



# Is early intervention timely?

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**Abstract:** *'Better to have a fence at the top of the cliff than a fleet of ambulances at the bottom'. Such is the call to early intervention: preventing legal problems from forming and escalating, rather than mopping up once the crisis has struck. The idea of early intervention has strong appeal: providing less intensive assistance early, before problems become more difficult and costly to resolve. But in the legal assistance sector, what and to whom does 'early intervention' deliver? The impact of 'early intervention' is based on two assumptions: (1) that priority clients groups are reached and assisted 'early'; and (2) that the assistance provided will make a beneficial difference.*

*This paper explores these assumptions in the context of the evidence-based priority given to assisting the most disadvantaged, and the need to do so within the scope and limited resources of the legal assistance sector.*

## Source

This paper is drawn from ***Reshaping legal assistance services: building on the evidence base: a discussion paper*** by Pascoe Pleasence, Christine Coumarelos, Suzie Forell, & Hugh M. McDonald (Law and Justice Foundation of NSW 2014).

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

## About Reshaping legal assistance services

The *Reshaping legal assistance services* discussion paper draws on a substantial base of empirical research – together with current experience of service providers – to inform the design and delivery of efficient and effective legal assistance services (e.g. legal aid, Aboriginal legal services, family violence prevention legal services, community legal centres and pro bono services).

It provides a framework for discussion around how Australian access to justice research, policy and legal assistance services can best build upon this substantial evidence base.

*Reshaping legal assistance services* explores the notions of targeted, joined-up, timely and appropriate service delivery. It exposes the conceptual and operational tensions in delivering such services, while providing guidance to and illustrations of practice, detailing facilitators and obstacles to change and presenting a range of approaches to evaluation. Acknowledging current arrangements and resources, it provides a basis for considering how to move from the theory to the practice of client-centred service delivery.

## Background

The concepts of ‘prevention’ and ‘early intervention’ have become increasingly common in Australian policy and strategy documents, shaping the delivery of legal assistance services.<sup>1</sup>

The 2010 National Partnership Agreement on Legal Assistance Services (NPALAS), which provided federal government funding for civil and family law assistance, specified as a desired outcome a ‘30% increase in early intervention services’. In this agreement, early intervention services were defined as:

*... legal services provided by legal aid commissions to assist people to resolve their problem before it escalates [including] legal advice, minor assistance and advocacy other than advocacy provided under a grant of legal assistance (p. 3).*

‘Preventative’ legal services were 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 (p. 4).*

Early intervention has also featured heavily in access to justice policy discussion in Canada, where strategies have been proposed to ‘help most people in the most efficient, effective and just way at the earliest point in the process’ (National Action Committee on Access to Justice in Civil and Family Matters, Prevention, Triage and Referral Working Group 2013, p. 11).

Figure 1 illustrates the place of early resolution strategies relative to (a) the formal justice system and (b) the volume of legal problems experienced. It describes strategies commonly implemented as prevention or early intervention in the legal assistance sector, indicating they are services that are provided early in the progress of a legal issue, ideally prior to the formal legal processes. These strategies also tend to be less intensive (e.g. information and education) but widely available at the earliest stages, in order to ‘catch’ potential problems in the net as they are forming.<sup>2</sup> In Canada, these strategies are collectively called the ‘Early Resolution Services Sector.’

<sup>1</sup> See *A strategic framework for access to justice in the federal civil justice system* (Access to Justice Taskforce 2009), p. 63; p. 144. Subsequent documents include *Commonwealth Community Legal Services Program guidelines* (Social Inclusion Division 2010); *National Partnership Agreement on Legal Assistance Services* (COAG 2010); *Strategic plan 2014–2016* (National Legal Aid 2014); *Review of the National Partnership Agreement on Legal Assistance Services* (Allen Consulting Group 2014); *Access to justice arrangements* (Productivity Commission 2014).

<sup>2</sup> 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).

This paper examines:

- the promise of early intervention (including prevention) as a policy framework for legal assistance services
- who legal assistance services aim to assist
- notions of ‘early’: in processes, problems and lives
- the nature of early ‘interventions’
- the interface of legal with non-legal services in early intervention
- early intervention as cost effective justice.

## The promise of ‘early intervention’

A central rationale for ‘early intervention’ is that earlier assistance may reduce the need for more intensive and expensive intervention later on. It is understood that, as a legal matter progresses, it can become more complicated, trigger further legal problems and require more intensive assistance to resolve:

*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, Macourt, People, McDonald, Wei, Iriana & Ramsey 2012, p. 13; see also National Action Committee on Access to Justice in Civil and Family Law, Prevention, Triage and Referral Working Group 2013, p. 9).*

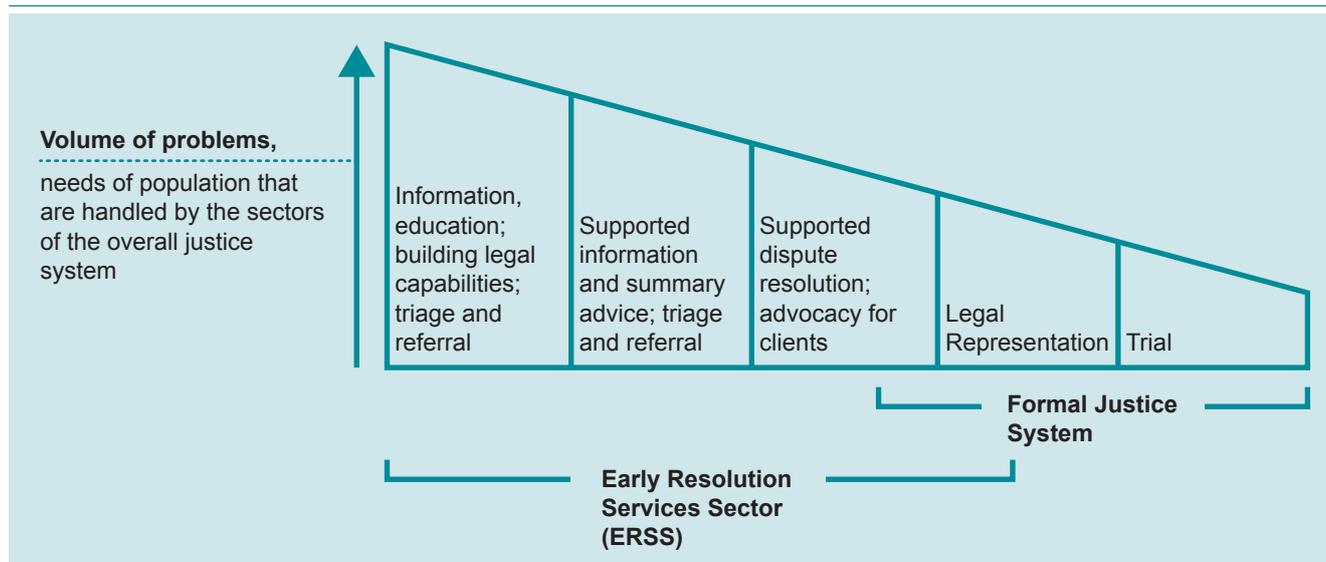
Another appeal of early intervention is the opportunity to broaden the reach of legal assistance services beyond ‘the most essential legal needs of the most vulnerable populations’ (Canadian Bar Association 2013, p. 2) and ‘to find solutions that will best alleviate the unmet legal needs of the *most* people possible’. (Canadian Bar Association 2013, p. 7; see also Trebilcock, Duggan & Sossin 2012; University of Toronto Faculty of Law, Middle Income Access to Civil Justice Steering Committee 2011). In Canada, this approach responds to a concern 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 2013, p. 2; see also Centre for Innovative Justice 2013).*

The rollout of early intervention services in Australia and overseas is seen as important, in part 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).*

**FIGURE 1: INVOLVEMENT OF THE ERSS AND FORMAL JUSTICE SYSTEM IN THE OVERALL VOLUME OF LEGAL PROBLEMS**



Source: National Action Committee on Access to Justice in Civil and Family Matters 2013, p. 11.

Thus, the appeal of early intervention is twofold. First and foremost it offers hope that matters will be resolved before escalating through the legal system. Second, less intensive but more widely available early intervention strategies are anticipated to provide cost effective justice options for a greater range of clients and issues.

## Who do legal assistance services aim to assist?

Before discussing whether ‘early intervention’ can deliver more cost effective justice, it is important to clarify who legal assistance services seek to serve and how services aim to assist them.

More than a decade of legal needs research has established a clear inequality in the experience of legal problems, with some groups more exposed to legal problems and/or less able to avoid or mitigate problems (Pleasence et al. 2014). As further observed by Pleasence et al. (2014, p. 5):

*This inequality of experience links to ‘social disadvantage’, with legal problems having been described as often existing “at the intersection of [law] and everyday adversity” (Sandefur 2007, p. 113).*

The extent of inequity in the experience of legal problems is encapsulated in the finding from the Legal Australia-Wide Survey (LAW Survey) that just 9% of survey respondents accounted for 65% of reported legal problems.<sup>3</sup> The evidence further

indicates that those most vulnerable to legal problems tend to have less of the knowledge, self-help skills, motivation and resources required to deal with legal problems without assistance, and may face additional barriers associated with geography (remote areas) and the availability of accessible, low cost services. Together, these factors lead to unresolved legal issues that contribute to ongoing and persistent disadvantage (Pleasence et al. 2014).

LAW Survey findings, previous legal needs surveys and other access to justice research have strongly influenced the prioritisation of disadvantaged people for legal assistance services. One objective of the NPALAS is, for instance, to develop:

*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).*

Recent national reviews of the NPALAS, and of access to justice arrangements more broadly, reiterate that the people who are most disadvantaged are priority clients for legal assistance services (Productivity Commission 2014; Allen Consulting Group 2014, p. 8).

## 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.

However, noting the reality of high legal need among the most disadvantaged, and the resulting prioritisation of public legal assistance to this group,

<sup>3</sup> The LAW Survey (Coumarelos et al. 2012) provides a comprehensive quantitative assessment across Australia of an extensive range of legal needs on a representative sample of the population (20,716 respondents). It examines the nature of legal problems, the pathways to their resolution, and the demographic groups that struggle with the weight of their legal problems.

it is against *their* needs and capabilities that the potential for early intervention legal assistance strategies should be considered.

For this reason, we now explore who early intervention legal assistance strategies best reach and when. We then examine how early intervention legal assistance might meet the needs of disadvantaged client groups.

### Who do early strategies best reach?

One assumption underpinning many early intervention strategies 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 their needs are addressed by early intervention strategies.

However, a substantial evidence base indicates the complex range of reasons why many people, particularly disadvantaged people, do not necessarily seek assistance for their legal problems in a timely way. These reasons include feelings of hopelessness and despair, fear, shame, denial, gratitude and frustrated resignation; believing they have insufficient power; not recognising or believing the law can work in their interests; or having other immediate priorities which take precedence over legal issues (e.g. Genn 1999; Forell, McCarron & Schetzer 2005; Pleasence 2006; Sandefur 2007; Balmer et al. 2010; Allison, Cuneen, Schwartz & Behrendt 2012; Pleasence et al. 2014).

New analyses from the LAW Survey have further 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’. McDonald and People (2014) observe that not knowing what to do was rarely reported as the *only* reason for inaction.<sup>4</sup> They noted, following an analysis of differences by demographic characteristics, that ‘particular types of people are more likely to be constrained from taking action’. In further analysis, McDonald, Forell and People (2014) identified that ‘not knowing what to do’ most commonly occurred as one of five or more reasons for inaction, and that it formed part of a cluster of reasons associated with ‘constrained inaction’ (Balmer et al. 2010). Other reasons in this cluster included that taking action was too stressful, it cost too much, it would take too long and that they had other, bigger problems to deal with.

Importantly, some of these barriers go beyond the legal domain – *and beyond what can be reasonably expected of legal sector strategies that are used to encourage people to seek assistance*. For instance, it is beyond the scope of the legal sector to deal with the complexity of day-to-day issues (e.g. looking after children, meeting Centrelink requirements, meeting bail requirements or underlying mental health issues) that may be preventing someone from addressing their fine debt issue.

One impact of this range of factors is that, as Forell et al. (2005, p. 136) 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’.<sup>5</sup>

Across a range of service sectors, research and practitioner experience has identified that help-seeking behaviour is often prompted by crisis (Evans & Delfabbro 2005; Hall & Partners, Open Mind 2012; Coumarelos et al. 2012, p. 30). Of note, the ‘tipping point’ for seeking help is later for some groups than for others and disadvantaged people are over-represented among those who delay help-seeking. This was reinforced by practitioners in Pleasence et al. (2014), particularly by frontline workers supporting clients with complex needs:

*... 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 these 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: people may wait until they have several problems to report, or until one problem becomes too painful to bear, before they finally seek help.

Practitioners further suggested that it is not only an issue of when people seek help, but when people are *ready to act* on the issue. As noted by a financial counsellor in Pleasence et al. (2014):

*... 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’.

Early assistance may therefore be less effective for some people, because they are not ready to address

4 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% gave ‘didn’t know what to do’ as their *only* reason for inaction. McDonald, HM, Forell, S & People, J 2014, *Limits of legal information strategies: when knowing what to do is not enough*, Updating justice, no. 44, Law and Justice Foundation of NSW, Sydney.

5 The Legal Services Board (UK) also notes research indicating that “legal services are commonly accessed at times of stress or trouble”. See <https://research.legalservicesboard.org.uk/analysis/demand/consumers-service-choices/#sources>

problems at that point in time.<sup>6</sup> There is a risk that if assistance is offered before the client is ready for assistance, it may not be taken, used to full advantage or have the impact expected.

For this reason, service delivery focused on *early* intervention – service provision *before* the crisis hits – risks missing those clients who simply do not come in early (Forell & Cain 2012) or who are not ready for help. Featured among these clients are social and economically disadvantaged people. Further, when a problem has reached crisis point, it is generally more complex, requiring assistance that may go beyond assistance commonly offered as ‘early intervention’.

Important also, among disadvantaged people legal problems do not exist in isolation, but are often closely interwoven with other legal (Pleasence 2006; Currie 2007; Coumarelos et al. 2012) and non-legal issues (Forell et al. 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 complex set of considerations such as health issues (including mental wellbeing), 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 extend beyond the domain of legal services. Timing must take into account factors beyond the presenting legal issue that may affect a person’s readiness and capability to act.

This raises the question: *what is meant by ‘early’ in the provision of legal assistance services?*

## When is early?

Early intervention is commonly conceptualised as the stage in the legal process, before formal court processes commence (Council of Australian Governments, 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 situation (Forell & Cain 2011).<sup>7</sup>

However, the progress of some legal issues is not so linear, with clearly defined early and late periods. In family law, there are defined steps leading to separation and divorce, but within these processes, additional legal issues (such as those regarding child

residence and access) may cause processes to start, stop, falter and re-emerge at any point. 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) 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 to its timing *in the legal process*. As a duty lawyer in the evaluation of the Legal Aid NSW Family Law EIU Duty Lawyer Scheme observed:

*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 experience of the client* rather than defining the effectiveness of service delivery (as is the case in the NPALAS) in terms of what may be an arbitrary point in a legal process. 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).

‘Early’ intervention in the legal assistance sector can also be understood as assistance provided before

6 Similar notions are described in relation health behaviour management as a model of ‘stages of change’ or ‘readiness to change’ (e.g. Prochaska, DiClemente & Norcross 1992, DiClemente & Prochaska 1998).

7 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.

a problem enters the legal domain. Advice about separation and divorce to people who are unhappy in their relationship or experiencing domestic violence is one example.

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.<sup>8</sup> Intervention at this point may steer people towards alternative sectors (e.g. 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, among very disadvantaged people, problems may have long and complex histories, and unpredictable futures. This can make it difficult to identify when problems are at the ‘early’ stage and to disentangle legal issues from other issues. Intervening before an issue becomes a legal problem also carries the risk that legal services stretch beyond their scope and into the terrain 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, 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).

Developmental crime prevention strategies also aim to intervene early in the lives of ‘at risk’ children to prevent later offending. Such strategies focus on ‘transition’ points in children’s lives e.g. early childhood, moves to pre-school, primary school and high school (National Crime Prevention 1999, Homel et al. 2006; Manning, Homel & Smith 2006). Manning et al. (2006) state:

*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 (2006, p. 4).*

This resonates with a range of legal needs and access to justice research findings.

First, the statement parallels LAW Survey findings that people are more vulnerable to different legal issues at different stages in life. Younger people

experience more problems related to criminal activity, accidents, personal injury and rented housing, while people in their late 20s and 30s experience more credit and debt issues related to owning or renting houses. Family-related legal issues peak in the 35–44 year age group, while, as might be expected, issues with wills and estates tended to peak at the 45–64 year age group (Coumarelos et al. 2012, pp. 168–173).

Second, it reflects findings that legal problems commonly co-occur or ‘cluster’ (Coumarelos et al. 2006; Currie, 2007; Pleasence, Balmer, Buck, O’Grady & Genn 2004, Pleasence 2006) and how some problems may ‘trigger’ others (Currie 2007; Genn 1999; Pleasence 2006). In summarising previous research, Coumarelos et al. (2012, p. 14) observed: ‘Although results across studies are not identical, relationship, injury and employment problems tend to emerge as likely trigger problems’.

Manning et al.’s statement also reflects observations made in qualitative legal needs studies about legal issues arising at key transition points in people’s lives such as family breakdown (Forell et al. 2005, pp. 65–74), sudden incarceration (Grunseit et al. 2008) and sudden illness or disability (Karras et al. 2006 re mental illness). Broadly echoing the theme, McLachlan, Gilfillan and Gordon (2013, p. 21) stated that:

*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.*

Legal service practices which aim to reach and assist disadvantaged clients at critical times recognise that transition points often trigger legal need. Examples include:

- Legal and other assistance services provided onsite to people following natural disasters (Victoria Legal Aid 2010)
- 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).
- Medical-Legal or Health-Justice partnerships, which link legal assistance to frontline health services (Noble 2012; Rodabaugh et al. 2010; Lawton & Sandel 2014).

The idea of ‘transition’ points during a person’s life, or even in the life of a problem, adds another

<sup>8</sup> Or escalate from one legal domain to another. As one public legal assistance lawyer noted in consultations for Pleasence et al. (2014): “...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”.

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.

Some of the sites of crisis or change may lie outside the legal sector, such as homelessness services and hospitals or other health services, pointing to the value of outreach or linked services (Forell, McDonald, Ramsey & Williams 2013; Noble 2012).

Equally however, a court or tribunal hearing may itself indicate a time of ‘transition’ for people facing criminal proceedings, family law matters, tenancy or employment issues, to name a few. As such, courts and tribunals can also 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 interviewed in Pleasence et al. (2014) 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)*

## What assistance is provided as early intervention?

Having considered the notion of ‘early’ we turn to the idea of ‘intervention’, and in particular, the question of what types of intervention may be necessary to prevent the escalation of issues, particularly for the most disadvantaged people who are a priority for legal assistance services.

Susskind (2010, p. 231) used the analogy of an ‘early intervention’ fence at the top of a 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 to ‘catch’ legal issues as they are forming (fences on the appropriate cliffs), but also be appropriate to the task of preventing the escalation of the problem (high enough fences).

### Types of services offered as ‘early intervention’ services

Early intervention strategies in the legal assistance sector are usually less intensive, short intervention services, which provide partial assistance (advice,

information and education), but rely on clients managing the problem (see COAG 2010, p. 34; Forell & Cain 2011, p. 6).

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.

Providing assistance which is appropriate and intensive enough to resolve issues, particularly for ‘priority clients’ who have a greater number of issues and more complex issues, but lower personal and legal capability is more of a challenge:

*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 Faculty of Law, Middle Income Access to Civil Justice Steering Committee 2011, p. 32).<sup>9</sup>*

Services also need to be accessible to disadvantaged clients and culturally appropriate. 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).<sup>10</sup>

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.*

<sup>9</sup> See Chapter 6 of Pleasence et al (2014) for literature on the appropriateness of unbundled legal services for clients with lower personal and legal capability.

<sup>10</sup> 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 ...”

Importantly, if the assistance provided cannot, for whatever reason, resolve the issue, it becomes not a replacement for later assistance, but additional to it. For example, because Indigenous people often fail to access family dispute resolution services, many require access to assistance through the family law courts 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 services offered through websites, telephone hotlines and self-help kits may suit some clients with certain problems, these service types may not match the needs and/or capabilities of others, typically people that are most disadvantaged. Simply put, they may not provide enough of a fence to prevent the need for the ambulance.

Also relevant to this discussion is how different strategies can most effectively 'dovetail' to best meet client needs. For instance, in consultations for Pleasence et al. 2014, 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 of legal advice being made available to their clients at or following 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.<sup>11</sup> 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.

It is also important to recognise that the types of assistance required and the options for resolution may not be exclusively legal. However, personalised legal assistance maybe required to 'rule the law out' as the path to resolution. 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*

<sup>11</sup> 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, Ramsey & Williams, 2013, p. 55)

*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) (Forell & Cain 2012, p. 22).*

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 escalation.

## The place of legal services in prevention and early intervention

The legal system – particularly legal assistance services, courts and other dispute resolution bodies – provides infrastructure to help people resolve disputes (e.g. Access to Justice Taskforce 2009; see also Schetzer & Henderson 2003). This role is largely reactive, with the formal court process a tool of last resort. It is at the ambulance end of the spectrum for disputes that are not resolved.

But legal problems have their roots in everyday life: in family, employment, housing, and consumer or contractual relationships to name a few. Among disadvantaged people in particular, other issues, such as mental health, disability, low or a sudden loss of income or coalescing needs may be relevant to these disputes. As has been observed:

*The so-called "legal" problem of the poor is often an unidentified strand in a complex mix of social, economic, psychological, and psychiatric problems (New York City Bar Association, Committee on Professional Responsibility 2013, p. 4).*

A central challenge for prevention and early intervention strategies in a legal assistance framework is that it is work 'beyond the law' that may best prevent legal problems from occurring or prevent problems from escalating. So, the most effective way to assist a homeless person with a 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 et al. 2005, p. 115).*

It is also the case that only a small proportion of public expenditure is allocated to the legal assistance sector, relative to the main human services programs (such as health and welfare), which have primary responsibility for a range of issues facing disadvantaged people, and which may enter the legal domain. The four main legal assistance providers in Australia (Legal Aid Commissions in each state

and territory, Community Legal Centres, Aboriginal Legal Services and Family Violence Prevention Legal Services) received around \$730 million in government funding in 2012–13, for both criminal and civil matters. This represented only around 0.14 per cent of total government spending in Australia (Productivity Commission 2014, p. 29). By way of contrast, welfare services account for 22 per cent of expenditure, health 19 per cent and education, 14 per cent of Australian governments' combined expenditures (Daley, McGannon & Savage 2013, p. 13).

The scope of legal assistance services is constrained both by funding and the need for legal services to work within their mandate and their expertise. So while legal assistance services may and do work effectively 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 position underpins and supports increasing interest in partnerships for joined-up service delivery (see Pleasence et al. 2014, Chapter 4) and is central to the practice of referral.

### **Systemic early intervention – the key role of law reform and strategic litigation**

Given the complex genesis of legal issues for the most disadvantaged, 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 is systemic work: strategic litigation (Curran 2013) and facilitating law and policy reforms to prevent or alleviate legal problems that particularly impact on disadvantaged people (Warner 2014; 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 et al. 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 (Buckley 2011 in Canadian Bar Association 2013, 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 change to improve the lives of not just one but many clients. For example, reforms to fines enforcement and driver licensing laws addressed hardship disproportionately experienced by disadvantaged people (Pleasence et al. 2014, p. 117). 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'.

These examples point to the value of funding and supporting strategic advocacy and law reform work by frontline legal services that work with disadvantaged clients. These services see the unintended impact of the law on their own clients and can advocate for change which can either prevent or address problems experienced by a wider group of people.

### **Early intervention as a cost effective justice option**

The prospect of cost effective justice has been a central driver to interest in early intervention services. However, as we have shown, 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 relates to who is best served by these early intervention strategies. While early intervention services may make legal assistance available to more people – if they do not address the needs of the most disadvantaged – they may not address more legal need. This is because a higher proportion of legal problems are experienced by a disadvantaged few (the nine per cent of people account for 65 per cent of legal problems (Coumarelos et al. 2012) and it is these few who, *if services are not targeted and appropriate*, may not be well served by early intervention strategies.

Further, if early intervention strategies *systematically* miss the 9 per cent of people who have a disproportionate number of legal problems and lower capabilities, this group may still need assistance when the crisis hits. A consequence of prevention and early intervention strategies missing the people who are most disadvantaged (and thereby a relatively high proportion of legal problems) is that early intervention strategies must be considered as an *addition* to more intensive assistance, rather than a *substitute*.

Given limited resources, focusing on early intervention strategies, which may in fact best serve the broader population, may be at the cost of more intensive service provision that better meets the needs of the most disadvantaged.

*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 if it is actually beyond the scope and capacity of the legal assistance sector to prevent escalation, the problems experienced by disadvantaged people 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, in turn driving 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 limited resources (University of Toronto 2011, p. 32).

## Conclusion

In developing strategies to address unmet legal need, it is sensible to ask what types of ‘intervention’ make a difference and at what points are these interventions most effective and cost effective.

However, such questions must be asked with a clear and shared understanding of who services aim to assist. The cascade of evidence on legal needs both in Australia and overseas shows the value of addressing the legal needs of the most disadvantaged. It is among these groups that the experience of legal need is highest and capability is lowest, leading to unresolved legal issues that contribute to ongoing and persistent disadvantage. As policy and practice in Australia indicates that the needs of the most disadvantaged are paramount, then service delivery needs to be targeted to these people and designed around their needs.

With a focus on the most disadvantaged, this paper has questioned the assumption that early intervention (in terms of lighter services earlier) is a panacea for cheaper and better justice. If early intervention services are not appropriate to those with the most need, they become an adjunct to rather than a replacement of crisis response services, further stretching already limited resources.

To reach this view, we examined both the notions of ‘early’ and of ‘intervention’. Early intervention is commonly conceptualised in terms of the legal process e.g. before court processes have commenced. However, for disadvantaged clients in particular, there is no single ‘early’, nor is there a clear cut off point when the intervention is suddenly late. Due to factors outside the law, the earliest and most effective legal assistance that can be provided to

some clients may in fact be ‘late’ in a legal process. 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 process – but relative to a range of other influencing factors.

Together, these observations suggest that a framework which focuses on the timeliness of services, *relative to experiences of the client*, may better address the needs of the most disadvantaged. A focus on the timeliness takes account of how legal issues are experienced, and how and where help is sought (recognising the common experience of crisis-driven help seeking, particularly among disadvantaged client groups). Thinking of early intervention in terms of the client’s experience also raises the further possibility of timeliness relative to significant ‘transition’ points in client’s life course, or even the life of a problem. Transition points offer opportunities for assistance when and where it is ready to be used. Legal problems themselves are often sites of transition (criminal conviction, family breakdown, loss of employment to name a few) where a legal crisis offers a chance to address immediate and imminent related issues. This is an area for further evaluation and research.

Turning to the ‘intervention’, effective services for disadvantaged clients need to be appropriate to those clients: catering for their particular legal needs and their capabilities. In this context we noted the value of *targeting* resources to those who most need it, and then *tailoring* those services by client need *and* capability, so the assistance provided has the best chance of making a difference.

However, due to the range of factors which contribute to the development of legal problems for the most disadvantaged, prevention and early intervention strategies risk stretching legal services beyond their scope. As disadvantaged clients of public legal services are often, and more immediately, the clients of other services, it is important to situate legal assistance in a broader social context. Further, as clients’ needs may well stretch beyond the tight remit and resources of the legal sector, legal services need to be connected: working as part of a broader service network in order to (together) provide holistic, targeted, client-centred responses. Models such as outreach legal services (Forell et al. 2013) and more specifically, health-justice partnerships take this approach (e.g. Noble 2012). Frontline legal services have a role in defining the boundaries of legal assistance work in this complex space.

It may well be the case that assistance provided early in the life of a problem can ‘nip it in the bud’ and prevent the escalating costs associated with ongoing disputes. However, for those disadvantaged clients with disproportionately high legal need but lower capability to address that need, assistance

may be most effective if it is responsive to their legal problem(s), appropriate to their capability, and provided at a time and place where it can and is most likely to be used.

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