagnostic triage and referral, and can provide consistency of service where they have the ability to meet client needs in-house. For example, systematic legal diagnosis and triage was at the core of the CLAC and CLAN service model in England. It was central to appropriately tailoring services, and for providing seamless and integrated services (see Box 6.11).

To appropriately match clients and services, diagnostic triage systems have to be able to correctly assess needs, and have up-to-date information about available services, and their eligibility criteria.

Various tools are available to facilitate identification of client needs. For example, computer software packages can help to identify and prioritise legal matters, streamline referral and flag client capability issues. As already discussed in Chapters 3 and 5, diagnostic tools such as ‘legal health checks’ or the i-HELP screening tool can facilitate diagnosis of legal problems and screen for other factors affecting clients. Checklists have also been developed for use with clients in various advice settings. Buck et al. (2010, p. 128) found that standard checklists and questionnaires were regarded as being useful by advisers providing services in the context of CLACs because they provided a structured way to gather information from clients:

The checklist is vital ... So many people say ‘I’ve got no problems with these others’, and then you start asking them, ‘Have you got any mortgage arrears? Have you got any rent arrears?’ Oh, yes,

Box 6.11: Community Legal Advice Centres (CLACs) and Community Legal Advice Networks (CLANs)

In the United Kingdom, CLACs and CLANs aimed to meet legal needs through a legal service delivery model which sought to be accessible, seamless, integrated and tailored. They aimed to meet legal needs from diagnosis and information, through to advice and assistance, and representation in formal proceedings. To provide advice and assistance appropriate to the client, and maximise the number of people able to be assisted, the services sought to tailor their assistance to the client's capability. Tailoring was a crucial aspect of the service provision because it enabled more intensive support to be provided to less capable clients. As the following interviewee reported by Buck et al. (2010, p. 144) explained:

the whole point is you're sort of enabling the client to move on. Some clients are not capable of moving anything on themselves but where they are. Well then obviously you can't do everything for everybody, it's just overstretched anyway. So if they're capable of writing a letter or ... filling their own forms in then that's great. That's something less that we have to do.

After intake, a diagnostic interview session was conducted. The diagnostic interview enabled advisers to systematically and quickly obtain information about a client's legal problems to determine an appropriate advice and referral route for them: to a generalist or specialist adviser within the centre or network, and/or referral to another agency. The diagnostic interview was a form of triage and provided a systematic gateway to services.

Buck et al. (2010) found clear examples of diagnostic interviews successfully identifying vulnerable clients and fast tracking them to appropriate advice. Compared to not having diagnostic assessment, advisers regarded diagnostics as a good way to filter urgent cases, to filter out those clients that the CLAC could not deal with, and route clients to wider advice and services. However, some advisers reported that it was challenging to manage client expectations and to balance client capability and problem severity with the available resources. Some clients with limited capability had difficulty communicating and required longer than standard diagnostic sessions. Buck et al. (2010) found that diagnostic interviews should take place in a private, confidential environment to avoid situations where clients may be unwilling to disclose the extent of their problem, and that the remit of diagnostics needs to be explained to clients. They also found that it is possible to place undue emphasis on the use of diagnostic assessment as the method through which clients' advice needs are determined, and that it was important for advisers at all tiers of the service to be aware of and probe for other legal problems and to consider client capability.

I've got ...What about a catalogue? Oh, yes. Suddenly, that simple checklist, and it doesn't take long, you suddenly tease out things very painlessly that when you asked the first question 'What is it all about?' 'Just one issue', she said.

Backed with effective referral and follow-up procedures, diagnostic triage systems might be central to actualising 'no wrong door' gateways to appropriate legal services. However, a number of key questions for policy makers concern at what points along legal pathways are triage and referral services best placed, and how might (often overburdened) non-legal services be harnessed and supported to facilitate screening and referral?

A fundamental service challenge is therefore how to effectively 'sift' and 'move' clients from the 'no wrong door' to an appropriate legal service. In the case of non-legal pathways, and services for the general public, this might mean having a central first port of call such as generalist legal services or dedicated legal triage and referral services (see Chapter 3 and also Coumarelos et al. 2012). LawAccess NSW is a specialist 'first point of call' for legal information, referral, and in certain instances, advice, for people in NSW who have a legal problem (see Box 6.12).

One obvious danger of creating referral pathways is 'referral fatigue' and the likelihood that some people will not successfully make it to subsequent referral destinations. As discussed in Chapter 2,

Box 6.12: LawAccess NSW

LawAccess NSW aims to be a first port of call for starting to deal with a legal problem. Launched in 2002 it has evolved to have three integrated services: (1) a free statewide telephone call centre, (2) an information website (LawAccess Online <www.lawaccess.nsw.gov.au>) and (3) a website to help people to represent themselves (LawAssist, outlined above). It is further expanding to include video and social media in its strategies (Evans 2013). It has been identified as a leader in its integrated approach and one of the best advice sites in the world (Smith 2013; Smith & Paterson 2014).

Legal information and referral are available to all users either over the telephone or via the website. The telephone service can send callers written information and has the ability to provide advice and minor assistance in certain circumstances. Legal advice is provided for family, criminal and civil law matters suited to telephone advice, where the caller has priority according to policy guidelines, and when there is organisational capacity. Advice for other areas of law is precluded. Callers in certain circumstances, who face particular difficulties or who are disadvantaged in obtaining legal services, have priority in receiving legal advice. LawAccess NSW has operational policies, procedures and standards in place to triage clients appropriately, covering customer service and the provision of legal information, advice and referral (NSW Department of Attorney General and Justice 2012b). For example, some of the factors to be considered in determining whether or not a caller is provided with legal advice are what assistance the caller requires, what assistance the caller has already obtained, or attempted to obtain, and whether it would be more appropriate to refer them to another service.

Evans (2013) recently identified key features of how LawAccess NSW operates. One is the support and training that customer support staff and legal officers receive, particularly in a constantly changing service environment. Another is the information technology resources available to staff, including a knowledge base and database. The database lists the details (e.g. catchment, legal matters, hours, contact details) for every public legal service in the state (Legal Aid office, Legal Aid outreach, CLC, specialist legal service, courts and tribunals) as well as alternative dispute resolution services, and relevant government, not-for-profit and other human services organisations. Interrogating the database by caller location and matter type returns referral options. LawAccess refers callers to private solicitors through the Law Society Solicitor Referral Service.

survey research has demonstrated that people become less likely to successfully act on a referral each time they are referred (Pleasence 2006). Over-fragmentation of services is therefore to be avoided.¹²³

In their CLAC study, Buck et al. (2010) reported examples where it was not clear what further steps clients were capable of taking, and where the signposting to a solicitor they had received at a diagnostic interview was ineffective and not sufficiently tailored to the client's capability. This suggests the need for 'warmer' referrals for some clients. For instance, one interviewee in our consultations explained how referral needed to be tailored to each client and their capability in the particular circumstances:

So every single case, is such a case by case judgment about how much support they need ... Some people you can say, 'Look you need to ring this person and they will help you'. Some have significant literacy problems for example, so we need to take them through, [the] precise referral forms and all that so it's very, yes — it just depends on clients and their case too, like what sort of crisis is it? Is it an immediate crisis need or can we hold it over?

¹²³ Notably, Pleasence (2006) found that respondents who had been referred by non-legal advisers were the least likely to go on and obtain advice from another adviser. He found that the rate of success of referring people on to other advisers was associated with the frequency and experience of the adviser type making referrals. It also 'most likely reflected respondents' expectations of their advisers', such as where a person approaches an adviser expecting to be referred (Pleasence 2006, p. 118).

Effective referral systems depend on knowledge and trust (Pleasence 2006). As noted above, while people may expect to be referred on by some types of initial advisers, where they are expecting that they will ‘get help to solve a problem’ they may become despondent when they are referred to another agency, only to have that agency then refer them on again. To avoid people falling off the ‘referral roundabout’, and learning that ‘no-one can help them’, client expectations should be carefully managed. Legal referral competencies developed in 2004 by the NSW Legal Referral Forum included the ability to make referrals that are appropriate to the needs of the client.¹²⁴ This included promoting realistic expectation about the assistance to be expected from services to which clients are referred. This means it might be necessary to detail the nature of unbundled services, the waiting period and cost. Where clients are to be referred to private legal services for further assistance, research suggests that providing realistic information about likely costs is particularly important, as many people may not have accurate information about cost (see Coumarelos et al. 2012; McDonald & People forthcoming; Pearson & Davis 2002).

Whether and how referral fatigue and failure to arrive at a referral destination is patterned by legal capability and other demographic and legal problem characteristics is a matter requiring further investigation.

Service eligibility criteria

A basic form of targeting public legal services is through eligibility criteria. Scarce resources for grants of legal aid are conserved for the most disadvantaged and/or most meritorious clients. Although legal information, referral, advice and minor assistance typically do not have eligibility criteria, merits and means tests apply to grants of legal aid. These tests are also examples of need and capability measures.¹²⁵ For example, means testing using income and asset criteria provide an indicator of financial capability. Where means tests apply, those with financial capability above the threshold cut-off are expected to use their greater financial resources to seek legal representation services from other providers.

Given the association between higher levels of social disadvantage and lower capability, means testing provides a broad proxy measure for legal capability. Those found to be out of scope are usually referred to the private legal sector, to non-tested legal assistance services, and self-help resources. This, however, does not mean that those who are ineligible for grants of legal aid have the financial and legal capability to obtain the legal assistance required to successfully resolve their legal problems.

The level at which means tests for legal aid are set has been characterised as creating a ‘low and middle income’ access to justice gap, especially for non-criminal issues, not just in Australia, but also in comparable countries (e.g. Canada and the United Kingdom) (see Engler 2012; Pleasence & Balmer 2012; Pleasence & Macourt 2013; Smith 2012; Trebilcock, Duggan & Sossin 2012).

Analysis of the LAW Survey dataset has pointed to the potential difficulty faced by those on lower-middling incomes in obtaining legal services, suggesting a ‘U’-shaped relationship between income and lawyer use in the case of family problems (Pleasence & Macourt 2013). A study of unmet legal need in Australia also found an overwhelming majority of survey respondents (83 per cent) agreed with the statement that ‘only the very wealthy can afford to protect their legal rights’ (Denniss, Fear & Millane 2012).

In addition to means and merits grounds, eligibility criteria can also raise service barriers stemming from the application process. For example, Legal Aid NSW recently reviewed its legal aid grants process to better cater for applicants with limited capability (see Box 6.13).

¹²⁴ Other legal referral competencies included: value and respect the customer; identify information and referral needs of the customer; communicate effectively and appropriately with all customers; knowledge of the law and legal system; knowledge of service providers; participate in and know about own agency. See further <www.lawfoundation.net.au/publications/guidelines/referralcompetencies>.

¹²⁵ Legal aid commissions typically use a combination of merits and means tests to determine eligibility to receive a grant of legal aid. For example, see <www.legalaid.nsw.gov.au/get-legal-help/applying-for-legal-aid/policy-easy-guide/legal-aid-tests>.

Box 6.13: Legal Aid NSW's Grants Assist Pilot

Staff at Legal Aid NSW were concerned about a higher rate of refusal of applications for legal aid when clients applied directly rather than doing so through a lawyer. In response, Legal Aid NSW instituted a project whereby grants officers assist clients who have attended the Central Sydney Legal Aid office for advice and are available to provide assistance with making applications for legal aid and advice as to grounds for eligibility. The program is an example of a client-focused service that helps avoid service barriers stemming from lack of personal capability, such as where a person who otherwise satisfies the eligibility criteria to receive a grant of legal aid has it denied because of an inadequately completed and expressed application.

Tailoring legal services to need and capability

Tailoring legal services to client need and capability is not new. Public legal services routinely consider client needs and capability in what type of services they provide, and where they are located (e.g. in-office and outreach, duty services at courts etc.). Indeed, myriad public legal service initiatives, programs and projects are targeted to better meet the needs of clients.

Chapter 3 outlined how outreach legal services target client groups on the basis of their legal need and inability to access mainstream legal services, while Chapter 4 noted how joined-up services might better meet the needs in particular problem and client circumstances.

In our consultations with practitioners, interviewees from public legal services often described how they modified their services to better meet client needs. One interviewee from Mt Druitt & Area Community Legal Centre (Mt Druitt & Area CLC) explained how the centre had changed its model of service in order to provide more appropriate services to limited capability clients with unfair dismissal problems (see Box 6.14). Interviewees from another CLC in urban Sydney similarly described how they assessed client capability when determining what type of assistance to provide to clients with employment and family problems.

We found that decisions about tailoring services, such as whether and what forms of minor assistance might be provided to a client, were routinely based on the professional expertise of the practitioner. There was some conjecture concerning whether or not this expertise could be taught or is only acquired through experience, but practitioners 'attuned' and responsive to client capability needs were identified as a feature of more appropriate and efficient legal assistance services. The following interviewee explained how their service continuously assessed the legal capability of their clients and tailored their services to conserve resources:

we're very mindful of that and very mindful of trying to conserve resources where we can ... we're very mindful of assessing people in that way ... We're constantly assessing to what degree it is appropriate to invest our resources in that client, having regard to their capacity and their frame of mind and ... capacity to act in their own best interests I suppose.

We encountered practitioners who described how their CLC had modified how clients are assisted in order to conserve resources for the clients in most need of more intensive face-to-face assistance:

we cannot give face-to-face appointments until after we've spoken to people on the phone. Again, trying to maximise our face-to-face resources ... we find that works quite well.

Practitioners described a range of criteria used to assess client capability. For instance, someone assessed as being 'able to stand on their own feet' might receive less intensive assistance, while others might receive more intensive assistance so that they are able to 'participate effectively in the legal system'. Such assessment was typically specific to the particular circumstances of the legal problem and person. Other examples of criteria used to assess client capability cited by practitioners in our consultations included the following:

Box 6.14: Mt Druitt & Area Community Legal Centre (Mt Druitt & Area CLC)

Mt Druitt & Area CLC is located in an area of social disadvantage. Employment matters comprise a quarter of the centre's matters. Clients seek help for unfair dismissal in about one-third of employment matters (based on Mt Druitt & Area CLC statistics recorded for the July 2012 to June 2013 reporting period). Clients are typically at crisis point, often stressed, anxious and seeking urgent advice. Problems such as unfair dismissal often have substantial adverse impacts, including flow-on legal (e.g. credit/debt, mortgage default, family and children problems etc.) and non-legal (e.g. physical illness, depression, having to move home, relationship breakdown etc.) consequences.

In 2012, to achieve better outcomes for clients within existing resources, Mt Druitt & Area CLC changed its service model for employment matters. Compared to the way assistance is now provided, the previous model of service was characterised as a 'light touch' — clients typically receiving standard legal information and advice about their employment rights and entitlements, as well as advice as to how to pursue them.

Solicitors, however, found a number of clients were unable to successfully action the advice. Some returned seeking further assistance, usually after having filed a poorly drafted application for unfair dismissal with the Fair Work Commission, or after a poor result following a mediation session. Some were too stressed and fearful of having to face a hearing to pursue their claim; others were seeking assistance for consequential legal problems. Solicitors found that clients with low personal capability were particularly vulnerable and lacked the confidence and skills necessary to negotiate a successful outcome at mediation.

Assisting clients with unfair dismissal after mediation is resource intensive. Because around 80 per cent of unfair dismissal matters are either settled at mediation or are later withdrawn, Mt Druitt & Area CLC changed its model of service to provide 'a more holistic service, from beginning to end'.

Clients receive advice and minor assistance prior, during and after mediation (e.g. advice on entitlements, the mediation process, how to negotiate, gathering supporting material, settlement terms, deed of release etc.). Providing legal assistance at the 'point where help is most needed' — during mediation — was considered critical for 'equalising' an imbalance of legal capability between the parties.

Clients lacking in 'ability to help themselves' are targeted for greater assistance, such as those with cognitive issues that impair their ability to understand legal advice, focus on the legal aspects of disputes, put a good 'case' at mediation and negotiate appropriate terms of settlement. Other low capability clients targeted include those facing substantial financial disadvantage, those who had been bullied, those exhibiting high anxiety and powerlessness, and having poor literacy or English skills.

The new service model has substantially improved client outcomes without increasing expenditure, with not only a higher proportion of unfair dismissal claims being settled in clients' favour, but also higher recovery of employee entitlements, such as unpaid wages, annual leave and leave loading.

we have special needs people and you put resources into them where you have to. We deal with a lot of people that have profound personality disorders that are really high needs and take up a lot of energy and time and are kind of difficult to deal with in so many different ways. We just cater for that to the extent that we can.

So we kind of grade our response ... it is subjective – responding to the client’s own expression ‘I can’t do this, I can’t understand this’...

[It’s] really on an ad hoc basis ...you’d be able to assess it whilst you’re having the discussion or a telephone conference with the client. Obviously their English ability, but [also their] general awareness; if they’ve done some research already, that sort of thing ... We haven’t got any hard and fast guidelines. I mean, you do tend to size them up on the phone.

It’s a gut feeling and an assessment that you make as you engage with the person.

Another legal service provider explained how she tailored her services to the needs of one particular client because it was only over time that she had learnt what they were:

I’ve got a client, who’s got a medical condition and she tends to forget, in this medical condition ... I [do things to] help in that respect but, that’s only because of [her] medical conditions. So you get to know your clients as well ...

Even where clients appear to have a higher level of capability that enables them to perform some tasks in resolving their legal problem, this does not mean that they are able to adequately perform those tasks without ongoing minor assistance. Our interviewees also cited examples where multiple instances of minor assistance were provided. As the following interviewee explained, rather than provide a more intensive form of assistance, a client assessed as being ‘quite capable’ might nevertheless be assisted to resolve a legal matter via periodic forms of limited assistance:

We have a certain number of clients that we probably have a relationship with ... they might be ringing up for a year because they’re going through the [family law] process and they just need pointers as they’re going along.

This type of tailoring often presupposes a longer-term relationship with the client. The type and level of service that public legal practitioners were able to provide to clients also depended on the available time and resources. For example, the following interviewee described how providing appropriate services to high need and limited capability clients can soak up resources:

There’s a whole range of high needs clients that pose a lot of challenges ... our resourcing doesn’t really take that into account – people like that. But we have more and more of those people I think; very troubled people.

Other research has similarly shown that professional skills and experience plays a crucial role in whether and how legal services are tailored. For instance, Forell, McDonald et al. (2013) found that outreach solicitors triaged assistance services by type of legal problem and client capability, and that their capacity to do so depended on their general legal skills and knowledge of the local service environment.¹²⁶ Buck et al. (2010) also found that appropriate tailoring of services depended upon the professional judgment of advisers.

These research findings highlight a number of challenges in providing appropriate legal services to clients with limited personal capability. In fact, for these clients, effectively dealing with the interwoven legal and non-legal problems may involve a more intensive form of service more akin or closer to case management. This is also where more integrated legal and non-legal services may be more adept and a more appropriate form of service better attuned to the needs of clients with limited capabilities.

Access to case management support was another common theme of our consultations with practitioners. In different regions this might be case management support because of a higher

¹²⁶ In the case of outreach by Legal Aid NSW, referral might be to a more appropriate Legal Aid NSW service, including escalated forms of assistance such as representation, the form of unbundled legal service provided, and referral to another legal or non-legal service.

prevalence of needs, such as settlement services and trauma counselling services to support humanitarian arrivals. In each area interviewees reported a need for greater support for clients with limited capability, and in particular those with mental health problems. Interviewees described the availability of case management and community support workers in mixed terms. Some limited capability clients were already receiving various forms of community services, but many others lacked access to support. Some community support services described how clients were assisted to prioritise and systematically work through their legal problems. However, a common theme across different regions was the gaps in available community support services associated with service eligibility requirements.

Because assessment of client legal capability and judgment about service provision are made within a wider organisational context, organisational and institutional features, as well as the broader socioeconomic and geographic environment, also affect the ability of legal services to appropriately match services to client need and capability (see Buck et al. 2010; Coumarelos et al. 2012; Sandefur 2009). In particular, lack of resourcing can affect things such as staffing, training and administrative and technical support, and lack of available local services affect ability to make appropriate onward referral.

A number of key questions for policy makers arise concerning how professional practice in public legal services might better support tailoring assistance to appropriately meet client need and capability — from client intake to assistance, referral and follow-up. One practical dimension concerns how to systematically capture and impart the professional expertise and learning accumulated by years of experience to early year legal practitioners. A prior question may be the recognition and articulation of public legal practice as a specialist area of practice. This might in turn lead to the development of professional practice competencies concerning things such as appropriately tailoring unbundled services, identifying and working with limited capability clients, working in joined-up and integrated legal and non-legal service environments.

Capability testing and screening

If legal services are to be appropriately tailored to client need and capability, a key challenge for policy makers, legal service providers and researchers is how to operationalise it in a service setting.

Client intake and screening procedures may be one way to match clients with legal assistance services that are better attuned to their needs and capabilities.

Legal service providers might be supported to better judge client capability through capability assessment or screening tools. Capability tests are utilised extensively in a number of fields. For example, aptitude, psychometric and skill testing is commonly employed in staff recruitment. Capability indicators are also widely employed to identify at-risk families and inmates etc. (e.g. receipt of government benefits, housing tenure, level of education, ability to read and write English, having a mental illness, recent major change in life circumstances, victim of violence).

One approach to capability testing may be to develop a set of indicators to use to streamline capability screening. This might be incorporated as a part of the client intake process and/or diagnostic triage and referral. Such an approach may have benefits in terms of standardised and supported practice, and may help to facilitate systematic data collection to inform ‘what works, and for whom’ evaluation of service provision. For example, the Department of Human Services is trialling and evaluating a new way of providing services, called Service Delivery Reform, which includes a customer-needs assessment framework to filter clients into one of four services (see Box 6.15).

Buck et al. (2010) found that CLAC advisers informally used various criteria to assess client capability. Criteria commonly used included: difficulty speaking English, some form of disability or learning difficulty, lack of knowledge of their rights, and being highly distressed or overwhelmed by the circumstances. Other criteria used or suggested by the researchers included client behaviour, communication skills, and health factors, particularly any medication that might affect the client’s abilities. It is notable that these factors include a mix of knowledge, skill and psychological factors, as well as the particular context or situation.

In the example of Mt Druitt & Area CLC matching services to client need and capability in unfair dismissal matters, outlined above, a range of indicators were informally used by practitioners to

Box 6.15: Department of Human Services: Centrelink clients with complex needs

Since 2010 the Department of Human Services has been transforming the way in which it delivers Medicare, Centrelink and Child Support services (Department of Human Services (DHS) 2011). The aim is improved client outcomes and more efficient delivery of government services ‘through more one-stop shops, more self-service and more support for people based on their individual circumstances’ (DHS 2011, p. 4). The intent is to provide improved access to services and information in the mode that suits clients, including face-to-face, on the phone and online. Improved services are envisioned ‘to better meet people’s needs by providing more tailored and intensive services’ (DHS 2011, p. 14).

One of the new initiatives in this transformation is the addition of Case Coordination services for vulnerable people. Case Coordination provides more integrated and intensive support for people with complex needs via DHS staff working to assist them to identify their needs and establish a plan of action, and may include working with social workers. It can involve connecting complex need clients to a range of services and support, including services such as housing assistance, health services, legal advice, education support and financial assistance (DHS 2013). The specific aims of Case Coordination are to deliver coordinated services that increase access to local support services, enhance assistance to people with additional needs through referral and follow up, support staff to consistently identify people with complex needs who would benefit from more targeted and specialised services, and enable partnerships and collaboration with local service providers to support better outcomes (DHS 2013).

A customer-needs assessment framework is being implemented to help DHS staff to identify those people in need of more intensive support. This assessment uses existing administrative information about a person’s circumstances as well as a series of additional questions. In turn, assessment allows services and referrals to be tailored to people based on their needs and circumstances at one of four levels of service: ‘self-managed’ (i.e. people who can independently access and navigate services without support or assistance), ‘assisted’ (i.e. people who, at certain times, are unable to self-manage as a result of particular circumstances and require additional assistance to access or interpret services), ‘managed’ (i.e. people requiring services to be coordinated into a support plan to meet compliance obligations or obligations such as parole conditions or child protection), and ‘intensive’ (i.e. people facing significant disadvantage or multiple complex challenges who require coordinated assistance) (DHS 2011, p. 6). The Case Coordination service approach is being trialled at 44 locations and evaluated in the period 2012–2014.

identify clients with limited capability, including cognitive impairment, having poor literacy or English skills, facing substantial disadvantage, having been bullied, exhibiting high anxiety and powerlessness. Other indicators suggested in our consultations included having mental health problems, difficulty communicating, limited education, a high level of anger and frustration, and fear of the legal system.

In their CLAC study, Buck et al. (2010) also described how some clients, although disadvantaged and vulnerable, had initially appeared capable of following the actions suggested to them (see Box 6.16). Mental or physical health problems affecting the capability of some clients only became evident later. Buck et al. (2010, p. 139) therefore cautioned that decisions about tailoring services to client capability are not necessarily a ‘one off’ and that judgments may have to be reassessed. This further suggests that client follow-up procedures might be important safeguards to avoid inappropriate unbundled forms of legal assistance being provided to limited capability clients.

However, there is still much to learn about how client capability affects legal problem solving and service provision. Further research is needed to determine how feasible it is to incorporate legal capability testing and screening, and whether it can be sufficiently streamlined to have utility.

Capability testing and screening will clearly not be appropriate in all public legal service settings. For example, targeted services, such as duty lawyer services and outreach to homeless persons,

Box 6.16: Determining client capability: CLACs

In their study of the early implementation of CLACs, Buck et al. (2010) found some examples of clients who had more limited capability than was initially apparent. One example was a seemingly capable client who had mental health problems and was on medication which affected her memory. She presented with a severe debt problem, having been referred to the CLAC by a debt management company. At her diagnostic interview session the adviser made an appointment to see a specialist debt adviser, she was given an information pack explaining what information she needed to bring to the appointment. After this session the client appeared to be confident about what next steps to take, because she had prepared similar information in the past. The diagnostic adviser believed the client could prepare for her appointment because she had brought in paperwork, made notes about what to do, and seemed organised. However, in her follow-up interview, the researchers found that the client could not remember having been asked to prepare anything, and was therefore unlikely to go prepared to the advice session with the specialist adviser. Buck et al. (2010) found that it was easier for advisers to recognise the capability limitations of clients who were repeat clients, and whose particular circumstances and situation were known.

may already have appropriately factored client need and capability into the model of service. Capability testing and screening will also be inappropriate where there is no capacity or flexibility in the particular service context to provide a tailored level of service. In such cases, clients may instead require onward referral to a more appropriate legal service.

Policy makers and service providers will also have to consider a number of other factors, including:

- **Problem characteristics/dispute resolution process** — Might capability screening have more or less utility with respect to certain types of legal matters, where a client may have to complete certain tasks or steps to successfully resolve their matter? Is it more appropriate in circumstances where the client faces certain potential adverse consequences or detriment?
- **Proportionality** — When will capability screening be disproportionate to the scope of the service available?
- **Timing** — At what points in the advice process, and at what points within a (holistic) legal service environment would capability screening have most utility? Might it have more utility within a joined-up service setting, or as a feature of client intake and diagnostic triage?
- **Assessor** — Is capability screening something that might be usefully performed by a non-legal service as a heightened form of referral, and might it be performed by a legal support officer within a legal service?
- **Formality** — How formalised should capability screening be? Should standard instruments and tools be developed?

Another approach to capability screening might be to identify and rate the capabilities that a client might be expected to have in order to make effective use of an unbundled form of legal assistance to successfully resolve their legal problem(s). For instance, a 'warning light' system based on certain client capability indicators might be utilised.

'Warning light' systems

To better support appropriate tailoring, a rating for various types of unbundled legal services (in form and mode) could be developed and assigned an explicit 'warning light' indicator. For example, a particular form of unbundled legal service, for a particular type of legal problem (and/or dispute resolution process) might be assessed as requiring a relatively high level of legal capability, and have a 'red light' attached. A 'green light' might attach to unbundled legal services that are suited to basic legal needs and capability, and 'yellow light' might attach to intermediate legal need and capability. Examples of a 'red light' form of unbundled service might be the provision of basic plain language information about legal rights concerning complex legal issues,

or matters where there is no single best course of action. For many types of legal problems, including many civil problems where it will be necessary to make a claim and negotiate terms of settlement with the other side, it is likely that many clients will also require some form of minor assistance in addition to legal information and advice to obtain a successful outcome. A ‘warning light’ system might therefore include suggested minor assistance that might be appropriate to complement other forms of assistance.

More sophisticated rating systems are possible, such as procedures that could assess broad legal need, assess legal capability using a range of indicators, and assess the anticipated legal capability requirements of various forms of unbundled legal services.

For instance, calibrating self-help resources (e.g. legal information, self-help kits, websites) in terms of tools such as the E&S Online component of PIAAC would enable functional literacy demands and capabilities to be matched to the tasks that clients are expected to complete to successfully resolve particular types of problems.

‘Warning light’ systems might also be used to flag limited capability clients, or clients who have received an unbundled form of service with a high capability rating, for follow-up.

Follow-up systems

One approach to more systematically managing the provision of appropriate legal services is to utilise follow-up procedures. This might be a useful strategy for fostering a ‘smart’ public legal services system, that is, one that has the capacity to learn ‘what works, and for whom’ from the experience of past service provision.

Because apparently straightforward actions can nevertheless present obstacles for some clients, follow-up procedures appear beneficial as a safeguard against inability to action any legal assistance received due to limited capability. For instance, it is simply not possible to ensure that all clients will have fully understood the information provided and recommended actions outlined at an advice session. Nor is it possible to ensure that clients will be able to reach a referral destination.

For example, in the context of telephone advice, Pearson and Davis (2002) suggested that follow-up systems were important to identify clients unable to action telephone advice and who may require more intensive legal assistance.

Smith and Paterson (2014) suggested that clients receiving telephone hotline advice in the following circumstances would potentially benefit from receiving follow-up contact:

- the recommended action is one where clients are less likely to obtain a favourable outcome
- they are representing themselves in court,¹²⁷ dealing with a government agency, or obtaining legal assistance from another provider
- the client is less likely to obtain a favourable outcome because of their characteristics or the nature of the problem.

Follow-up systems — such as follow-up letters to confirm advice and follow-up contact (e.g. a telephone call) to check whether or not those advised to take certain actions have been able to do so — have been identified as a feature that increases the effectiveness of telephone hotline services (Banks, Hunter & Giddings 2006; Smith & Paterson 2014).

Follow-up procedures could potentially be implemented for a range of self-help and legal information and advice forms of unbundled services. For instance, call-backs could be used to follow up on telephone, video-conference, email or face-to-face legal information and advice. After the passage of a suitable period of time (i.e. to give the client an opportunity to act on that advice), services could contact clients to see whether or not they have been able to resolve their legal problems and whether they might need alternative services.

¹²⁷ Self-representation in court, tribunal and other dispute resolution processes such as mediation are some situations where a client may require further assistance in order to effectively participate.

Follow-up might seek to determine:

- if the client has not successfully resolved their problem, why not, and whether an escalated form of service is appropriate
- if the client is still trying to act to try and resolve the problem, whether escalated service may be appropriate
- if the problem has been resolved, how it was resolved, and whether or not the person is satisfied with the outcome and the services they received.

In contexts or service environments where it is not feasible to follow up on all clients, clients might be followed-up randomly as a way of monitoring the effectiveness of service delivery, and/or flagged for follow-up on the basis of sociodemographic indicators or having received a 'red light' form of unbundled legal service. Used in conjunction with capability screening, follow-up procedures have the potential to collect valuable data about 'what works, and for whom'.

Routine follow-up, however, could help to determine what form and mode of legal services are more appropriate for what type of legal problems and type of clients, as well as potentially providing a safety-net to help avoid unmet legal need stemming from lack of legal capability.

At the least, for the purposes of evaluation, follow-up procedures should be considered in the context of new service innovations.

Implications of legal capability for evaluation of legal services

Legal capability has the potential to confound socio-legal studies and vex evaluation of legal service provision. Unless differential client legal capability is taken into account, evaluation of legal services may not provide an accurate picture of whether or not certain forms and modes of legal service provision 'work'. Capability factors may obscure the particular problem and people circumstances affecting appropriateness.

For instance, a service initiative may produce good outcomes for certain people, but not others, for reasons related to the knowledge, skill and attitudes of the client (i.e. legal capability). Thus, the legal capability assumptions that particular service initiatives are predicated on need to be made explicit for robust service evaluation strategies to developed. The aim of 'what works' evaluation of legal services is to test whether or not services work for specific client groups, and/or to identify for which clients particular services will work.

By way of example, a community legal education initiative to increase the ability of people to self-help for a matter, such as obtaining probate for an estate, is likely to suit some people more than others (see Lawler, Giddings & Robertson 2009). If sociodemographic factors and legal capability are not taken into account in the design of the evaluation, it is likely that whether or not the initiative is considered to be a 'success' will be affected by the legal capability of test and comparison groups. The community legal education initiative might interact with the legal capability of the participant. A test group that outperformed comparison groups in terms of their ability to successfully obtain probate on an estate may simply reflect greater legal capability within the group rather than the effect of the community legal education. To determine what types of services are necessary for clients with particular legal needs and capability, comparison groups need to be matched in terms of legal capability. Evaluation aims should include specifying in what problem and people circumstances different services 'work'. Ideally, a growing evidence base of 'what works, and for whom' with respect to diverse legal needs and capabilities across the community will contribute to the provision of more effective and efficient public legal services. The implementation of standard capability screening and follow-up procedures, although likely to be challenging and have resource implications, holds the promise of building a service system where systematic information about past service can be used to better inform future service.

Further research

Realising any potential access to justice and efficiency gains through the provision of legal services that are appropriately personalised in terms of legal need and capability requires further research. In particular, greater understanding of how legal capability interacts with the experience of legal problems, problem-solving behaviour and legal service provision is needed. With respect to legal

service provision, greater understanding of how legal capability affects the advice seeking dynamic at all points from legal problem perception to resolution is needed.

The concept of legal capability also requires further theoretical conceptualisation and articulation. In particular, greater understanding of the interrelationship between the knowledge, skill and attitude dimensions of legal capability is necessary to establish the most effective strategies for establishing foundational legal capability and potentially bolstering the legal capability of certain demographic groups, or people in particular problem circumstances.

Greater understanding of how legal capability affects legal service outcomes would, in turn, better inform legal service policy and practice. It is potentially a key to the collection of systematic, aggregated data necessary to provide more nuanced understanding of differentiated legal needs across the community and more sophisticated understanding of ‘what works, and for whom’ in legal services.

There is also opportunity for the legal sector to learn how personal capability has been operationalised within other sectors as part of client-focused and tailored services to better meet needs. Including what tools and procedures have been developed and implemented to support staff. For example, there is opportunity to learn from the evaluation of the DHS’s Service Delivery Reform (outlined above). In fact, it may be more efficient for the legal sector to learn from client-focused service provision and evaluation within the human services sector, such as health, homelessness and family support services.

Importantly, in the context of legal service delivery, further research is needed to determine how joining up with other services can optimally overcome the limitations of unbundled legal services that emanate from limited individual legal capability and how feasible it is to incorporate legal capability screening using standard indicators as a part of systematic client intake and diagnostic triage.

7. From theory to practice: the continuing challenge

A change of approach: client focused services

In Chapter 2 we set out evidence from recent Australian and international ‘legal needs’ surveys that is at odds with traditional legal service delivery models and, consequently, has influenced the movement of policy and delivery of public legal assistance services towards a greater client focus.

Findings from the LAW Survey and other recent legal needs surveys demonstrate that disadvantaged groups (e.g. those facing disability, homelessness, single parenthood, unemployment) are among the most likely to experience legal problems, particularly those concerning basic wellbeing (e.g. debt, employment, family, government, health, housing and rights), and that these legal problems exacerbate disadvantage. Recent findings also demonstrate that legal problems tend to cluster, within people and by problem type, and that this is part of a broader and complex clustering of interlinked legal, social, economic and health problems that threaten human services’ unilateral efforts at solution.

Just 9% of LAW Survey respondents accounted for 65% of legal problems, with these respondents disproportionately disadvantaged¹²⁸ and disproportionately suffering the impact of problems. Furthermore, just under half of these respondents also had non-legal public service needs, twice as many as other respondents.

Findings from legal needs surveys also make plain that income, distance, personal capability and the manner in which services are made available impact on people’s use of legal (and other) services. Moreover, findings reveal that personal capability links to the utility of different forms of assistance.

As is represented in Figure 7.1, these findings collectively entail that public legal assistance services should, as far as is practicable, be targeted (to those most in need), joined-up (with other services likely to be needed), timely (to minimise the impact of problems and maximise the utility of services) and appropriate (to the needs and capabilities of users).

In short, to best meet the needs of service users, service design should start and end with the needs and capabilities of users.

Of course, the reality of the public’s experience of legal problems does not provide the only impetus for moving towards greater user focus. There is also an economic basis for services to be targeted, joined-up, timely and appropriate. Targeted services can maximise social return on investment by ensuring limited public funds are first used to assist those facing the greatest number and most severe problems and least able to otherwise access help. Joined-up services potentially provide time- and cost-efficiencies in assisting with a range of linked problems, through swifter and more effective problem noticing and referral, economies of scale, reduction in the number of public service contracts and, where underlying problems are consequently dealt with, better and more enduring outcomes. Although, these benefits must be achieved against the certainty that collaborative working is resource intensive and ‘only to be considered where the stakes are really worth pursuing’ (Huxham & Vangen 2005, p.13). Timely services introduce efficiency through limiting problem escalation, adverse consequences and resolution process costs. In addition, services that are appropriate to users (in terms of mode of delivery and level of assistance) enable efficiencies by migrating users to the least expensive services that adequately meet their needs.

¹²⁸ In terms of disability, disadvantaged housing, unemployment, single parenthood and multiple disadvantage.

From theory to practice

In Chapters 3 to 6 we set out a framework to guide thinking about the operationalization of targeted, joined-up, timely and appropriate public legal assistance services.

While for the purpose of communication we have dealt with each of these four precepts separately, they are best understood as being four interconnected aspects of client-focused services. For example, targeting through outreach frequently depends on services joining-up or the use of technologies that require certain client capabilities. Outreach and joined-up services constitute means to deliver more timely services. More timely services need to be targeted to be cost effective if they involve widening the service net (relative to services delivered higher up the dispute pyramid (Miller & Sarat 1981)). And the benefits of timely services are undermined if these services are not also appropriate to need and capability.

Nevertheless, although there are commonalities in the character and challenges of targeted, joined-up, timely and appropriate public legal assistance services, each precept is conceptually distinct, encompasses a defined range of service forms and, in implementation, gives rise to particular considerations.

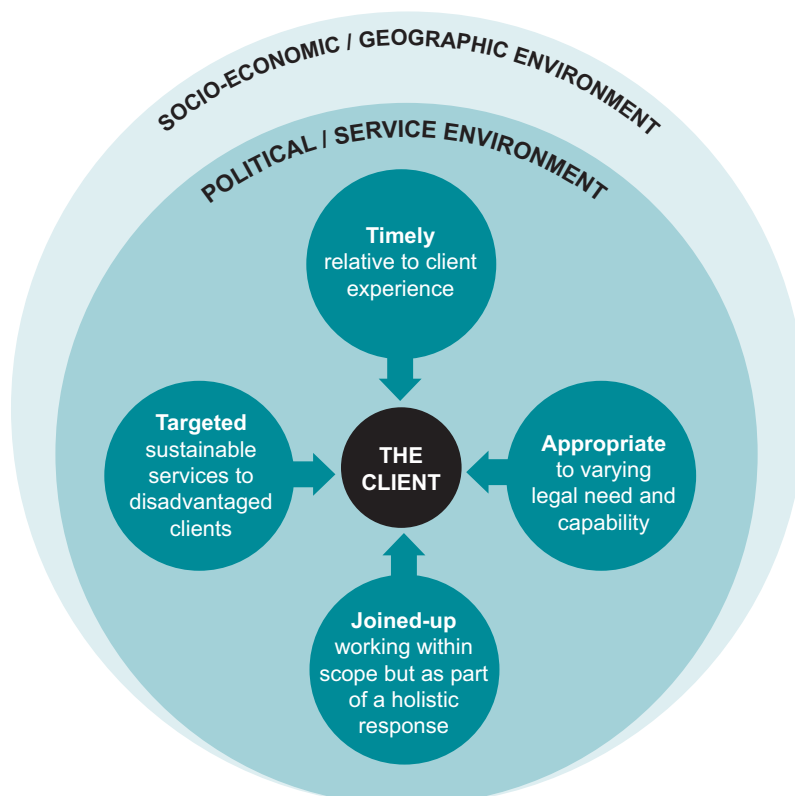
The Reality of Public Experience and the Reality of Service Delivery

The service environment

Whatever we now think public legal assistance services should look like across Australia, the development of services is constrained by past decisions, current arrangements, available resources and market conditions.

As is illustrated by Figure 7.1, the development of public legal assistance services occurs within existing socio-economic, geographic, political and service environments. The extent, form, reach and location of current services are a reflection of successive policy decisions (including sector-wide funding decisions), aimed at addressing the unique (and changing) needs and spatial distribution of communities, and market conditions.

Figure 7.1: A framework for client focused public legal service delivery



Patterns of service delivery thus vary greatly across Australia, reflecting the diversity of both public legal assistance funders, regulators and providers, and socio-economic, geographic and market conditions. There are also evident differences in the broad focus of services between regions. So, while services in many remote areas are forged by geography and scarcity of human services, many major city services are forged by population density and diversity and the complexity of the service environment.

While existing services provide a scaffold upon which to build future services, system inertia and limited resources to bring about or sustain change means that significant change to their current form will be difficult to realise.

Inertia is a characteristic of all systems, but particularly of complex systems. As Coiera (2011, p.2) has noted in the context of health systems, complexity and competing demands '[diminish] the potential for improving system fitness.' In the case of public legal assistance services, substantial complexity and competing demands are introduced by the fragmentation of accountability, policy, funding and delivery at national, state, regional and local levels, as well as by the diversity of forms of practice, areas of practice (in both legal and geographical terms) and client needs, and professional regulation.

The fragmentation of accountability, policy, funding and delivery presents a particular challenge to coordinating system-wide change in a public legal assistance services sphere that is continuously being reformed. While there are broad government moves to integrate human services, continuing development of Legal Assistance Forums (LAFs) and, in NSW, the Cooperative Legal Services Delivery (CLSD) program, and an emerging consensus on the general direction of travel for public legal assistance services, there remains inflexibility in the system attributable to tensions between different organisations' approaches, objectives, obligations, resources and vulnerabilities. Tensions even manifest within organisations, owing to the sometimes different service delivery constraints imposed by different funders; a particular issue for those organisations that receive funding from a range of sources (which are often the most integrated services).

The tensions that emanate from siloed government funding were recently highlighted by the Law and Justice Foundation's 2013 Justice Medal winner Alison Churchill, CEO of the Community Restorative Centre in Sydney:

we could encourage ... state and federal governments to actually move away from funding programs, particularly in the community, in silos ... As a CEO of a community organisation, I'm responsible for 18 different funding streams in order to deliver pretty much the same service and it makes it extremely difficult trying to actually deliver services in those silos, and particularly when ... people of multiple needs ... need a response that actually is providing a holistic service to people. And we need to be able to address funding to be able to better provide that.

Beyond this, with no substantial increase in funding into the sector being likely, change will need to be brought about using existing public resources – meaning that where there are no services, or services are unable to meet needs, change will need to be brought about through service innovation (e.g. technological), service efficiency (increasingly hard to realise against a backdrop of long-term funding pressure) or redeployment of resources – or through market/regulatory change. Change (such as increased targeting or increased differentiation in eligibility for services based on capability) is likely to create both winners and losers, among both clients and service providers. Accordingly, difficult decisions around where losses should fall will need to be made.

Where there could be benefits from joining-up legal services or legal and non-legal services (including for the purposes of providing outreach services), the availability of services will limit change. There can be no joining-up of services where there are no services.

Moreover, while there are substantial resources of lawyers and legal services in capital city and inner regional areas of Australia, there are remote areas where there are no legal services, no lawyers and, in a small number of very remote areas, where it is difficult to recruit and retain lawyers.

Also, moves to provide more tailored legal services rely on capacity for flexibility in the provision of (or links to) a range of services, along with the capacity of users to select from a range of services and/or organisations to assess client capability and shape services accordingly. As one service provider noted in our consultations:

because of [the] characteristics of our demographics it's not a hard and fast rule. ... Someone, for example, may be on a modest income but other parameters would dictate that it's just going to be too unreasonable for us to expect them to ... participate in the legal system... you need to be flexible.

The place of public legal assistance services

A hierarchy of public funded human services exists, with government expenditure on welfare, health and education (together accounting for 55% of all federal and state expenditure (Daley, McGannon and Savage 2013)) dwarfing that on justice related services. In addition, within the justice sector expenditure on criminal justice enforcement dwarfs that on public legal assistance services. Thus, public legal assistance services rarely have the resources required or jurisdiction to take a central role in relation to broad client welfare. Other human services have more established and substantial infrastructures to draw upon. So, while effective relationships with other human services are important to the delivery of targeted, joined-up, timely and appropriate legal services, public legal assistance services tend to be supportive, rather than central, to broad human service provision – although in some cases, and at particular points in time, legal issues can be the most important issues faced by clients.

In Chapter 4, we observed how limited resources (along with unfamiliarity among human service organisations of the range and work of legal services) entail that legal services struggle to engage with the full spectrum of human services. Rightly, therefore, local and regional efforts to increase collaborative practice focus on improving links within the legal sector, with outward engagement limited to the most closely related non-legal services. Also rightly, within this picture, legal services inter-agencies, such as CLSDs, interface with only a limited number of broad non-legal inter-agencies. However, at the organisational peak, state and federal level, there remains a need for broader strategic cross-sectoral engagement; to ensure that the relevance of legal issues to the full range of human services is understood, to highlight the role of legal services in achieving public service goals, to facilitate collaborative activity where it would be beneficial to the public interest, and encourage further investment by non-legal services in related legal services.

The place of legal services is also relevant to the delivery of timely services. In Chapter 5, we explained that, as legal problems have their roots in everyday life, a range of further underlying issues (such as mental health, family violence) may be relevant to them. In these cases, in the context of timely intervention, work beyond the law may best prevent legal problems from occurring or escalating. However, while there are grey areas around the intersection between law and other human services, such work beyond the law is evidently not the responsibility of legal services; although, in the context of joined-up services, it would be constructive for legal services to signpost, refer and (in the case of common issues) raise awareness.

Targeted, joined-up, timely and appropriate services

Targeted, joined-up, timely and appropriate services defined

In Chapters 3 to 6 we set out a framework for thinking about targeted, joined-up, timely and appropriate services.

Targeting and outreach defined

In Chapter 3 we noted, as is now well understood across the legal profession, that target clients do not always make their way to lawyers' offices. People's personal circumstances and legal capability can constrain them from recognising and resolving their legal problems. In addition, environmental, systemic and cultural factors also act to make justice inaccessible, including distance and scant service infrastructure in remote Australia, cost, and the fragmentation of the legal system.

Consequently, legal services need to be more proactive in targeting and reaching their clients. Possible strategies for facilitating broad community access to justice and fostering a 'no wrong door' type approach include simplifying the gateways into mainstream legal services, more systematic use of non-legal professionals as legal problem noticers and better legal diagnosis and triage.

In Chapter 3 we also recapped how disadvantage is associated with heightened vulnerability to legal problems, lesser capability to resolve problems and, as a consequence, further disadvantage. Thus, the most needy legal clients are often socially excluded groups who can face particular difficulties in accessing mainstream legal services. Outreach is therefore a necessary aspect of

targeting in order to reach particularly marginalised groups, and has a vital role in bridging barriers created by limited personal capability and by vast distances in remote Australia.

Outreach involves service providers making a proactive attempt to reach clients rather than waiting for clients to come to them. Broadly defined, legal outreach comprises any legal service delivery other than the traditional delivery of face-to-face consultation at the legal service provider's primary office, which aims to enhance the accessibility of the service to the target client group.

There are a diverse range of legal outreach models, which reflect historical differences in the practices of different legal services, as well as attempts to address the heterogeneous needs of different target groups and the varied constraints embodied by different geographical contexts, resourcing and local service infrastructure. Outreach models vary in their target clients (e.g. a specific disadvantaged group, a RRR area with few local services, a location frequented by clients with legal needs), legal practice areas, interventions (e.g. community education, advice, minor assistance, representation), modes of communication (e.g. in person, technology-based, inreach), legal and non-legal staff, collaboration with other agencies (e.g. host agencies), timeframes and administrative arrangements.

Joined-up services defined

In Chapter 4 we explained how the joining-up of legal services with other legal and non-legal human services can take many forms. For example, services can be joined-up formally or informally, episodically or continuously, horizontally or vertically, within sectors or between sectors, visibly or invisibly, physically or remotely, voluntarily or forcibly, for private purpose or for social goals, and they may be joined to any extent on a continuum that extends from almost complete separateness to full integration. Commonly recognised points on this continuum are networking (which involves information exchange), coordination (which involves information exchange and alteration of activities), cooperation (which involves information exchange, alteration of activities and resource sharing), collaboration (distinguishable from cooperation through the additional aim of service improvement via partner agencies learning from each other) and integration (which involves organisations merging). In general, in moving along the continuum towards integration, autonomy is surrendered to trust and the resources required to manage collaboration increase.

Early intervention defined (and the emergence of the concept of timeliness)

In Chapter 5 we examined the concept of early intervention. In the legal sector, early intervention is most commonly described as less intensive assistance provided earlier in a legal process with the objective of resolving problems at an earlier stage and at lower cost. The lower cost is taken to allow services to be provided in respect of a greater range of clients or issues. Less commonly, early intervention in the legal sector is described as targeted and intensive assistance to prevent problems from entrenching or multiplying, and so prevent their bringing about or reinforcing disadvantage. This conceptualisation is more common beyond the legal assistance sector (e.g. in the child development field), but resonates in the legal assistance sector in the context of problem clustering. The existence of multiple conceptualisations of early intervention fuels ambiguity in descriptions of early intervention in the legal context. This ambiguity is also a symptom of the inherent tension between the common conception of early intervention and policies around targeting.

Ambiguity also stems from there being various notions of 'early' utilised in the literature and in practice: in processes, the course of problems and people's lives.

In the context of legal services aimed at helping to break longer term cycles of disadvantage, we suggest that a focus on the timeliness of assistance, relative to the experience of the client, may provide a more flexible and responsive framework.

Legal capability defined

In Chapter 6 we discussed the concepts of personal and legal capability and how they affect legal problem-solving behaviour and appropriate legal service provision. Appropriate legal services, in this context, are simply services that match client legal need and capability.

The concept of legal capability can be conceived of either as a subset of broader 'personal capability' or as necessarily encompassing those elements of personal capability a person requires to be capable in the domain of the law and its institutions.

Coumarelos et al. (2012) observed that conceptual approaches to legal capability typically span three areas — knowledge, skills, and psychological readiness — and defined legal capability as the personal characteristics or competencies necessary for an individual to resolve legal problems effectively (Coumarelos et al. 2012).

Similar definitions of legal capability have been proposed by others who have suggested that legal capability comprises the abilities a person needs to recognise and effectively deal with law-related issues, and what a person might be expected to know and be able to do when faced with legal problems.

Parle (2009) outlined six legal capability domains affecting ability to resolve basic legal problems: knowing rights and remedies, spotting a legal issue, knowing where to go for help, planning how to resolve the issue, communicating effectively and managing emotions. Collard et al. (2011) developed a legal capability matrix comprising a mix of skills and personal attributes across 22 components of four domains: recognising and framing the legal dimensions of issues and situations, finding out more about the legal dimensions of issues and situations, dealing with law-related issues, engaging and influencing.

The dimensions of legal capability are not independent, but rather are bundled and mutually interacting. Greater or lesser ability in any dimension is likely to impact on other dimensions and manifest in qualitatively different problem-solving behaviour.

Considerations for planning and service delivery

In Chapters 3 to 6 we also set out current understanding of the considerations and approaches that should be adopted in developing public legal assistance services that are targeted, joined-up, timely and appropriate.

There are a broad range of issues that need to be considered as part of implementing service change, including defining the aims of change and issues related to the process by which the change is to occur. Some are particular to the service model concerned, but others more generic. These include issues such as:

- the clients' legal needs that are not being best met
- the nature of legal services gaps or deficiencies
- the identity of target clients
- the capabilities of target clients and the obstacles they face
- the infrastructure and resources available to deliver change
- the current state of knowledge about relevant service models
- what service model will meet the needs and match the capabilities of target clients
- what is needed to implement the service model
- what difference implementation of a new service model will make
- how difference will be brought about
- how difference will be evaluated.

In the remainder of this section, we recap the particular considerations for planning and service delivery that relate to achieving targeted, joined-up, timely and appropriate legal assistance services.

Considerations in reaching out

In Chapter 3 we described how effective outreach is characterised by a number of key features, and how thoughtful planning to expedite the achievement of these is crucial. Effective legal outreach fills a service gap by targeting and meeting legal needs that are not routinely addressed by existing services. It successfully engages the target client group through building rapport and establishing trust in the credibility of the service. Effective legal outreach is also characterised by delivering services that are appropriate to the client group, providing accessible, responsive, efficiently administrated and sustainable services. The target clients of legal outreach services are often disadvantaged clients with multiple legal needs that can encompass more than one legal practice area, broader human needs and low levels of legal capability. Thus, successful legal outreach typically entails client-centred services that involve effective partnerships and referral networks with other legal and non-legal services.

Consequently, the first important step in planning legal outreach is identifying and understanding the target client group (Figure 3.1). The particular legal needs of the client group and their legal capability and the existing barriers they face to accessing legal assistance will ideally influence the location and type of legal outreach service that is established. Other important considerations in planning a new legal outreach service are the opportunities and constraints provided by the geographic and service environment within which the client group is situated. These considerations will again help to develop and situate a viable legal outreach service, by, for example, identifying physical barriers or service gaps that must be overcome, and by connecting with leaders or organisations that are trusted by the community and could serve as facilitators, host agencies or partners. Where legal outreach is sited at a host agency, effective collaboration with the host agency is critical.

Considerations in joining-up

In Chapter 4 we indicated that the challenges to successful joint working are many, complex and considerable. A range of factors is associated with good collaborative performance (Table 4.3), starting with shared and achievable aims. Other factors include adequate resourcing, political and organisational commitment, flexibility, leadership, compatibility of organisational cultures and professional ethics, continuity of individual and organisational membership, good communication, information sharing, policy and regulatory stability, user trust, inclusion of user perspectives and appropriately conceived and well-recognised target outcomes.

However, success in collaboration is not simply the product of there being a greater number, or levels, of these factors. Very different patterns of supply, demand and need in different places, populations and in respect of different types of service entail that attempts to join-up services must be grounded in their unique circumstances. Moreover, more can sometimes be less. For example, while collaboration benefits from shared aims, too detailed elaboration of aims can highlight difference and introduce tensions between organisations. In this context, organisations need space to pursue their own agendas within a common framework.

It is also important to recognise the temporal dimension of service integration. At any given point in time, some services are already well connected, and already have extended reach to clients and the issues that they face. Thus, it may be more effective and efficient to join up, where possible, with those services that are already joined-up/integrated.

While not often a practicable solution to bridging distance between services in remote areas, or in the context of looser forms of collaboration, co-location of staff is a powerful facilitator of effective joint working. Co-location results in greater opportunity for staff contact, trust building, knowledge sharing and inter-professional understanding. Co-location can also help in the management of clients from one service to another. From a user perspective, co-location also provides a more general convenience and can promote awareness of services.

As well as the challenges that are inherent in processes of collaboration, there are also distinct challenges that attach to efforts to join-up services from the outside (e.g. through political and/or financial exertion in a manner identified by government or other funders/stakeholders as appropriate). As well as the service environment dictating that joined-up services will look very different between different areas, and the preferences of funders varying from context to context, choices around how to exert external influence over service development are also constrained by authority and cost.

Whether at a national, state, regional or local level — and whether at a human services or single service domain level — certain basic options are available to those wishing to join-up services from the outside: development of infrastructure, incentivisation, compulsion and replacement (Figure 4.4). As choices progress towards compulsion and replacement, there is likely to be a trade-off between control over, on the one hand, the form of services and, on the other, market disruption and diversity of supply. Thus, choices present significant challenges as well as potential benefits.

Development of infrastructure refers to the development of resources that support collaboration between services, but do not constitute services. Examples include service directories, opportunities for co-location, fora for networking and regulation/deregulation. Some opportunities for co-location, such as the Lotteries Houses in Western Australia, can be achieved at relatively low-cost. Networking initiatives also have the potential to produce considerable gains for relatively

little cost. For example, the CLSD program in NSW, which, helped by modest expectations, a long-term outlook and harnessing the enthusiasm and commitment of local service providers, is 'viewed as a highly effective program within the constraints of its resource capacity and framework' (Ryan and Ray 2012, p.5). At a peak organisation level, the development of the CLSD program is mirrored by the development of state and territory Legal Assistance Forums (LAFs). Changes in the regulatory environment for legal services can also have profound impact on service operation. So, while the impact of Multi-Disciplinary Partnerships (MDPs) and Incorporated Legal Practices (ILPs) has not yet been as far reaching as that of the similar Alternative Business Structures (ABSs) in the single legal jurisdiction of England and Wales, it is evident from the British experience that new and distinct forms of service can be realised through regulatory change. However, regulatory changes may have effects beyond those initially anticipated (or hoped for) and the impact of regulatory change is not always positive to desired outcomes.

Incentivisation refers to the provision of financial or other incentives to increase collaborative activity. Examples include payments and targets linked to collaborative activity. Legal Aid NSW, as well as providing strategic and administrative support for CLSDs, earmarks modest funds to assist with CLSD projects. Paradoxically, the modesty of funding may help to yield disproportionate benefit. It has been argued elsewhere (Naylor 2002) that while substantial funding can entice additional players to the table, and accelerate processes of joining-up, an absence of financial incentives to engage in partnership work can bring about inherently strong collaborations.

Compulsion refers to collaborative activity being made a mandatory aspect of service provision (in order to enable funding, etc.). Huxham and Vangen (2005) have argued that compulsion brought about through threat to withdraw resources can undermine ownership and commitment. However, the joint procurement (by the Legal Services Commission and local government) of one-stop shop Community Legal Advice Centres (CLACs) in England and Wales provided the impetus for real and seemingly positive change in the structure of local services. Although, it also demonstrated the disruption to inter-service relationships and local markets (involving sometimes substantial reductions in market diversity, where losers in the process sometimes exited the market) that can be brought about by major change in funding policy and the vulnerability of whole-system change to policy reversal. The cuts to legal aid in England and Wales that followed the global financial crisis saw CLACs abandoned and realised the risks of a policy 'U-turn'. As the CEO of Citizens Advice observed (Ricketts 2008):

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

Replacement refers to the introduction or replacement of existing services with new services that contain desired collaborative features (as happened in the case of some CLACs). This is a resource intensive option that requires effective authority and control of the sector. Thus, it provides particular challenges in the Australian context, where the legal services sector is characterised by diversity of service funders and providers, of purposes, policies and ideologies, of responsibility and accountability, and of social and geographical environments. The sector is also one in which funding is limited and in many parts of rural Australia there are currently few, if any, services to replace.

Considerations in timely intervention

In Chapter 5 we highlighted a number of challenges to the implementation of early intervention services, as currently conceived in access to justice policy.

While there is a simple attraction to providing less intensive services early on in the lifetime of legal issues, to bring about early resolution, early intervention, as so conceived, may not best match the needs and capabilities of the most disadvantaged. In missing this group, early intervention may also miss the associated concentration of legal need.

Mismatches may firstly occur due to the timing of interventions relative to the way that disadvantaged people tend to experience and respond to legal issues. For instance, services directed to early stages of legal problems or processes to avert crisis do not accord with the reality that for some people it is the crisis that triggers help seeking and readiness to act.

Also relevant are the range of other factors beyond the law which may also affect the escalation of legal issues. Importantly, for clients with complex needs, the timing of legal assistance cannot be

considered uni-dimensionally (early or late in the progress of a single legal issue or legal process). Instead it must be considered relative to the range of other influencing factors which form the context of the particular legal issue.

A mismatch may secondly occur if the service provided is not appropriate to need and capability and thereby fails to address or prevent the escalation of issues. Those with low legal capability will generally require relatively resource intensive services, and those who live chaotic lives may lack the life stability to facilitate ongoing solutions.

The simple economic idea of making savings through earlier intervention to allow services to be provided to a broader range of clients/issues is also problematic. Richard Susskind introduced the early intervention analogy of building a fence at the top of a cliff to save on the cost of emergency treatment for those who fall off. But it is not evident that such fences save money. As we asked in Chapter 5, how long and high does the fence have to be? Does the low fence we can actually afford risk making little difference to those who would not fall in any case, but not be high enough to stop those heading blindly for the cliff? What of those who have already fallen?

The point that this analogy raises is simple: far more understanding of client need, the propensity and capability of clients to utilise services, and the effectiveness of early intervention services is required before the case can be made that they present a cost efficient manner to address the needs of target clients. In short, if early intervention services do not address the legal issues faced by those with the most need, these services become an adjunct to rather than a replacement of crisis response services, further stretching already limited resources.

An alternative framework which focuses on the *timeliness* of services, *relative to experiences of the client*, may better help 'break the cycle of disadvantage'. In the words of an early intervention duty lawyer:

I still see us [duty lawyers] as early intervention, even when we come in at a really late stage, because for that client it's the earliest intervention that they've had. (in Forell & Cain 2012, p.34)

This more responsive approach can take account of:

- when and where legal issues are experienced by the client (in a complex context where other factors may affect the impact of assistance) and
- when clients are ready to act (the common experience of crisis-driven help seeking) and how help is sought.

Conceptualising early intervention in the legal assistance sector in terms of the *client's* experience also raises the further possibility of understanding timeliness more broadly, and relative to significant 'transition' points in a client's life course, or in the life of a problem. This approach to early intervention is consistent with that used in other sectors (see Manning et al. 2006) and allows legal assistance to be provided when and where it is ready to be used, and at a point in people's lives when it could have a major impact. Examples of legal assistance strategies which attend to timeliness in this way include:

- outreach to those at particular risk of mortgage hardship following retrenchment, and the physical location of relevant legal assistance in identified mortgage hardship 'hotspots'
- providing a range of legal and other assistance services on site to people immediately following bushfires and other natural disasters
- family law outreach to local courts on Apprehended Violence Order list days.

The timeliness of these approaches operates in two ways. First, such approaches provide assistance at the time and in a place that it is relevant to current circumstances, is useful and ready to be used. Second, and recognising the clustering of legal issues, assistance services at these key 'transition' times can be provided with the foresight of service providers (but not necessarily clients at this point) about other legal issues likely to surround or follow the crisis. Service provision can be appropriate to immediate and potentially imminent need.

In Chapter 5, we also discussed the role and interaction of legal and non-legal services in prevention and early intervention, noting that many of the factors which contribute to the

development of legal problems lie outside the law. This has immediate implications for the scope of legal work and the role of legal services at this point. For this reason, and recognising that disadvantaged clients of public legal services are often, and more immediately, the clients of other services, we discussed the importance of situating legal assistance in a broader social context. As the needs of disadvantaged clients' commonly stretch beyond the legal, it is beyond the scope of legal services to be 'holistic' from the client's perspective in terms of addressing all their (legal and non-legal) needs. Rather we suggested that legal services connect with the broader service network in order to together provide holistic client centred responses (see Chapter 4). That noted, we also acknowledged the experiences of those we consulted for this study. At times, frontline legal practitioners may be required to define the boundaries of legal assistance work in this complex field. They should, though, avoid the temptation to act 'like they're lone rangers' (respondent quoted in Forell and McDonald 2013).

A related issue concerns where responsibility and service capacity may lie for assisting clients with non-legal tasks that may be essential to the resolution of legal issues. To address this question, it is necessary to identify the range of tasks essential to resolving legal issues in a timely manner, particularly for clients with low capability.

Moving beyond the individual client, is the quintessential 'early intervention' role of systemic advocacy, law reform and strategic litigation in preventing and reducing the escalation of legal issues for disadvantaged people. Advocacy around fine enforcement reform is an effective example of this. Public legal services are at the intersection between law and community. They are uniquely placed to document how law impacts upon disadvantaged people, such as where law has (or proposed reform may have) unintended detrimental impacts that further entrench disadvantage. Their ability to act as 'canaries in a coalmine', however, depends on their capacity to participate in law reform. Funding requirements and competing demands on scarce resources may mean that individual legal assistance services are prioritised (see Nheu & McDonald 2010).

In sum, in Chapter 5 we advocated for a legal assistance framework that takes a broader and more client centred view of timeliness and which revisits what type of assistance may actually prevent the experience and escalation of legal issues but remain within the sphere of legal services.

Considerations around legal capability

In Chapter 6 we noted how legal capability, while a deceptively simple concept, is a challenge to operationalize in a service setting. Capability influences whether those facing legal problems seek any help and can use the help that they receive. Knowledge of the law or available services, in themselves, are unlikely to be sufficient to prompt a person to try to use the justice system to resolve legal problems. Even where legal information strategies can overcome knowledge barriers to actions, skill and psychological factors remain.

Public legal assistance services in Australia occur largely through a mixed-model of unbundled services. Unbundled services can match legal need and capability, but research suggests limits to the appropriateness of unbundling in terms of form and mode depending on the type of legal matter and individual client capability.

As in the case of early intervention, policy and resource tensions underpin support for unbundled public legal services – the choice between using scarce resources to provide full representation services to a fraction of disadvantaged clients (and perhaps zero services to the remainder) or to provide some assistance services to a broader range of people. This utilitarian quandary of benefit distribution was highlighted by one Sydney CLC respondent as being one of the main challenges to public legal assistance service providers:

Do you plough more resources into helping fewer people more or do you help more less? I think that is the biggest challenge actually for the legal service is, yeah, where do you strike that balance?

A challenge made harder by the need, expressed by a senior legal aid manager, to maintain broad support for public services.

Importantly, though, provision of inappropriate services is wasteful, with those who receive services beyond their needs utilising resources that could be deployed elsewhere, and those who receive services falling short of their needs requiring redirection to more appropriate services or suffering poor outcomes.

To appropriately meet the needs of some clients with limited capability, more targeted, integrated and timely services may be required. Where there is a mismatch between the need and capability of the client and the service accessed, quick and effective referral is crucial to successfully manage client expectations, facilitate access to an appropriate referral destination and avoid referral fatigue.

Chapter 6 set out a 'ladder of unbundling' showing how client contribution to outcomes increases as legal services are increasingly unbundled. Personal and legal capability is therefore increasingly important in terms of the effectiveness of more unbundled services. For example, legal information, self-help and advice services are likely to be ill-suited, ineffective and inappropriate for many clients with limited capability, who also require at least some form of minor assistance to action legal information and advice and obtain successful outcomes. Conversely, resource intensive help are likely to be inefficient and inappropriate for clients with higher levels of capability when dealing with relatively straightforward legal issues.

Deriving benefits for clients and service providers in a legal service environment by tailoring services is a challenge. It requires, firstly, the ability to quickly determine or assess client need and capability, and secondly, an ability to meet those identified needs through either appropriately tailored assistance or referral. Ultimately, there is a question of how public legal services can be better supported to recognise client need and capability and appropriately tailor services, and how greater understanding of personal and legal capability can better inform policy and practice.

In Chapter 6, we also discussed how legal services might be more appropriately matched to client need and capability across client in-take, diagnostic triage, referral and follow-up, through effective non-legal spotting and signposting, service eligibility criteria, and seeking to better support practice through the assessment of capability and warning-light systems. We note that while a broad range of methods have been developed to identify legal need, little attention has been paid to the development of methods to measure associated capabilities beyond the financial.

An incomplete picture

The public experience of legal issues

While the LAW Survey, other recent legal needs surveys and broader access to justice research provide a broad and compelling picture upon which to base access to justice policy and further moves towards the delivery of targeted, joined-up, timely and appropriate services, there remain many parts of the picture that have been poorly or only partially researched.

There remain significant sections of the population who do not feature prominently in 'representative' legal needs surveys, because of limitations of sample frames, lack of capability/inclination to participate, or unavailability of indicators within samples. Children, rough sleepers, prisoners, people in hospital/care, people (especially Indigenous people) living in remote areas and people who do not speak English provide examples of those routinely excluded from or under-represented in surveys. While the needs of some of these groups have been explored through qualitative studies (e.g. Forell, McCarron & Schetzer 2005; Karras, McCarron, Gray & Ardasinski 2006; Grunseit, Forell & McCarron 2008), the specific needs of many groups remain unclear.

While there is much similarity between survey findings in different Australian jurisdictions and internationally, there is little research examining how the public's experience of legal issues changes over time.

Also, while this paper has focused on individuals and services directed towards individuals, the social and economic cost of legal problems faced by businesses is also considerable. Thus, a small number of legal needs surveys have recently explored the experiences of legal problems of, in particular, small businesses (Asia Consulting Group and Policy 21 2008; Croes & Maas 2009; Croes 2012; Orima Research 2010; Pleasence & Balmer 2013). These surveys have uncovered similar issues to legal needs surveys of individuals, including uneven vulnerability, problem clustering, problem impact, unmet legal need and legal capability, and they have placed these issues in the context of economic growth.

In relation to legal problem experience, relatively little is known about how problems endure or how the experience of enduring problems changes over time. Linked to this, while the

phenomenon of problem clustering is now well understood, it is not known how clusters evolve over time, nor how issues may cluster around significant transition or crisis points in people's lives (e.g. family breakdown, loss of employment, imprisonment, onset of sudden illness, chronic illness and aging). Nor are the mechanics of clusters (i.e. the causal pathways involved) clear.

Moving on to problem resolution behaviour, the psychological and emotional aspects of decision-making in legal processes remain largely unexplored. And, while there is a growing literature around people's understanding and attitudes towards the law, there has been only limited research exploring how people conceptualise the problems they face (Pleasence, Balmer & Reimers 2011), and none extending to conceptualisations of the services that are available, and how conceptualisations of problems and services interact. Linked to this, there is little known about how non-legal professionals conceive of legal issues and their awareness of law and legal services.

It is also unclear what the triggers are that lead people to take action or seek advice to resolve legal problems, and whether there are particular events which trigger help seeking more than others, potentially acting as 'draw cards' to legal services. A deeper appreciation of the motivating (and demotivating) factors to help-seeking, the notion of readiness to act and how best to capitalise on these, may help better shape the front-end of legal service delivery. There is also scope to further explore whether there are some legal problems which act as 'red flag' indicators of further or complex need.

Although an increasingly detailed picture is available of the steps people take to resolve their problems, there is a notable gap in relation to the extent and manner in which people use the different types of self-help materials available to them, either independently or as part of a broader structure of unbundled services. There is further to learn about the limits and opportunities for unbundling services and sharing tasks between individuals, joined-up public legal services, private legal services and non-legal support. Similarly there is little known about what people think about or want from the various self-help options available to them. And despite the increasing importance of the Internet, only modest efforts have been made to establish how people go about seeking help online, and how this varies between people and the nature of the help sought.

Linked to this, research is also needed to determine the best measures of the different dimensions of capability, and whether and how this can and should be applied in service delivery and monitoring.

Finally, at the system level, in a context of continuous service development and change, it remains necessary to monitor the broad public experience of legal problems. Patterns of experience are fairly consistent between jurisdictions, and over time. But the details change, and monitoring enables complications to be identified.

What works?

Across all aspects of delivering targeted, joined-up, timely and appropriate services, there are substantial gaps in understanding 'what works'.

Unpacking 'what works?'

In the wake of legal needs surveys around the world producing broadly consistent findings, there is extensive evidence demonstrating how legal need is broadly patterned across the community. While there remain research gaps — some of which we noted in the previous section — policy, operational and research focus has accordingly shifted to 'what works' in redressing identified legal need.¹²⁹

¹²⁹ For example, in the United Kingdom (e.g. Day, L, Collard, S & Hay, C 2008; Smith, M & Patel, A 2008; Canada (e.g. Focus consulting 2004; 2006) and Australia (e.g., Lawler, Giddings and Robertson 2012; Porteous 2012; NSW Department of Attorney General & Justice 2011, Curran 2012). In Australia, the Law and Justice Foundation has been in the vanguard of 'what works' research and evaluation. Recent examples include systematic reviews of outreach legal services to people with complex needs (Forell and Gray 2009) and legal assistance by video conferencing (Forell, Laufer and Digiusto 2011); an evaluation of the Legal Aid NSW and NSW Consumer Credit Legal Service Mortgage Hardship Service (Forell & Cain 2011); an analysis of clients, matters and determinations of the NSW Mental Health Review Tribunal (Cain, Karras, Beed & Carney 2011); an evaluation of the Legal Aid NSW Family Law EIU duty lawyer scheme in the Parramatta Court (Forell & Cain 2012); a two part review (including a statistical overview and an analysis of best practice drawn from the extensive experience of practitioners) of Legal Aid NSW outreach legal services (Forell et al. 2013a; Forell et al. 2013b).

However, ‘what works?’ is really a convenient short-hand question. To effectively redress legal need through effective service delivery, what we really need to be able to answer is the more complicated ‘long-hand’ set of research and evaluation questions: ‘what works, for whom, when, why and at what cost?’¹³⁰

Purpose of evaluation

Fully establishing the impact of services and service change is complex and, as we discuss below, requires resources and expertise that are not commonly available within legal assistance service agencies. As we also discuss below, evaluation of service effectiveness and efficiency encompasses a broad range of questions and issues (informed by service aims, target client needs, infrastructure, funding, etc.), all of which can assist to shape effective and efficient service delivery.

As the Law and Justice Foundation of NSW has argued, the primary role of evaluation — and related monitoring and data collection — is to inform decision-making; and decision-making can be informed through many means. Without such purpose, monitoring and evaluation risk only adding further stress to an already stretched service environment.

The Foundation has also detailed how purposeful evaluation is an integral part of service planning and management – from the operational to the broad strategic level. Throughout the lifespan of a service there are different types of evaluation questions that can be asked (reflecting different purposes). And there are also questions that can be asked of services collectively.

The model set out in Figure 7.2 is helpful to place different types of research questions (and evaluation) in a policy and operational context. Figure 7.2 illustrates that outcome evaluation and cost effectiveness studies are important forms of evaluation - but only one type of evaluative work. Also, as our earlier descriptions of the patterns and diversity of service funders and providers across Australia make clear, evaluations of what works may be specific not just to particular types of client, but also to particular forms of services or service environments.

Different types of evaluation question, and questions posed by different stakeholders, also require different research designs and data collection strategies (Diguisto 2012, pp. 9-10), of differing complexity and cost. Addressing ‘what works’ requires a multifaceted, coordinated and systematic approach to service monitoring and evaluation. A clear focus on the purpose of any particular research or evaluation task, set against the capacity to complete that task accurately and effectively should inform choices about where to focus the research dollar.

Figure 7.2: Evaluation in a policy and operational context



¹³⁰ Detailed discussion of evaluation of ‘what works’ in the public legal assistance sector is set out elsewhere (e.g. Forell & McDonald 2013).

Responsibility

Broad improvement of our understanding of ‘what works’ will require that policy makers, service providers and researchers become more ‘joined up’, that partnerships are forged, and there is collaboration, coordination and systematic learning; perhaps even the development of a formal research framework that stakeholders can contribute to realising. For example, service providers have frontline legal service delivery expertise essential to operationalizing and reforming service provision, but tend to lack the research and evaluation expertise. Research agencies have evaluation expertise but do not have the operational experience of service delivery nor access to frontline service environments.¹³¹ Research that does not draw upon the rich and nuanced understanding of practitioners cannot accurately reflect the reality of service provision. Also, service funders generally have a broader perspective and need to understand disparate services and the operation of whole systems.

Already imbedded in the allocation of some funding, is the requirement that strategies are ‘evaluated’. The expectation is that strategies will be evaluated in terms of their benefits or impact. However, the evaluation of effectiveness and cost effectiveness in complex social contexts is a specialist task. As argued by the Law and Justice Foundation in Digiusto (2012, p.1):

demonstrating that a strategy actually caused a desired outcome – that is, that the strategy rather than any other factor has actually made the difference – can be an ambitious task. Evaluating effectiveness in causal terms requires careful planning, dedicated resources, and particular expertise and methodology. This is especially the case in sectors such as the legal assistance sector, which have not, as yet, widely used this approach.

Digiusto (2012, p.10) further suggests:

Given that funding for such research tends to be very limited in the legal assistance sector, it may be appropriate to consolidate resources and expertise so that fewer, well designed evaluations are produced, rather than more evaluations which fall short of accurately assessing effectiveness. In addition, resources should be provided to increase in-house evaluation capacity and evaluation activity in the legal assistance sector, and to develop a detailed, outcome-based evaluation framework for legal assistance services.

This raises two key questions. What type of evaluative work it is appropriate and effective to require of (and importantly within the resources and capacity of) front line service workers, with guidance from specialist researchers? And what type of work needs to be undertaken at a more systematic, larger scale, or in a more coordinated way, by regional, state or federal stakeholders, through specialist researchers.

As the most complex and resource intensive type of research, outcome focused work may be best conducted strategically and by specialists. It is not appropriate to expect already stretched frontline services to, in addition to their primary task, to have the time and skills to undertake this type of research.

In our Research Alliance with Legal Aid NSW, we have first explored how the role of specialist evaluators integrates with the work of front line service delivery. We have also explored the roles of program manager relative to evaluator. We have further noted the very challenging data collection and data management issues that services need to address to facilitate effective monitoring and evaluation into the future (Forell & McDonald 2013).

Learning from others

Just as the legal sector has opportunities to lever off existing human services scaffolding in the delivery of legal assistance services, so too it has opportunities to learn from the experiences of other sectors in reaching people with complex needs, assessing client need and capability and meeting those needs. While some of the issues facing different sectors will be unique, there are also strong commonalities in the challenges for services seeking to assist this shared group of very disadvantaged clients. This is evident in the very rich material provided by non-legal interviewees

¹³¹ Recognising this, the Law and Justice Foundation of NSW and Legal Aid NSW formed a Research Alliance to undertake evaluative research and build capacity within Legal Aid NSW to support and participate in evaluation. The most recent evaluation studies undertaken by the Foundation have been undertaken as part of this alliance.

for this study and reported in Chapters 3 to 6. Research and evaluation undertaken in other human service environments, on service delivery to people with complex needs, may also provide direction for service delivery in the legal assistance sector.¹³²

Thus, to supplement original research and evaluation undertaken within the legal assistance sector, efforts should be made to systematically learn from experience, research and evaluation in other sectors.¹³³

Where next?

The preceding text provides a framework for discussion around how Australian access to justice research, policy development and the delivery of public legal assistance services can best build upon the substantial evidence base made up of findings from 'legal needs' surveys undertaken in Australia and overseas. However, one final question remains. Where does this framework take us in policy, operational and research terms? In this final section, we therefore suggest what we see to be the key issues in each of these spheres.

Policy (and funding)

In policy terms, this discussion paper draws attention to a number of critical issues that need to be addressed to enable public legal assistance services to effectively and efficiently meet the needs of their clients.

It is evident that clarity is needed as to the purpose of individual public legal assistance services. For example, our analysis and discussions with human service professionals in New South Wales repeatedly made plain the dichotomy between general and targeted services. As a Sydney CLC worker asked, "Do you plough more resources into helping fewer people more or do you help more less?" The question has particular pertinence, having arisen in all of Chapters 3 to 6. To what extent should resources be diverted away from helping the maximum number of people towards helping the most needy people in the most effective way? This is a policy question, along with subsidiary questions around prioritisation, and its answer, as provided by all those who have ultimate responsibility for the provision of public legal assistance services, dictates the entire operation of the sector.

However, it is also evident that responsibility within the public legal assistance sector is complex and fragmented. There is a diversity of funders, regulators and providers, operating within a broad range of socio-demographic, geographic and service environments. There are positives to this diversity, such as resilience and the incubation of innovation. But it also gives rise to inconsistencies of approach and tensions between different approaches, objectives, obligations, resources and vulnerabilities. We noted that tensions can even manifest within services owing to different service delivery constraints and priorities imposed by different funders. Great strides have been made in the development of regional, state and national fora, such as CLSDs and LAFs, that bring together the major stakeholders to promote system coordination. The continued health and development of these fora is vital to the sector, but there remain questions around how far they should develop and what type of resourcing and support best sustains this model.

When looking to make change to the operation of the public legal assistance sector, it should be recognised that the current service environment provides the starting point. The service environment provides both opportunities and constraints. The service environment is also likely to reflect different challenges in different areas. For example, service provision in remote areas

¹³² Examples we have discussed above include: the long experience of the health sector in providing services through outreach (e.g. NRHA 2004 on models of specialist outreach services for rural, regional and remote Australia; Gruen, Baile, Wang, Heard and O'Rourke (2006) on specialist outreach to isolated and disadvantaged communities and Lloyd, Bassett, Taggart and Nathan (2012) on challenges faced by the health homeless outreach team); research on the impact of case management on service use and outcomes in the health sector (Department of Health 2002); research into the important features of effective early intervention strategies to prevent harm associated with child abuse and neglect and poor educational attainment, such as adult offending behaviour (see Valentine and Katz 2007; Manning et al. 2006); the evaluation of the Department of Human Services, Service Delivery Reform initiative, regarding strategies to assess client need and capability and match service delivery accordingly (DHS 2011, 2013).

¹³³ It should be noted that in the Foundation's experience, there are particular challenges to applying formal systematic review methodologies (e.g. Campbell Collaboration reviews) to the literature available in the legal assistance sector. In particular, the paucity and very diverse quality of the evaluative literature available in the legal sector tends to lead to a dearth of results from what is a very resource intensive review process.

of Australia is defined by geography and scarcity of services, while in parts of major cities, such as Sydney, service provision is defined by population diversity and density and the complexity of the human services environment. Cities are inherently complex, with a high volume of services operating (seemingly) with lesser mutual awareness than in more rural areas.

Thus, there is no 'ideal' model of service delivery, or simple formula for change that will be appropriate across regions. The challenge of improving public legal assistance services is a complex one, and requires complex thinking and complex policy responses.

In the context of joining-up services, we have observed that there are four routes to bringing about system change from the outside: development of infrastructure, incentivisation, compulsion and replacement. We have suggested that infrastructure provision and incentivisation represent more promising avenues for fostering change in the fragmented public legal assistance services sector. One example of this is support for fora such as LAFs, but there remain questions around what other infrastructure to support and how to best incentivise change. We noted, for example, the paradox that some of the success of CLSDs may be related to their modest devolved funding and separateness from central funding allocation processes (as compared to the ill-fated CLSPs in England and Wales); along with a high level of professional support.

Looking beyond the legal sector, clarity is needed as to the place of public legal assistance services within the broader human services sector. The law is a tool to resolve problems – issues which commonly have their genesis in other domains and beyond the remit of legal services. The law often only becomes a first line response when crisis has hit. This does not mean that legal services are central among welfare services. We have argued that legal services should be viewed as being on the periphery of the sector, acting in a supporting role. Legal services are not lone rangers. However, there remains the question of who has responsibility for, and should resource, inter-sector co-ordination. This is a particularly challenging question, as while there has been increasing recognition in the legal sector in recent years that their disadvantaged clients are the clients that are already receiving other human services, there is much less of a corresponding recognition among human service providers of the legal aspects of the problems faced by their clients (or at least, less drive from these human service providers to link up with legal services).

Turning to eligibility for legal services, it is clear that there are efficiency savings to be made from ensuring that clients receive appropriate levels of support. Resources are wasted both when levels of support are insufficient to bring about effective outcomes and when they are in excess of what is required. However, the provision of appropriate support relies on the ability to determine legal capability. There is a question of whether capabilities beyond the financial should be part of eligibility tests for rationed services. There is also a question around how this could be implemented. More broadly, we have raised the question of how public legal services can be better supported to recognise client capability and appropriately tailor services. As part of this, we have noted the need for a degree of service flexibility – through funding and service scope - to enable services to target and tailor services in response to variability in capability and need, and to link clients to more intensive services as required.

Turning to the evidence base required to make real targeted, joined-up, timely and appropriate services, there is a role for the larger public legal services stakeholders, either individually or together, in supporting strategic evaluation of what works. While it can be politically awkward to divert funds to evaluation when funding is under pressure, it is imperative that funding and policy decisions are evidence based. There are evidently many competing models of service delivery in use and under development. Their costs and benefits (both within and beyond legal process) need to be better understood if public money is to be put to best use in the long term. In this context, evaluation can extend beyond simple service provision. For example, evaluation could also be undertaken of legal capability measures.

Finally, in relation to policy makers, we noted that short-term funding – including piloting, where no funding is assured beyond the pilot phase - has been identified as a concern, not just to the stability of services, but also to their effectiveness. As one of Chang's (forthcoming) Legal Aid NSW respondents stated:

I hate pilot projects, hate them, especially in regional areas. Because I know you're going to put some resources in, and then you're going to take them away. You raise the expectations and then

you take them away. And people go, 'well, why should we trust you?' It's about a relationship of trust, especially when you're doing it in disadvantaged communities. Trust is absolutely vital.

In recognising this, the Foundation has a policy, when funding pilots, to require recipients to demonstrate how initiatives will be evaluated and — if the pilot is deemed 'successful' — then how it will be continued beyond any pilot stage.

Service delivery

Much progress has been made over recent years in moving towards client focused service delivery. From our meetings with legal and other human service practitioners across NSW, it was evident that the lessons of legal needs surveys and associated research are increasingly understood, and practiced. This manifests in the impressive number and variety of outreach services operating across the state, the many examples of legal services working together, and alongside other human services, to deliver better outcomes for clients, and examples of services being designed to reach clients at the most opportune moment. It also manifests in the increasing use by services of available data to identify pockets of legal need and to use this information to target and design service delivery.

The framework set out in this discussion paper presents those engaged in the delivery of public legal assistance services with new challenges; challenges that centre upon ensuring that efforts to deliver client focused services deliver better outcomes.

In the context of targeted services, we have detailed those things that need to be considered when designing outreach services, including the need to understand the target population (and, particularly in diverse urban environments, tensions between different target populations), to generate awareness, to build trust, and to recognise and work within the existing service environment. We have also raised the question, set out also in the last section, of how outreach services can best be balanced with broad service provision.

Similarly, we have detailed the forms, facilitators and pitfalls of collaborative working. We have stressed that joining-up services, whether through assisting users to navigate between them or through services working together, is far from straightforward, and noted that "seeking collaborative advantage is a seriously resource-consuming activity so is only to be considered where the stakes are really worth pursuing" (Huxham and Vangen, 2005, p.13). When looking to join-up with other services, we have suggested that it may be more effective and efficient to join-up, where possible, with those services that are already joined-up. A notable example of this is the collaboration between Legal Aid NSW and Migrant Resource Centres for outreach to people from CALD backgrounds. Legal Aid staff we spoke to in Sydney also referred to a number of inter-agencies managed by Migrant Resource Centres that legal aid attended.

In the context of holistic service delivery, we have stressed the importance of legal services placing the particular assistance they provide in a broader service context. This involves recognition of the place of legal services in the broader world of human services, and also of the reality that for many public legal assistance services, such as those delivered by Legal Aid NSW, there is little discretion over the use of the majority of resources. It is also clear, though, that there are grey areas of practice and immediate risk can be involved.

In the context of timely services, we have drawn attention to the policy tension between early intervention as a low cost means to deal with cases before they use up court resources and early intervention as intensive support for vulnerable clients to prevent problems from escalating. Here we raised the question of where boundaries should be drawn when broader social issues have a direct bearing on the efficacy of options for timely service intervention.

Also in relation to timely services, we have argued that the timing of legal assistance cannot be considered solely in terms of a single legal issue or process. Instead it must be considered relative to the range of other influencing factors that form the context of the particular legal issue.

Turning to capability, we raise the question of how legal services can be more appropriately matched to client capability across client in-take, diagnostic triage, referral and follow-up, through effective non-legal spotting and signposting, service eligibility criteria, and seeking to better support practice through the assessment of capability and warning-light systems. We also noted

the particular skillset of solicitors working to provide services which are targeted and appropriate to client capability.

Finally, we have stressed the importance of evaluation, and the value of evaluation as an integral part of program or project planning and management. One particular challenge for services is to better reflect appropriate service delivery to 'priority' clients in service level data, such that successful targeting and service provision can be identified and valued. This suggests further work to better define and record disadvantage in frontline service data. Consideration of this challenging endeavour must balance the potential for accurate recording, with the imposition on already stretched front line services, and importantly, the value of these data in informing service and policy decision making.

In recognising that evaluation is multi-dimensional and sometimes complex, we have also raised the question of what type of evaluative work it is appropriate to expect of front line legal service workers. Influencing this decision will be a balance of service capacity to participate in effective evaluation, the availability of specialist research support and the utility of the information able to be collected.

Research

The principal issue that this discussion paper throws up for researchers is that research in the public legal assistance field needs to support decision makers and practitioners to grapple with the questions highlighted in the previous two sub-sections. Research needs to push beyond patterns of need to the practicalities of appropriate service delivery.

While there are still research gaps relating to particular populations, the evolution of problems and problem clusters, and psychological aspects of advice seeking behaviour, the direction of travel for researchers in the field should now be more towards questions of 'what works, for whom, when, why and at what cost?' A first step towards that has been the development of the framework set out in this discussion paper.

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