



Taking justice into custody: the legal needs of prisoners – summary report

Anne Grunseit, Suzie Forell & Emily McCarron

All prisoners have criminal law issues. Civil and family law issues also emerge when people are imprisoned and removed from their daily lives. They add to legal problems which occurred before custody, and those particular to the prison environment (e.g. prison disciplinary matters and parole). Taking justice into custody: the legal needs of prisoners reports on in-depth qualitative research into the legal needs of prisoners and their capacity to access the law and legal help. This research includes interviews with prisoners, ex-prisoners, prison staff, lawyers and others, and a review of available literature and statistics. It also identifies opportunities for prisoners to obtain legal assistance and to participate in legal processes. However, through a combination of the prison environment, legal environment, prisoners' personal capacity, (often) convoluted pathways to legal help, and the pre-dominant prison culture, such opportunities may be missed or compromised.

AIM

Taking justice into custody is part of a broader program of research being undertaken by the Law and Justice Foundation of New South Wales into the access to justice by, and the legal needs of, economically and socially disadvantaged people.¹ Prisoners have been included in this program because of:

- the concentration of disadvantage in the prison population in terms of higher levels of mental illness, intellectual disability, histories of alcohol and other drug misuse, poverty, poor education, and unemployment than in the general New South Wales (NSW) population
- the existence of previously collected evidence that prisoners experience a unique range of barriers in meeting their legal needs because of the nature of the prison environment
- the dearth of research on this topic.

¹ The Access to Justice and Legal Needs (A2JLN) research program is described on page 15 of this report.

The report examines the capacity of prisoners in NSW to:

- obtain legal information (for criminal, civil and family law matters)
- obtain legal advice and representation (including basic legal advice, initial legal assistance and legal representation)
- participate effectively in legal processes (including access to courts, tribunals, and prison disciplinary/administrative processes).

Included under these aims was the ability of prisoners to obtain assistance with their legal issues from non-legal sources (including the NSW Department of Corrective Services (DCS) and external support agencies), as previous research has demonstrated the important role such assistance plays in resolving legal issues (see, for example, Forell, McCarron & Schetzer, 2005, *No home, no justice? The legal needs of homeless people in NSW*). The investigation examined the above issues in relation to not only the prisoners' existing legal troubles, but other legal problems that may arise or be prevented during their incarceration.

METHOD

In this project, we used qualitative interviews to explore the experiences of prisoners and people recently released from prison. Through one-on-one interviews and a small number of focus groups, we also sought the perspectives of DCS staff and other legal and non-legal service providers who support both prisoners and ex-prisoners.

In total we interviewed 67 prisoners and ex-prisoners and 42 other stakeholders using semi-structured, open-ended questions. The prisoner sample for this project included 27 sentenced inmates and 19 inmates on remand, drawn from five NSW prisons. The ex-prisoner sample included 15 parolees and six unconditionally released inmates, who had been released from full-time custody in the last two years. Interviewees were asked a series of semi-structured, open-ended questions seeking information about their experience of different legal problems, what steps they had taken (if any) to remedy them and the current status of that problem.

The stakeholder sample for this project was drawn from DCS staff and other service providers. Nineteen DCS staff were interviewed, including prison

welfare staff, a financial counsellor, parole officers, library staff, education officers, policy workers, 'Throughcare' workers, and department managers working both within correctional centres and in head office. Interviews were also conducted with 23 legal and non-legal service providers who provide support to prisoners and people recently released from prison.

LEGAL ISSUES EXPERIENCED BY PRISONERS

Prison inmates by definition have experienced or are experiencing criminal law issues. However, our research suggests that prisoners commonly face a range of other civil and family law issues as well. Some arise from their chaotic lives and financial disadvantage prior to custody, including outstanding debt, unpaid fines, unresolved family law issues and apprehended violence orders. Imprisonment itself also may lead to further legal issues as the person is suddenly excised from their everyday life. Prisoners' housing, child custody arrangements, the retention of their personal effects, employment, the operation of any business and/or social security payments are all affected by their sudden separation from the community through incarceration.

I wouldn't even know what outstanding debts might be out there from five years ago, you know. There might have been \$300 on the electricity bill or \$400 on the phone account, this here and that there and, all of a sudden it's turned into \$2000 because of interest and you know, what am I supposed to do with it? I couldn't really deal with it, I was in jail.

— Male sentenced prisoner

Legal issues particular to being a prisoner may also arise, such as bail, prison disciplinary action, classification and segregation issues, victims compensation restitution, and the threat of deportation. When they leave prison, ex-prisoners may experience legal issues relating to their parole and discrimination when seeking housing and employment. Our research also demonstrated that, upon release, prisoners may feel the impact of unresolved legal problems dating from a time prior to custody or during their imprisonment.

OPPORTUNITIES AND BARRIERS TO ACCESS JUSTICE

It's difficult enough for somebody that's educated, confident [and] forceful to get what he wants through the system. If you're young, Aboriginal, uneducated and you're not used to talking to people in authority, you're starting [at] a disadvantage there. You've got no money and you have to depend on the public purse to get your lawyer.

— Custodial manager

Interviews with inmates, ex-inmates and the people who assist them, indicated that technically, there are opportunities for prisoners to obtain legal information, advice and representation and to participate in legal processes. Visiting legal advice services, prison libraries, prison staff and independent organisations, as well as telephone access, do much to facilitate the access that prisoners have to legal assistance. However, the interplay of the prison environment, inmates' own personal capacity, the pathways through which inmates can access help, and prison culture, all mean that in many instances, those opportunities are missed or somehow compromised.

Obtaining legal information in prison

Our interviews indicate that prisoners obtained information about legal issues from a range of sources, including the prison library, welfare staff, other inmates, the visiting legal advice service, and from their own lawyers. Specific barriers that were identified in relation to inmates' access to legal information and advice included:

- lack of information about a service or process (e.g. how to request information from the library; how to secure legal representation and how to book an appointment with the visiting legal advice service)
- the quality and currency of legal information (e.g. incomplete or out-of-date legal resources in libraries and wrong advice or information from workers, friends or other inmates)
- the length of time it takes to get legal information or advice (e.g. to make a request from a law library if there is no direct access and lawyers not being able to return telephone calls)
- restricted access to legal information due to lockdown, classification or placement on protection/segregation (e.g. inability to physically access the library)
- the requirements and/or limitations of the process of obtaining information compared to the inmates' capacity (e.g. the need for prisoners with poor literacy to complete forms to request help; the provision of written information to prisoners with poor literacy; and, advice sessions being too short, particularly given the cognitive capacity of some inmates).

Legal advice and representation in prison

Opportunities to engage and consult with a lawyer are available to inmates whilst in prison. Legal Aid's Prisoners Legal Service (PLS), for example, provides a visiting legal advice service to NSW prisons on a regular basis. Legal numbers are included on prisoners' phone cards and the number for LawAccess is automatically programmed in. Legal advice visits are catered for with designated areas and times for such visits to take place. However, despite these facilities, interviewees in the current study reported problems for inmates in securing and interacting with legal professionals. Problems included:

- inmates not being able to identify the correct process to secure legal advice
- access to the PLS being undermined by: lack of information about the service in some prisons; the service being over-subscribed; legal advice sessions in jails not taking place or being too brief; the range of advice offered being dependent upon the speciality of the attending lawyer; and the inmates' failure to attend scheduled appointments
- inmates' communication with their lawyers being compromised by: the limited availability of telephones; no facility for lawyers to return calls; delays in getting lawyers' telephone numbers onto phone cards; the expense of the telephone calls if the inmate is moved to a prison away from the lawyer's location (e.g. to a rural prison when the lawyer is in Sydney)
- inmates not getting to see a lawyer before attending court or be confident a lawyer will be present when they attend court
- legal visits in court cells being too brief and not always confidential

- quality/utility of the advice session being compromised by the inmate’s mental and emotional capacity, the complexity of information provided, and the (perceived) assumptions by the lawyer about the inmate and inmates in general.

Effective participation in legal processes

To participate effectively in a legal process a prisoner needs to be aware the process exists, know what to do to become part of that process and be able to signal that intention to the relevant authority. Again, procedures are in place to facilitate inmate participation in law processes, especially criminal law processes. However, during our interviews, we unearthed a number of barriers to inmates commencing and participating in criminal and civil legal processes. These included:

- limiting beliefs held by inmates (e.g. the perception that a legal process would have negative consequences or would not yield a satisfactory/fair outcome; inmates pleading guilty or choosing not to attend court for fear of leaving their current prison and losing their “place” and privileges, and the humiliation of being transported to court in a truck)
- lack of understanding about what transpired in a hearing or a misunderstanding about the outcome or obligations of a legal process (e.g. an inmate leaving court without understanding the sentence or the consequences of any conditions to which they agreed)
- lack of information about possible legal remedies and how to initiate and participate in a legal process when in prison, and about the progress of their own matter (e.g. court dates and which lawyer would be attending)
- inefficiencies in the process (e.g. inmates seeking assistance for the same legal problem from several different staff members and inmates needing to rely on other people to initiate or progress a legal process and this assistance not being forthcoming)
- lack of confidentiality (e.g. keeping sensitive briefs of evidence or other information in cells and conferring with counsel while in court cells)
- insufficient time/facilities to prepare cases (e.g. briefs of evidence being held up in the mail system; inmates not getting enough information

about how their case is to be run; and, limited facilities to read briefs of evidence)

- lack of direct access by telephone to government departments
- restrictions on legal transactions inmates are allowed to make because they are inmates.

Particular issues were raised in relation to appearing in court by Audio Visual Link (AVL), including the perceived impact of appearing by AVL in prison uniform rather than civilian clothes, and the greater difficulties for inmates with cognitive impairment to follow proceedings by AVL.

Consequently, while there are opportunities for prisoners to access justice, there are situations where these opportunities break down. Our analysis shows that there are a number of factors which contribute to the breakdown of opportunities for inmates to access justice. These are analysed and discussed under four themes:

- the personal capacity of prisoners (prisoner capacity)
- the manner in which the various components of the justice and administrative system (prison, courts, advocates, authorities, etc.) operate and interact (systemic environment)
- features of the pathways and intermediaries inmates utilise to address a legal need (pathways and intermediaries)
- the role of culture operative in the prisons sampled in shaping inmates’ legal needs and responses to those needs (prison subculture).

PRISONER CAPACITY

Interviews conducted for this study indicated that prisoners’ capacity to identify and deal with legal issues they are facing, and to actively participate in legal processes to resolve those issues, is affected by their own:

- histories and lives before prison
- financial capacity and resources
- prior experience in legal processes
- comprehension capacity
- life skills.

... we've got lots of people with mental illness and lots of people with disabilities, and I'm sure a lot of those inmates would be in states of confusion and not have a handle on all that's happening. ... and the drug users too. We have a lot of people who come in and have to detox and ... who knows what they've been through and not been able to actually absorb.

— DCS Policy officer

Prisoners commonly reported that their lives had been spiralling out of control prior to their coming into custody. Contributing factors included mental illness, alcohol and other drug misuse, difficult and unhealthy family relationships, criminal activity, prior custody and poverty. As a result, inmates often came to jail with multiple criminal and civil legal issues, were not necessarily aware of the extent of these issues, had limited documentation, and had often damaged relationships with formal and informal sources of support.

Of particular note was a tendency reported in the interviews for inmates to have made financial, family and other arrangements outside the formal legal processes. These included informal money lending, housing and custody arrangements. There were also examples of this extending to the use of violence to settle scores. A lack of trust in and marginalisation from formal legal processes appeared to contribute to the reliance on alternative, less formal solutions. Choices concerning appropriate courses of action were further compromised by inmates' often limited financial resources and lack of appropriate documentation. Consequently, inmates commonly came to jail with multiple legal problems but little leverage to resolve those issues easily.

Given the significant systemic barriers they face to addressing multiple legal issues from inside jail, inmates need to be motivated, tenacious, articulate, patient, organised and familiar with the law and legal process to successfully address their legal needs. In contrast, the profile of the prisoners in NSW is characterised by high rates of illiteracy, mental health issues, alcohol and other drug misuse, and cognitive impairment. Many prisoners had limited or interrupted education. Periods in custody had served to decrease inmates' confidence and skills at being able to function constructively when they return to the community.

Without recourse to the necessary skills or support to address legal issues, inmates tended towards maladaptive interaction styles (e.g. passive or aggressive behaviour). Dangerously, the inability of some prisoners to comprehend legal information, advice or outcomes was sometimes overlooked by people who offer assistance, because previous experience before the courts or time inside was taken as a proxy for actual knowledge. Lack of capacity may also be masked by bravado or disinterest because people are too embarrassed, intimidated or overwhelmed to admit that they did not understand information or advice, or that they cannot read.

Difficulties understanding and engaging with lawyers and the legal process also appeared to alienate inmates from using the law in their own interest, with some prisoners actively avoiding legal help. Inmates whom we interviewed reported avoiding the legal system to redress injustice because, in their experience, it was intimidating, incomprehensible and unlikely to operate in their favour. When compelled to participate in the legal process, some people did so in a state of ignorance and ensuing anxiety.

SYSTEMIC ENVIRONMENT

As a consequence of being in prison and having legal needs, prisoners usually come into contact with a number of systems, such as the legal, custodial and bureaucratic systems. Features of, and tensions between, the systems have presented barriers to prisoners accessing justice.

They're constantly moving around, a lot of them. And that makes it hard for them to contact people. They might contact their legal representative, [who says], 'Okay, I'm going to come out and visit you on Thursday'. And they may be moved on Wednesday.

— Custodial officer

Firstly, according to our interviewees, the level of resourcing within DCS and public legal services, such as the Legal Aid Commission of New South Wales (Legal Aid) and the Aboriginal Legal Service (ALS), seemed to threaten the capacity of these bodies to facilitate prisoners' access to justice. For example, the number of inmates requiring time with the PLS visiting legal advice service meant that each inmate

may only have five or 10 minutes to discuss their case. Many felt that this was insufficient to convey their situation and absorb the advice offered.

Opportunities to contact a lawyer by telephone or during a legal advice visit, reach the library for legal information and get legal support through welfare staff can be compromised by conflicting priorities within the custodial system, such as the emphasis placed on security and efficient management of inmates in correctional centres.

There also seemed to be clashes between the custodial system and the legal systems and processes, making it difficult for inmates to access legal help. For example:

- the hours that lawyers were available often did not match the hours of operation within the prison (that is, when inmates were out of their cells)
- time-limited telephone calls from prison made it particularly difficult for inmates to get help through the receptionist and call centre based systems adopted by Legal Aid and other legal service providers
- lockdown at the prison could prevent an inmate receiving a legal visit or a consultation with the visiting legal advice service.

The AVL system was posited as a way that could circumvent some of the tensions between these external systems and internal custodial processes. However, its utility is tempered by the concern that AVL can add another layer of confusion for inmates who already have comprehension difficulties. Other initiatives, such as the recent implementation of the Centrelink outreach service, were also suggested as ways to ameliorate conflict between the different components of the broader justice system.

Finally, while procedures are in place enabling inmates to participate in their criminal matters, there are less systemic processes and facilities available to help prisoners resolve their non-criminal problems. For example, the procedures for prisoners to access government agencies such as the Department of Housing or the State Debt Recovery Office are variable, not always immediately apparent, involve a number of steps to reach and are consequently less reliable. The visiting advice service also did not routinely cover civil issues. However, the addition of the LawAccess

number to inmates' phone cards (subsequent to our interviews) has the potential to substantially improve access to advice on civil matters.

PATHWAYS AND INTERMEDIARIES

Our interviews indicated that inmates rely to a high degree on other people to help address their legal issues. These people, or intermediaries, may act on the prisoners' behalf or as a relay point in the process of preventing, identifying or addressing a legal problem. Our analysis revealed that there are a number of features of intermediaries and mediated pathways to legal help that facilitate an inmate's access to justice or act as a barrier.

So I spend a great deal of time contacting solicitors and saying, 'What's happening?', 'These are the concerns that the inmates have, these are the questions that the inmate has and when are you coming to see them?' You are very much acting as that middle person.

— DCS welfare officer

Firstly, although there appeared to be numerous people prepared to assist with tasks associated with a legal problem, inmates often expressed confusion about who was the best person to approach, particularly in the first instance. Pathways to assistance with legal problems were fragmented and obscured by a number of practices: lack of information detailing appropriate contacts, several different staff groups covering the same task, tasks designated to one group being taken over by another, and different people within the one occupational group having varying degrees of knowledge and consequent capacity to assist. Inmates tend to respond to this uncertainty either by giving up the pursuit or approaching several intermediaries for the same issue simultaneously, thereby doubling up on the use of resources and further entrenching the confusion surrounding the question of responsibility.

Secondly, a major issue that arose particularly in relation to custodial staff was the lack of consistency and clarity in the assistance given to prisoners. A prisoner may feel uncertain about who to contact for assistance, when, in their experience,

one officer in a certain position may have been helpful, yet another officer in the same position at a different time had not been particularly useful. The assistance provided may depend on the mood or disposition of the individual officer, rather than their position. This can reinforce uncertainty about where to go for help.

Thirdly, mediated processes seem to delay help, with many interviewees describing apparently cumbersome processes to achieve relatively simple tasks. As a consequence, inmates would in some cases abandon seeking help because they felt it would take too long. In other cases, inmates missed an opportunity to address a legal issue or prepare effectively for a hearing. As the contingencies increased with every pair of hands a matter passed through, so did the opportunity for a breakdown or delay to occur.

The final factor that affected the utility of intermediaries was the potential for exploitation or being (unintentionally) misled because of the relationship of dependency that mediated pathways create. This sub-theme was mainly an issue where personal intermediaries (as opposed to ‘professional’ intermediaries such as DCS staff or staff of other organisations) were used. Although inmate peers were an easily accessible and often a preferable source of assistance with legal problems, the sensitive nature of the matters could sometimes place an inmate at risk of privacy breaches. In other cases the inmate may lose money, property or have debts incurred in their name because they have had to ask friends or family to pay bills, mind property or oversee their finances. In yet other instances, inmates may be given incorrect or incomplete information.

PRISON CULTURE

Our analysis also indicated that prison culture is a factor in shaping the degree to which inmates access justice and obtain assistance with their legal issues. The prison culture not only informs inmates’ behaviour but also that of legal service providers and those who assist prisoners in obtaining access to service providers. Our interviewees observed this occurring in a number of ways.

Firstly, inmates were defined and define themselves as being in opposition to correctional officers

and/or even the justice system itself. For example, an inmate may not report an assault perpetrated by another prisoner because it betrays a code of behaviour that pits inmates against prison authorities. Consequences, such as stigmatisation, harassment or even violence, reinforce these notions. Consequently, although there were processes available that provided legal redress for inmates who are assaulted, they are not pursued because the prison subculture makes it unattractive or at least problematic.

It’s us versus the friggin’ officers and if you want to go and put another inmate in, well you’re going to cop the retribution from the rest of the inmates.

— Male parolee

Secondly, violence committed against inmates is conceived as unremarkable in the prison environment. An assault may not be reported by an inmate because physical violence is part of the experience of prison or because such incidents can be resolved by responding with further violence. This normalisation and naturalisation of violence enhances informal resolution of issues and undermines the formal systems that aim to deliver justice to inmates.

Thirdly, common notions that ‘criminals’ do not ‘deserve’ justice may lead to prisoners not challenging circumstances where they do not feel they have been treated justly because they perceive that they are thought of as unworthy of assistance. Such perceptions persist even though the ‘lived’ experience of many inmates and the attitudes of those who help them are to the contrary. A number of examples were given in our interviews where unfair treatment was explained by the inmates to themselves as ‘criminals break the law therefore they deserve whatever treatment they get’.

Finally, a tendency to compliance, which is reinforced by prison culture, seemed to discourage inmates from being proactive about meeting their legal needs. Inmates may be less inclined to challenge perceived injustices, as non-compliance may attract disciplinary action or result in help being withdrawn. This passivity is a barrier in post-release life where the ex-inmate must be far more active in pursuing assistance.

CONCLUSIONS AND POLICY IMPLICATIONS

Taking justice into custody builds a complex picture of prisoners' legal needs and their capacity to access justice. To begin with, prison inmates are, as a group, disadvantaged. At the aggregate level they are under-educated, have high rates of mental illness and intellectual disability, have drug and/or alcohol addictions and are financially compromised. Our report indicates that imprisonment tends to compound this disadvantage. Each time the person cycles through the justice system personal supports are strained, skills become atrophied, financial resources are depleted and the capacity to operate well 'on the outside' and without resort to unlawful means is further diminished. Many of the symptoms and causes of these problems have legal implications, with family breakdown, difficulties with housing, high levels of debt, and conflict with government authorities all generating and reflecting the disadvantage that prisoners experience.

Formal opportunities do exist for prisoners to address their legal needs, particularly for criminal legal problems, and to prevent new issues developing. Our research has revealed that prison libraries, knowledgeable staff, visiting legal services, and LawAccess assist inmates to identify and satisfy legal needs. However, what was also revealed was the vulnerability of these opportunities to being compromised by poor inmate capacity, the systemic environment, the mediated and at times convoluted pathways to assistance, and prison subculture. However, looking across these factors, a range of other observations and themes emerged from the analysis.

The first theme concerns the seemingly inverse relationship between the accessibility of legal help and the quality of that assistance. For instance, while other inmates were a very immediate source of assistance, the quality and relevance of advice given was variable. In contrast more reliable sources of assistance such as lawyers were much harder for prisoners to reach. The need to bring quality legal assistance within more direct reach of inmates and the improvement in resourcing more accessible sources were two clear implications for future policy. The recent placement of the State Library's Legal Information Access Centre (LIAC) materials into prison libraries and the addition of the LawAccess telephone number to inmates' phone cards were two examples of such strategies.

But sometimes I do wish I had some knowledge to be able to answer them. You know, some knowledge with some confidence to be able to give them a response rather than, you know, 'Go and see Welfare, speak to your solicitor, I'm only a wing officer.'

— Custodial officer

A second theme concerned the mismatches between what inmates needed to access justice and what opportunities were available. For instance, legal processes often rely on written information, and yet many prisoners are poorly educated and face difficulties with literacy. Further, resources within the systemic environment often fell short of demand for them — telephones, public legal professionals and welfare staff for example were in high demand but often, apparently, short supply. There was also evidence of mismatches between the routine and realities of life inside prison and the way services to prisoners were delivered. For example, lawyers were most accessible by telephone or in person at the times that inmates were more likely to be locked in cells unable to access the telephone. Similarly, restrictions on inmates' movements within prison could prevent their access to the prison library when it was open.

Disempowerment was a third theme concerning barriers facing prisoners when they try to prevent or address legal issues. The pervasive need for prisoners to rely on other people to carry out tasks on their behalf (such as calling government agencies, passing on messages and arranging legal visits) meant that inmates were often not in control of obtaining information and advice on their own behalf.

Consequences included delays, essential activities not taking place at all, and the creation of unequal power relationships that sometimes were to the detriment of the inmate. Additionally, the loss of skills and resources through repeated incarceration and concomitant reliance upon others may cumulatively erode inmates' capacity to address their legal needs on their own behalf even when released.

A final theme concerns how the capacity of prisoners to address certain legal issues varies at different stages of their incarceration. When first incarcerated, inmates are generally too unstable, stressed and focused on their criminal matters to

have the capacity to focus on their longer term civil law problems. By the time they are in sentenced prisons, inmates appear to have more personal capacity to address these issues, but are faced with more systemic barriers to doing so (e.g. placement in a rural prison and less access to welfare or regular legal assistance). If civil law assistance was provided at a point in the incarceration when inmates were most able to engage with that assistance, the effectiveness of that assistance may be increased.

The following table (*see* page 10) summarises the changing capacity of inmates and the nature of their environment as they move through the incarceration process. It also shows the barriers they face, highlighting policy development and service provision issues.

It is important to recognise that some of the factors that affect prisoners' access to justice may not be easy to modify or will change slowly. These include the overriding priority given to security in jails, limited resources within both correctional and legal service delivery systems, the complex histories of prisoners and the limited cognitive capacity of many inmates, particularly during early periods of custody.

Sometimes you might need more than a few minutes but because [the legal advice service] have got so many they want to see, then they can only give you, like, two, three minutes to see you, and they've got to get quick details and then rush off. They need to send more lawyers out here.

— Male sentenced prisoner

However, here are some key elements that would address a number of the barriers identified in our study:

- bringing quality legal help (information, advice, representation, access to processes) closer to inmates to reduce the number of intermediaries between the inmates and quality assistance (e.g. direct access to legal assistance telephone lines and visiting civil legal advice services)
- providing legal help in formats that can be used by inmates, given some inmates' reduced capacity to comprehend material and retain information (e.g. lawyers spending more time with inmates to help them understand the advice, or providing legal information in DVD format)

- providing clear access points to legal help (e.g. a single telephone number or contact point)
- recognising points in the incarceration process when it may be most beneficial to engage with inmates to address their civil legal needs (e.g. once prisoners are sentenced or past the early remand period)
- legal services having greater awareness of the routines and limitations facing prisoners in accessing their services and incorporating such awareness into the legal processes (e.g. knowing that, during a lockdown, the prisoner is only available between 8.30A.M.–3.30P.M. or that a prisoner should not be left on hold during a telephone conversation as they can only make time-limited calls)
- having greater cognisance of how prison culture may affect the decisions inmates make about where and how to seek help with their legal problems
- providing some continuity of legal service provision from inside jail to the outside (e.g. having access to the same telephone help line inside and out of jail).

Satisfying legal needs from within the prison environment can be a complex process. Isolation from services, the formal and informal regulation of movement and interactions, personal capacity and the conflicts between components of the justice system all affect how opportunities to access justice are exploited or missed. However, our research shows that many strategies are successful in bringing legal assistance to prisoners, by engaging with the prevailing conditions and working within the limitations of imprisonment. Consequently, while it is true that many circumstances exist to impede access to justice for inmates, it is certainly possible to successfully address the legal needs of prisoners and to bring the opportunity of accessing justice to people in custody.

Needs and policy implications, by stage of incarceration

Ident	Key barriers	Policy/service provision implications
IN DETENTION		
<i>Suffering impaired cognitive capacity and having very limited access to legal advice and support</i>		
<p>that lack privacy for legal</p> <p>but not for criminal</p> <p>er at bail hearing</p> <p>on welfare support</p>	<p>Little access to legal information or advice about criminal charges, particularly for those without private representation at the time of arrest</p> <p>Confidentiality compromised when speaking to legal adviser in police or court cells</p> <p>Personal capacity may be limited by intoxication, shock, lack of appropriate medication for mental illness and anxiety but crucial statements may still be made</p> <p>Limited financial capacity may impact on ability to get bail</p> <p>Detention may be sudden and unexpected</p>	<p>Resources for longer appointment times with legal advisers, taking into account the often reduced capacity and high need of prisoners at this time</p> <p>Training for lawyers about factors affecting prisoner capacity (e.g. drug and alcohol impairment, mental illness and the impact of a chaotic history or lifestyle)</p> <p>Provision of time and space for private legal consultations in police cells</p> <p>Assessment of and assistance with immediate non-criminal needs (e.g. housing, child care, employment, property and pets) especially if held in police cells for extended periods</p> <p>Consideration of a legal advice service for prisoners with urgent civil/family legal issues in police/court cells where prisoners are held for extended periods</p>
AND		
<i>Civil/family issues when unfamiliar with the systems, suffering from a reduction in personal capacity and constraints because of court dates and time limits for notifications</i>		
<p>um security, which is a</p> <p>t</p> <p>to be functional</p> <p>odial officers being</p> <p>s sorting the mail and</p> <p>nerable prisoners may be</p> <p>n has more restrictions on</p> <p>f-cell hours</p> <p>experienced within</p> <p>en first received due to</p> <p>duction information</p> <p>s</p> <p>ce has limited time to</p> <p>r lawyers to attend prison</p> <p>s) or for inmates to</p> <p>lockdown occurs in the</p> <p>lawyers are out of court)</p> <p>ceive telephone calls in</p> <p>s and a limited number of</p> <p>may not be able to give</p> <p>ea of expertise e.g. on</p> <p>e or she has specialised as</p> <p>oners between</p> <p>rupt communication with</p> <p>ediaries</p> <p>information</p> <p>diaries for assistance with</p> <p>n from library may entail</p> <p>to read briefs</p> <p>ay involve transfer to</p> <p>hearing by AVL)</p> <p>use of custodial staff for</p>	<p>Personal capacity may be limited by intoxication, shock, depression, anxiety, re-establishing psychiatric medication and uncertainty about time that will be spent in custody</p> <p>Problems associated with phoning legal for advice because of prisoner classification, restriction on movement, delayed telephone approval, limited time available on telephones, competition for telephone use and lawyer not available during prison operating hours</p> <p>Prisoners reliant on publicly funded legal services because of poor financial capacity — yet these services are limited by resources</p> <p>Access to legal advice given in person reduced because of lockdown, prisoner classification, timeliness, movement between prisons and low resources of publicly funded legal services</p> <p>Reduced capacity to give instruction to lawyers because of comprehension difficulties, privacy and limited time with adviser</p> <p>May not receive legal mail in time to prepare for court because mail distribution is delayed (e.g. delays may occur because the officer responsible has been placed on security related duties during staff shortages)</p> <p>Intermediaries delay or fail to carry out tasks related to obtaining legal assistance</p> <p>Reduced capacity to access legal information because of prisoner classification, restriction on movement and delayed responses to legal information requests</p> <p>Difficulty understanding legal documents and court processes because of complexity, limited proficiency in English and literacy problems</p> <p>Transportation to court hearing on trucks is highly unpleasant and prisoners may plead guilty to avoid it</p> <p>Criminal matter takes priority to the possible detriment of civil/family legal issues</p> <p>Unfamiliarity with formal and informal prison 'rules' may leave them vulnerable and/or unable to initiate obtaining assistance</p>	<p>Assessment of remandees' civil and family legal needs</p> <p>Clear, reliable and timely information for prisoners about how to access legal assistance for civil, family and criminal law problems from jail</p> <p>Strategies to ensure that prisoners in reception, segregation and protection can access legal assistance</p> <p>Clear and consistent information and support for DCS staff about their role as a link to legal assistance (e.g. consideration of courses such as 'law for non-lawyers' for key custodial and other staff like Wing Officers, Welfare Officers and Community Corrections Staff)</p> <p>Continuation of the PLS weekly visiting legal advice clinic, with funding to allow for longer appointment times</p> <p>Continuation of visits by the ALS field officers</p> <p>Maintenance of LIAC information and staffing in all prison libraries</p> <p>Persons (staff and prisoner peers) who may assist prisoners to complete library request forms are clearly identified to prisoners and trained appropriately</p> <p>Develop phone cards that are transferable between prisons</p> <p>Consideration of ways to improve telephone communication between prisoners, legal and government services (e.g. instituting a message service for lawyers trying to contact prisoner clients and setting up special telephone numbers for prisoners without automated waiting periods)</p> <p>Increasing the accessibility and availability of welfare staff/staff that can assist with welfare issues (e.g. advocacy and contact with government agencies)</p> <p>Provide community legal education for longer term remand and sentenced prisoners on issues including housing, debt/finance, child custody, domestic violence issues, immigration and employment</p> <p>Increase opportunities for prisoners to act autonomously in address their legal issues (e.g. enable access to government agencies such as SDRO)</p>

Legal issues	State of prisoner	Features of the environment
SENTENCED		
Phase characterised by prisoners having time to take on out		
<ul style="list-style-type: none"> Appeal sentence/conviction Access to children and other family matters AVO/ADVOs Prison disciplinary matters Assault or other accidents in prison Victims compensation restitution Outstanding warrants and DNA testing Unpaid fines, child support, DOH, Centrelink and other debts Defamation 	<ul style="list-style-type: none"> More familiar with available processes and culture in prison Receive treatment for mental illness and alcohol or other drug problems <i>DEPENDING UPON LENGTH OF SENTENCE</i> More involved in work and education programs Has links within jail to other inmates and staff Less connected with life outside prison 	<ul style="list-style-type: none"> Most sentenced prisoners in rural/regional locations Longer out-of-cell hours May still be transferred between jails If in a rural/regional location, may incur costs for telephone calls Less access to the prisoner's family/friends At the time of our interview, legal information materials were available in sentenced jails (LIAC materials) No direct access to law libraries Free telephone calls to Legal Aid, but prisoners have to pay for telephone calls to family/friends Little or no resources to assist with family legal issues Limited access to formal hearing matters
PRE-RELEASE		
Phase characterised by prisoners experiencing anxiety concerning his or her release, partly stemming from		
<ul style="list-style-type: none"> Securing parole Outstanding debts Identification documentation Deportation and immigration issues Outstanding warrants Unpaid fines 	<ul style="list-style-type: none"> May be more comfortable in prison than outside May feel heightened emotions about leaving prison, either nervous or eager Possible unrealistic expectations of post-release life 	<ul style="list-style-type: none"> Lower security May be placed in rural/regional locations, leading to increased costs of telephone calls, non-local lawyers and more complex arrangements for post-release Limited information on civil legal services Limited places in courses, workshops, etc. to attend so that they can be eligible for parole Parole hearing conducted at the prison
POST-RELEASE		
Phase characterised by prisoners experiencing		
<ul style="list-style-type: none"> Complying with parole conditions Social security debt and proving social security eligibility Housing debt Identification documentation Outstanding fines and other debts Police attention and harassment Discrimination issues when trying to find employment and housing Access/custody of children Victims compensation restitution 	<ul style="list-style-type: none"> Capacity to meet responsibilities reduced by lack of autonomy in prison Deskilled May be stressed, overwhelmed or fearful Face recurring alcohol or other drug and/or mental health issues Lack of support network due to release into a new area or relationships damaged prior to incarceration No drivers licence Stigmatised because of imprisonment Reduced financial resources Out of touch with current technology, procedures and social mores Accustomed to acting passively and/or aggressively May have few social supports and be tempted back to negative patterns of behaviour 	<ul style="list-style-type: none"> Greater access to legal services No, inappropriate, or temporary housing May be subject to multiple requirements (parole, Centrelink requirements, methadone, etc.) Unstructured environment (parole) Old networks linked to substance use and criminal behaviour Restrictions placed on people they can associate with

Context	Key barriers	Policy/service provision implications
SENTENCED <i>Prisoners in crisis, but more distant from issues outside of prison and have fewer legal resources</i>		
<p>Prisoners in lower security prisons</p> <p>Distance between prisons</p> <p>In higher security prisons, higher costs are involved and, consequently, there is less access to a private lawyer as well as</p> <p>Legal services, limited and outdated (services were available at the time of sentencing but are now distributed)</p> <p>Legal services are based in MRRCC</p> <p>Legal Aid but prisoners have limited access to private lawyers</p> <p>Prisoners assist with resolution of civil matters</p> <p>Prisoners are awaiting hearings for civil/family law</p>	<p>Prisoners must have money and be prepared to pay for certain charges, such as telephone calls to their private lawyer, with the cost being higher if the prisoner is transferred to a regional prison</p> <p>Difficulties accessing solicitor when transferred to a prison away from the prisoner's usual place of residence</p> <p>Loss of connection with the outside world reduces prisoners' motivation to address outstanding legal problems</p> <p>Limited access to current, relevant legal information materials from sentenced jails</p> <p>For those on short sentences, limited access to education or other programs and there is less time to 'settle' into jail and address issues</p> <p>For those on longer sentences, prisoners are more entrenched in prison culture and are less likely to report assault by other prisoners</p> <p>A more passive approach to addressing issues may evolve during the prison sentence</p> <p>Accessible information sources (e.g. other prisoners) may not have reliable information</p>	<p>Regular specialist civil/family legal advice clinics in sentenced jails</p> <p>Maintenance of LIAC information and staffing in all prisons</p> <p>LawAccess number charged as a local call on all prisoners' phone cards</p> <p>More formal streamlined processes for prisoners to contact relevant government agencies (e.g. SDRO to address fine-related debt and DOH concerning housing debt)</p> <p>Increasing the number of welfare staff/staff that can assist with welfare issues, including advocacy and contact with government agencies</p> <p>Further explore and evaluate the use of AVL for the provision of legal advice services in prison</p> <p>Improved systems of contact between prisoners and lawyers (e.g. reliable message system and mobile numbers)</p> <p>Better access to forums for resolving civil/family matters</p> <p>Calling in of warrants to enable the prisoner to serve time concurrently</p>

RELEASE <i>Prisoners not eligible for release in the context of the prisoner experiencing an inadequate knowledge about the situation outside of prison</i>		
<p>Prisoners in regional location, which leads to fewer phone calls, less access to legal services and difficulty in making arrangements for case support</p> <p>Prisoners with family law matters</p> <p>Prisoners which prisoners may need to be eligible for parole</p> <p>Prisoners at a distance to prisoner's usual place of residence</p>	<p>Lack of access to up to date accurate legal information because of barriers to accessing a law library and/or out of date library content</p> <p>Willingness to agree to parole conditions that can't be met</p> <p>Less access to lawyers because of geographical location</p> <p>Failure to attend court or parole hearing on the basis that, by leaving their current prison to attend their hearing, they will lose standing and privileges</p> <p>Cannot meet parole requirements because insufficient places on required courses</p> <p>For short stay prisoners, less time to address outstanding legal issues and to prepare for release</p>	<p>Support and assistance to address outstanding legal issues:</p> <ul style="list-style-type: none"> • outstanding warrants • commence child access arrangements • payment of fines to regain license • deportation and immigration <p>Establish familiarity with resources/networks that may be continued outside of prison (e.g. LIAC and LawAccess)</p> <p>Sufficient places/organisation of courses to allow prisoners to meet eligibility requirements by the end of their non-parole period</p> <p>Alternatives to travelling for, and otherwise not participating in, parole hearings</p> <p>Provide sufficient information/education about basic life skills, such as opening bank accounts, regaining a drivers licence, obtaining identification such as a Medicare card and accessing legal assistance outside of prison</p>

RELEASE <i>Prisoners with multiple obligations, few financial resources, absent or outdated skills, poor housing options and an unstructured environment</i>		
<p>Prisoners with more obligations than current prisoners</p> <p>Prisoners with temporary housing</p> <p>Prisoners with compliance regime requirements, AVO/ADVOs,</p> <p>Prisoners (particularly if not on parole)</p> <p>Prisoners with substance problems and/or mental health issues</p> <p>Prisoners with family law matters</p> <p>Prisoners with whom the person is in contact</p>	<p>Lack of support and multiple responsibilities may lead to breach of parole or re-offending</p> <p>Housing and reduced financial resources may make it difficult to regain custody of children</p> <p>Re-connection with family/friends may make it difficult to avoid drug or alcohol use and criminal activity</p> <p>Difficulty in modifying passive yet aggressive behaviour patterns to meet social expectations especially when dealing with services/authorities</p> <p>May have made unrealistic arrangements/commitments that are prone to break down and may place them at risk of breaching parole conditions</p>	<p>More general support for prisoners upon release, including with housing, employment and reintegrating with family/community to assist in the prevention of parole breaches and going outside the law to meet needs</p> <p>Upon release, all prisoners are provided with:</p> <ul style="list-style-type: none"> • LawAccess number • PLS number (if need assistance to vary parole conditions) <p>Information for Community Corrections staff about legal services for their clients (at the very minimum, knowing about and giving out the LawAccess telephone number)</p> <p>Consideration of courses such as 'law for non-lawyers' for Community Corrections staff</p> <p>Information for support agencies/welfare staff about legal services available for their ex-prisoner (and other) clients. At the very minimum, giving out the LawAccess telephone number</p> <p>Recognition by authorities of the multiple obligations that prisoners experience while trying to re-establish life outside prison</p>

TAKING JUSTICE INTO CUSTODY: THE LEGAL NEEDS OF PRISONERS

Some quotes from interviews conducted in the research for this report.

... a lot of inmates have done the get rich quick thing. Sold drugs, whatever. Many of them believe there isn't another way for them to ever aspire to, other than crime because of their poor education or their limitations, or some cultural groups that are chronically illiterate. They come to jail outside the education loop. They don't have the social connections. They see this as the only way they're going to ever do things.

— **Financial counsellor**

You will find more often than not that when you are first brought into custody that you are, not so much segregated, but have limited opportunity to see support staff. Because you're locked down so often under the duty of care, you know, we must make sure that there's no risk intervention required here, so we'll check this person out for a period of two or three weeks. And those two or three weeks or one week can be crucial to a person's peace of mind, [and inmates] facilitating legal representation.

— **Female sentenced prisoner**

And it's often just the last thing on people's minds if they've just been arrested. And you know, we're down at whatever jail they're on remand at, you tell the welfare officer you're on a payment, a million other things going through your mind. You've got so many restrictions on what you're allowed to do and who you're allowed to contact anyway. Last thing on your mind, is, ooh, must call Centrelink.

— **Caseworkers Welfare Rights Centre**

... because you're not at liberty, the process is laborious, and the information is not available to you as to how to go about it in the first place. So a lot of inmates are just in the dark as to what their rights, obligations and responsibilities are.

— **Male sentenced prisoner**

I mean the other thing that would help us [is] if we could have some sort of system or process in place in prisons for us to call prisoners back. That would be really helpful, because it's not always guaranteed that there will be a lawyer off the phone, or in, or available, to talk to them.

— **LawAccess**

We don't get mail regularly at all. Very, here, there and everywhere. I've had letters that have taken over three weeks to get delivered ... I know it's not the mail officer's fault, but as soon as they need somebody else [for security duties] she's the one that they take away, and so the mail doesn't get done ... I know two other [inmates whose] briefs didn't come till after they went to court.

— **Female remandee**

... pretty much all of the offenders that come here would have lost their licence at some point or other. And often it's not through driving whilst disqualified, it's just because they've accumulated fees and they can't pay them so they lose their licence. So then that stops them from looking for work, or for people [who] have got a trade or whatever, and they're a painter and they need to be out, you know, going around, they can't drive. And they can't get a job because ... the first thing they've got to say is that they haven't got a licence. So they don't get employed. And it's just this kind of domino effect.

— **Probation and parole officer**

The Access to Justice and Legal Needs Program

The Law and Justice Foundation of NSW has undertaken the Access to Justice and Legal Needs (A2JLN) Research Program to identify the access to justice and legal needs of disadvantaged people in NSW. The objectives of the program are to examine the ability of disadvantaged people to:

- obtain legal assistance (including legal information, advice, assistance and representation),
- participate effectively in the legal system,
- obtain assistance from non-legal advocacy and support,
- participate effectively in law reform processes.

The program employs three methodological streams to address these objectives:

- the analysis of legal service usage data, giving particular insight into expressed legal need;
- original quantitative legal need surveys, giving insight into expressed and unexpressed/unmet legal need;
- in-depth qualitative research into the needs of particular disadvantaged groups.

Specific research published as part of this program to date includes:

Public consultations: a summary of the submissions received from organisations and individuals as part of the initial consultation process for the A2JLN Research Program.

The Data Digest: The Data Digest is a database for examining expressed legal need as identified through inquiries handled by public legal services. It currently includes legal inquiries to the Legal Aid Commission of NSW, LawAccess NSW, and community legal centres in NSW. The inaugural Data Digest report, published in 2004, presents service usage data from 1999–2002.

Justice made to measure: NSW legal needs survey in disadvantaged areas: a quantitative survey of legal needs in six ‘disadvantaged’ regions of NSW, measuring a wide range of legal events, including those where help is sought from legal or non-legal advisers (expressed legal need), those handled without outside help and events where no action is taken (unmet legal need).

The Bega Valley pilot survey: a quantitative survey of the legal needs of 306 people conducted via telephone in Bega Valley. This was the pilot survey undertaken for the survey reported in Justice Made to Measure.

The legal needs of older people in NSW: a qualitative study into the legal issues commonly experienced by older people in NSW and the barriers faced by older people in accessing services to resolve legal issues.

No home, no justice? The legal needs of homeless people in NSW: a qualitative study into the capacity of homeless people in NSW to obtain legal assistance, participate effectively in the legal system and obtain assistance from non-legal advocacy and support agencies. The study also details the legal issues commonly experienced by homeless people.

On the edge of justice: The legal needs of people with a mental illness in NSW: a qualitative study into the legal issues faced by people with a mental illness in NSW, their capacity to obtain legal assistance, participate effectively in the legal system and obtain assistance from non-legal advocacy and support agencies.

LOOKING FOR INFORMATION . . .

The Law and Justice Foundation of NSW is an independent, statutory organisation which aims to improve access to justice, particularly for socially and economically disadvantaged people in NSW.

Our website — www.lawfoundation.net.au — includes two search tools:

Just Search

www.lawfoundation.net.au/justsearch

Look for information in a range of Foundation and other resources, including the full text of all major research reports in our innovative Access to Justice and Legal Need (A2JLN) program, and find links to justice organisations throughout NSW.



Plain Language Law Search

www.lawfoundation.net.au/pllsearch

Search over 700 current plain language legal information resources, including books, factsheets, videos and DVDs, community legal education programs and material in other languages; or search by law type including consumer, credit and debt, employment, environment and human rights.

KEEPING INFORMED . . .

The Foundation produces a suite of free electronic bi-monthly newsletters to keep you up-to-date with access to justice initiatives.

JAPA (Justice Access Programs Alert)

includes innovative programs improving access to justice for socially and economically disadvantaged people. Evaluations of programs are included if available. Each issue has a focus on a specific theme. To subscribe: www.lawfoundation.net.au/publications/newsletters/japa

PLL (Plain Language Law)

is for individuals interested in plain language legal information and education. Content includes new and forthcoming plain language resources about the law, community legal education programs, and related research and conferences. To subscribe: www.lawfoundation.net.au/publications/newsletters/pll

JARA (Justice Access Research Alert)

covers current research in access to justice and law reform, with a particular focus on economically and socially disadvantaged people. To subscribe: www.lawfoundation.net.au/publications/newsletters/jara

LJF e-bulletin

provides short reports on the range of Foundation activities including the Access to Justice and Legal Needs (A2JLN) research program, Legal and Information Referral Forum, Grants, the annual Justice Awards, and advance notice of new Foundation publications, launches and seminars. To subscribe: www.lawfoundation.net.au/publications/newsletters/ebulletin



LAW AND JUSTICE
FOUNDATION

OF NEW
SOUTH WALES

Street Address: Level 14 130 Pitt Street Sydney NSW 2000

Mailing Address: GPO Box 4264 Sydney NSW 2001

e: lf@lawfoundation.net.au t: +61 2 9221 3900 f: +61 2 9221 6280

www.lawfoundation.net.au