



Reshaping legal assistance services, building on the evidence base: summary

Source

This paper summarises *Reshaping legal assistance services: building on the evidence base. A discussion paper* by Pleasence, P, Coumarelos, C, Forell, S & McDonald, HM (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 public 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.

What the research tells us

More than a decade of empirical research conducted in Australia and overseas provides a clear picture of the nature and distribution of legal need, and the capability of different people to manage their legal issues. Critically, the research indicates that:

There is clear inequality in the experience of legal problems.

In the Law and Justice Foundation of NSW's LAW Survey, for instance, 9% of respondents accounted for 65% of legal problems.¹

Inequity links to social disadvantage. Research has consistently identified that legal problems are particularly prevalent among people with chronic ill-health/disability, single parents, the unemployed and people in disadvantaged housing.

Social disadvantage is linked to lower capability.

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
- tend towards delayed, crisis-driven help seeking
- face additional barriers, including barriers associated with remoteness and the availability of accessible, low-cost services.

Legal problems don't exist in isolation.

- Legal problems occur in defined 'clusters', often coexisting with 'everyday life' problems.
- Legal problems can both result from broader social problems and reinforce disadvantage.



Implications for legal assistance services

Together, these findings indicate that to most efficiently and effectively assist those with the disproportionate amount of legal need, services should be increasingly client focused. This involves services being:

- **targeted** to reach those with the highest legal need and lowest capability
- **joined-up** with other services to address complex life problems
- **timely** to minimise the impact of problems and maximise the utility of services
- **appropriate** to the needs and capabilities of users.

Targeted services

Service targeting involves prioritisation, to ensure that limited public funds are first used to assist those with the most and most severe need and who are least able to otherwise access legal help.

People's personal circumstances and legal capability can constrain them from recognising and resolving their legal problems. In addition, environmental, systemic and cultural factors can act to make justice inaccessible, including distance and scant service infrastructure in remote Australia, cost, and the fragmentation of the legal system.

Outreach legal services are one way of proactively targeting and meeting legal needs that are not routinely addressed by existing services. Chapter 3 of the report describes legal outreach models, challenges to and facilitators of effective outreach practice, and the best practice features necessary for effective and sustainable outreach services.

While legal need is heavily concentrated, the needs of the broader community remain.

Recognising legal need across the entire community, and the common experience of seeking help from family, friends and non-legal providers, evidence also indicates the need for simple, well recognised gateways into mainstream legal services, more systematic use of non-legal professionals as legal problem noticers, and better legal diagnosis, triage and referral.

Joined-up services

Legal problems commonly exist as part of a broad set of related legal and wider social, economic and/or health problems, and sit 'at the intersection of [law] and everyday adversity'.ⁱⁱ Joined-up services provide a client-focused approach to service delivery, and have the potential for allowing clients to move swiftly, easily and seamlessly between the services they need in order to get a holistic, comprehensive response to all their legal and associated non-legal needs.

Joined-up services can take many forms. Services can be joined-up formally or informally, episodically or continuously, horizontally or vertically, within sectors or between sectors, physically or remotely, voluntarily or forcibly. They may be joined to any extent on a continuum that extends from almost complete separateness to full integration. In general, in moving along the continuum towards integration, autonomy is surrendered to trust and the resources required to manage collaboration increase.

A key message of *Reshaping legal assistance services* (Chapter 4) is that the challenges to successful joint working are many, complex and considerable, and that for more intensive forms of joining-up there is a risk these can outweigh the benefits. Particular caution is noted for those wishing to join up services from the outside (e.g. through political or financial exertion). As choices progress towards compulsion and replacement (see Figure 4.4 in the report) there is likely to be a trade-off between control over the form of services, and market disruption and diversity of supply.

Timely services

Common interpretations of 'early intervention' legal assistance suggest the provision of less intensive help (e.g. advice, self-help strategies) early in legal process, in order to resolve problems sooner and at lower cost. The

concept has a logical appeal and has been widely employed in the legal assistance sector. However, while these types of assistance may suit some clients, they may not best meet the needs of the less capable, most disadvantaged who experience the majority of legal need.

Finding the ‘right time’ to help disadvantaged people with complex need is challenging, as problems often have long histories and unpredictable futures. These clients may not seek assistance until the crisis has hit – making ‘early’ intervention more challenging.

Chapter 5 of *Reshaping legal assistance services* critically examines the idea of early intervention and how this concept can be best directed to address legal need where it is concentrated. It suggests a more nuanced approach whereby timely, responsive legal assistance is considered relative to the client’s experience of problems and help seeking. Timely services help people when they are ready and able to act, at whatever stage of the legal process this is. Ideally this is before problems further escalate, compound and become even more difficult and costly to solve.

Appropriate services

Disadvantaged people and groups, who are a priority for legal assistance services, often have low capability. People with low capability are less able to use self-help and unbundled services effectively, and therefore require more intensive assistance to resolve their legal problems. Appropriate services enable efficiencies by providing the least expensive services required to meet the legal needs and capabilities of particular clients.

The provision of appropriate legal assistance relies on the ability to determine legal capability. Resources are wasted when levels of support are insufficient to bring about effective outcomes and when they are in excess of what is required for each client. Chapter 6 of *Reshaping legal assistance services* provides guidance on how legal services can be more appropriately matched to client capability across client in-take, diagnostic triage, referral and follow-up. Client assessment is examined in terms of: diagnostic triage and referral by non-legal workers (legal health checks), legal service eligibility criteria, and intake and warning-light systems.

Implementing change in the current environment

The development of targeted, joined-up, timely and appropriate legal services necessarily occurs in context of current socio-economic, geographic, political and service environments, with their attendant opportunities and constraints. Service development is therefore influenced by past decisions, current arrangements, available resources and market conditions.

Given the variation in context, as well as in the geography of need and client capability, there is no single or ‘ideal’ model of service delivery, or simple formula for change that will be appropriate across regions. There are different challenges in different areas. For example, service provision in remote areas of Australia is defined by geography and scarcity of services, while in parts of major cities, such as Sydney, service provision is defined by population diversity and density and the complexity of the human services environment. Thus, the challenge of improving public legal assistance services is a complex and nuanced one, and requires complex thinking and complex policy responses rather than a one-size fits all approach.

Fragmentation of accountability, policy, funding and delivery also presents a particular challenge to coordinating system-wide change in a public legal assistance services sphere. There are positives to this diversity, such as resilience and the incubation of innovation, but it also gives rise to inconsistencies of approach and tensions between different objectives, obligations and resources.

Finally, with no substantial increase in funding into the sector being likely, change will need to be brought about using existing public resources: through service innovation (e.g. technological), service efficiency (increasingly hard to realise against a backdrop of long-term funding pressure) or redeployment of resources – or through market/regulatory change.

Clarity is needed as to the place of public legal assistance services within the broader human services sector. The law is a tool to resolve problems – issues which commonly have their genesis in other domains and beyond the

remit of legal services. The law often only becomes a first line response when crisis has hit. Further, other human services (such as welfare, health, and education) receive a far greater commitment of public funding than legal assistance services. Thus, while effective relationships with other human services are important to the delivery of targeted, joined-up, timely and appropriate legal services, public legal assistance services rarely have the resources required or jurisdiction to take a central role in relation to broad client welfare. However, there remains the question of who has responsibility for, and should resource, inter-sector coordination. This is one of a number of challenging questions.

Monitoring and evaluation

Monitoring and evaluation are critical to inform decision making. However, establishing the impact of services is complex and requires resources and expertise that are not commonly available within legal assistance service agencies. Broad improvement of our understanding of 'what works' will require that partnerships are forged between policy makers, service providers and researchers, for collaboration, coordination and systematic learning. While it can be politically awkward to divert funds to evaluation when funding is under pressure, it is imperative that funding and policy decisions are evidence based. There are evidently many competing models of service delivery in use and under development. Their costs and benefits (both within and beyond legal process) need to be better understood if public money is to be put to best use in the long term.

Questions for discussion

The purpose of *Reshaping legal assistance services* is to inform and focus debate, policy development, future research and the development of practice. It summarises and applies available empirical evidence, having considered it against the realities of service delivery on the ground in urban, regional and remote service locations. The discussion paper draws heavily on the consultations with solicitors and managers working in public legal assistance services as well as the non-legal workers they are connected with.

Numerous questions arose during the development of this paper and more will arise on the reading of it. The following are listed simply to commence this debate. We welcome the dialogue that follows.

1. What are the opportunities/challenges for implementing services which are:
 - targeted?
 - joined-up? E.g. Difficulties for small organisations with limited resources?
 - timely?
 - appropriate? E.g. Does the system allow capability to be considered?
2. What funding models may assist with the above?
3. How do we encourage a more proactive approach to monitoring and evaluation?
4. How do we inspire further discussion and relevant policy development?
5. What gaps in knowledge would be most useful for future research to address?

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

ⁱⁱ Sandefur, RL 2007, 'The importance of doing nothing: everyday problems and responses of inaction', in P Pleasence, A Buck and NJ Balmer (eds), *Transforming lives: law and social process*, Stationery Office, London, pp. 113.