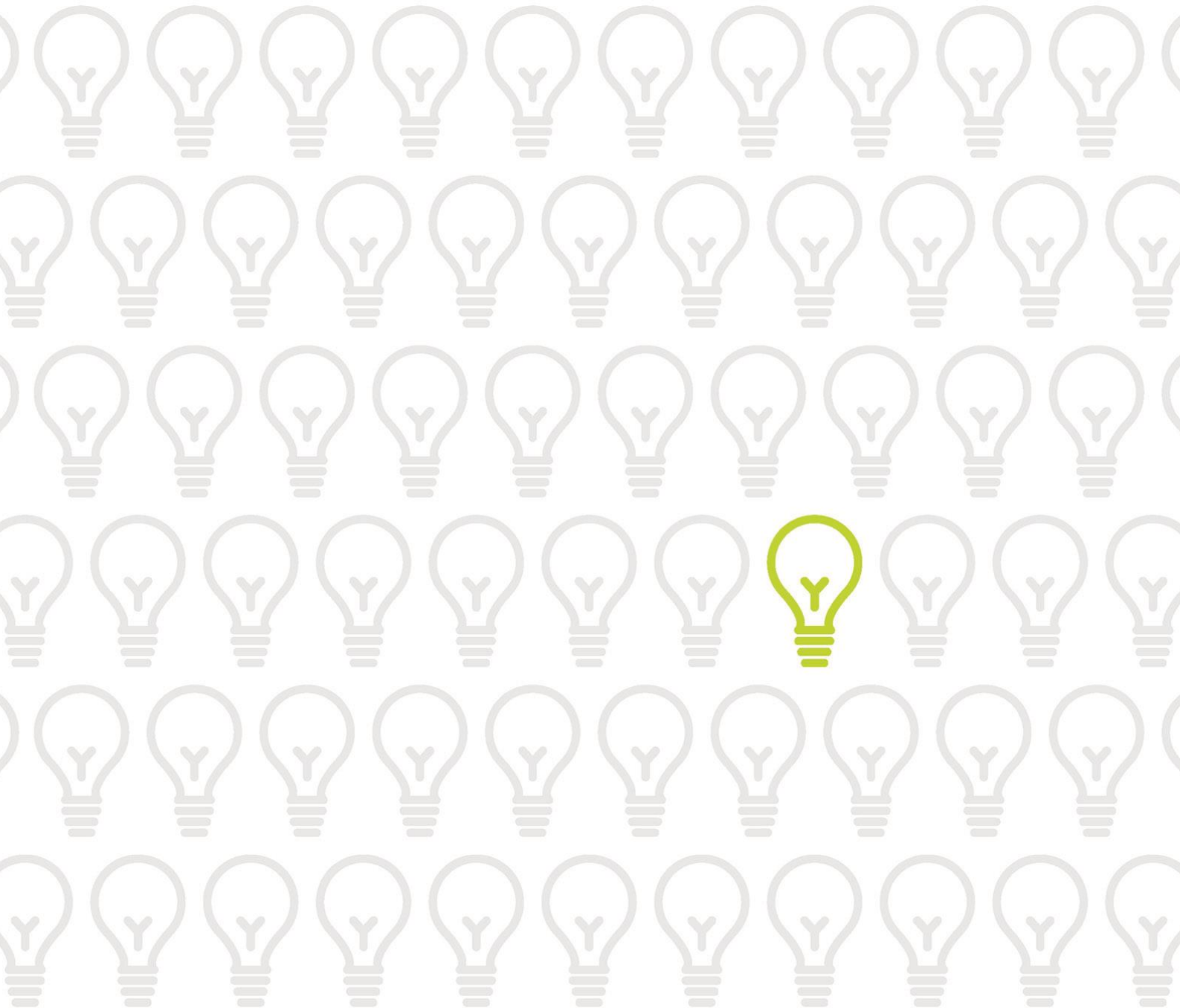


Strategic Review of the Law and Justice Foundation of NSW



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The Foundation

The Law and Justice Foundation of NSW (the Foundation) is a statutory authority established by and operating under the *Law and Justice Foundation Act 2000* (NSW).

The objects of the Foundation are:

*to contribute to the development of a **fair and equitable** justice system which addresses the **legal needs of the community** and to **improve the access to justice** by the community (in particular by economically and socially disadvantaged people).*

The Act provides that the Foundation may, in attaining the Objects:

- a. conduct and sponsor research (including inter-disciplinary research) into the law, the justice system, alternative dispute resolution and the legal profession,*
- b. collect, assess and disseminate information about the justice system,*
- c. conduct and sponsor projects aimed at facilitating access to justice and access to information about the justice system, and*
- d. promote education about the justice system.*

The Foundation primarily conducts and disseminates research relevant to its objects. It plays an active role with the legal assistance sector in NSW and nationally, providing independent data and analysis and contributing to the infrastructure for collaboration. Examples of its published research and resources are available on its website: lawfoundation.net.au

The Foundation has operated on year-to-year funding of less than \$1.5m, and currently employs about 6.5 Full Time Equivalent (FTE) staff, of whom 2.5 FTE are researchers. It has supplemented this income with contracted work, hence some of its more recent research is confidential and unpublished. With this review pending, several project and recruitment decisions have been deferred.

This review

The Board of the Law and Justice Foundation of NSW (the Foundation) initiated this review to answer a few central questions

- Is there a compelling strategic role for the Foundation into the future?
- And if so:
 - How ought the Foundation pursue its statutory objects?
 - What ought the Foundation's organisational context be?
 - How can it be resourced appropriately for its role and functions?

These questions primarily arose in the context of the dual existential threats of diminishing income and a decline in the confidence of key stakeholders. The Foundation faces the prospect of little or no further income from its long-term source - the Public Purpose Fund (PPF) - and uncertainty on the part of the PPF Trustees and the NSW Government as to the ongoing value of the Foundation to NSW.

To gain an independent view as to the central questions of this review the Board contracted Insight Consulting Australia to engage with stakeholders and review relevant literature. Insight was selected for its strengths in strategic policy and in regard to the wider human services landscape, including organisations with comparable functions.

This is an independent strategic review. Its findings are the views of Insight Consulting based on a synthesis of stakeholder input and relevant literature. The review consulted with more than 80 stakeholders from a diversity of relevant sectors, with each stakeholder bringing substantial expertise and wider networks to the task (see Appendix 1).

As per the language of the Australian Productivity Commission, in this document 'promoting access to justice' means, 'making it easier for people to resolve their disputes'.¹

¹ Productivity Commission 2014, *Access to Justice Arrangements: Overview*, Inquiry Report No. 72, Canberra

Summary of findings

While a very small number of stakeholders questioned the ongoing relevance of the Foundation, most saw it as an essential part of the infrastructure supporting access to justice in this State. Most of these stakeholders observed that a refresh of the organisation was overdue and noted a number of issues for the Foundation to address. This review finds a pressing need for the Foundation to reset how it operates twinned with an expectation that the Foundation can offer significant value to NSW.

There are several conclusions which can be drawn with high confidence from the review process

1. The objects of the Foundation remain important for NSW. Being grounded in people's legal needs and their access to justice, the objects describe a remit for the Foundation which goes beyond either formal legal systems, the legal assistance sector, the wider legal profession, or the role of government. It is this holistic, cross-sectoral perspective which outlines the Foundation's scope. Within that scope some organisations already have a niche (eg. BOCSAR), but the Foundation's scope is not defined by existing systems or stakeholders – rather by whatever contributes strategically *to a fair and equitable justice system which addresses the legal needs of the community or improves the access to justice by the community*. The assessment of what is most strategic to focus on within that scope relies on deep engagement with stakeholders.
2. The NSW Parliament and NSW agencies need high quality data and analysis to guide their budget and strategy decisions regarding the administration of justice and the ways justice outcomes are interconnected with other downstream outcomes for people and government.
 - a. There are currently significant gaps in our knowledge of civil justice needs, access, operations and outcomes. This is despite civil law undergirding the operation of the economy, and civil needs comprising the majority of people's legal needs.
 - b. Expert stakeholders and previous research attest that there is significant room for improving access, efficiencies and outcomes regarding people's civil justice needs, including within formal civil justice systems. Because there has been so little empirical research to date – even internationally – substantive gains are likely to be made from the first rounds of research. Research then needs to connect to reform for improvement and/or savings to be realised.
 - c. Beyond a focus on civil justice and on the legal assistance sector, there are a range of policy priorities to which the capabilities of the Foundation are uniquely positioned to contribute. For example, its qualitative research and/or policy translation capabilities could be used to complement the work of BOCSAR regarding the criminal justice system (see Figure 1 next page).
3. Apart from the Foundation, there is a dearth of accumulated multi-disciplinary research expertise relevant to its Objects. Currently there are very few researchers or consultants able to deliver the specialised work of the Foundation to similar quality. Without the Foundation there would be even greater gaps in the capabilities and body of research necessary to inform future policies, programs, reform and innovation.

Figure 1: How the Foundation complements existing research and innovation capacity

| Expertise | NSW Civil and Coronial Systems | NSW Criminal System | Family Law System |
|---|---|------------------------|----------------------------------|
| Quantitative and economic research | | BOCSAR | AIFS |
| Qualitative research especially with system users and key cohorts (First Peoples, disability) | | BOCSAR ANROWS | AIFS |
| Policy and program translation <i>Person centred and outcomes approaches, systems thinking, implementation science, improving access, practice, pilots, etc.</i> | Legal Aid NSW | BOCSAR ANROWS | AIFS Health Justice Australia |
| Two-way engagement with the legal assistance sector and non-traditional partners for access - research, innovation, evaluation and improvement | Health Justice Australia Legal Aid NSW | | |
| Key: | Nil or limited LJF role | Some scope for the LJF | Significant scope for LJF |

Note: Beyond this diagram is the larger Foundation domain regarding people's legal needs and the legal frameworks and alternative resolution mechanisms which enable those needs to be addressed without recourse to the courts. This diagram represents how the Foundation complements key organisations conducting research relevant to the Foundation's objects.

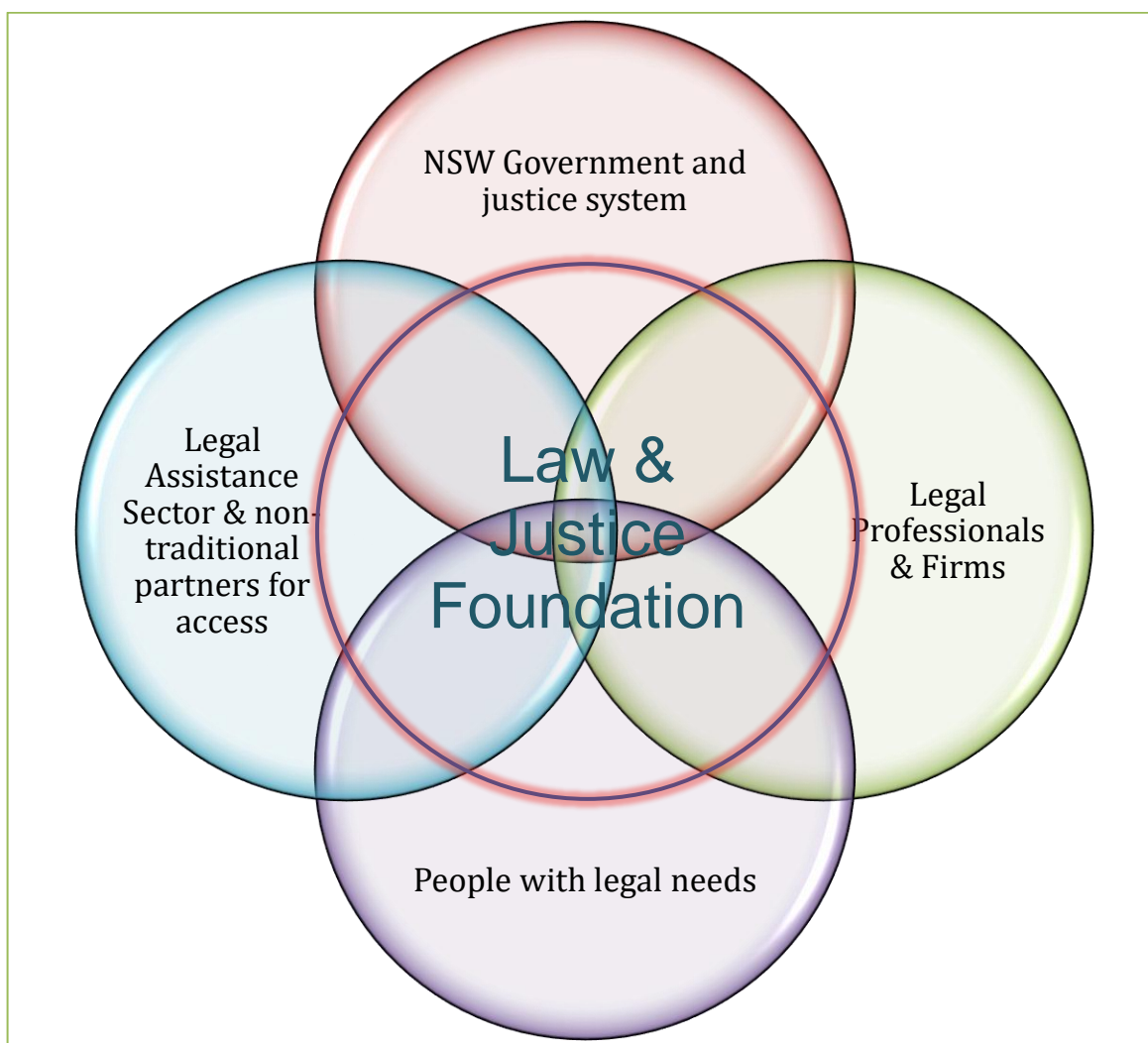
4. Better addressing people's legal needs through efficient access to justice is a core responsibility of government and generates net benefits to the community – benefits which need to be better quantified².
5. While there is ample strategic scope for the Foundation to continue in NSW, it cannot do so unchanged. Several matters need attention:
 - a. Income source, scale and certainty
 - b. Stakeholder engagement in the Foundation's agenda setting and delivery
 - c. Improved dissemination and translation – especially for policy audiences and purposes, but also for legal assistance providers, non-legal partners, the legal profession and academia
 - d. Appropriate engagement in public discourse
 - e. The capacity to leverage maximum value from its research through inter-connection to test-and-learn innovations
 - f. Adequate succession planning for both the Director role and the Board
 - g. Regular review and measurement of the Foundation's own impact

² Productivity Commission 2014, *Access to Justice Arrangements: Overview* p31, & Appendix K

The following findings are our conclusions arising from expert stakeholder input and the literature reviewed but, to varying degrees, are more contested than the above.

6. There are several possible options for the Foundation's future organisational context. We recommend the Foundation remain independent to harness the trust the Foundation has from diverse stakeholders, and for the Foundation to fulfill the expectations of its legislation. The remit of the Foundation, according to its objects, expects a focus driven by people's legal needs and the access to justice which enables resolution of those needs, through a fair and equitable justice system. This leads the Foundation to work closely with and across several sectors – something which is enhanced by being independent of each of them (see below diagram).

Figure 3: Stakeholders who use or benefit from the Foundation's work



Other key users: the Commonwealth Government and legal systems, international policy (via OECD), and academia.

7. The year-to-year focus of the Foundation's work needs to be negotiated with its funding sources. Grounded in the Foundation's objects and in what is strategic for government, the legal assistance sector and the legal profession, the potential scope of the Foundation's work is significant – but resourcing will never fully match that scope. Hence it is necessary for the Foundation's work to be planned in consultation with key partners.

8. We recommend the Board negotiate with the NSW Government so as to reset the Foundation to succeed and deliver value for NSW - according to agreed value propositions for government, the profession and for the people of NSW including through 3 - 5 year funding and delivery cycles, providing sufficient security to attract and retain high quality researchers to deliver excellence
 - a. Achieve sufficient scale and resourcing of key functions to enable the Foundation to maximise the impact of its research, including via dissemination, policy translation, participation in public discourse, and connection to test-and-learn innovation
 - b. Require the Foundation to report regularly on its impact - the return on investment it achieves, and the social return on investment to which it contributes
 - c. Enable the Foundation to develop a robust strategic plan and commercially savvy business plan
 - d. Review the Foundation every five to ten years - in alignment with its funding and delivery cycle. The first review will be an important test of the reset undertaken following this review, allowing sufficient time for change to be implemented and impact measured.
9. There are a limited number of options for resourcing the Foundation's work. We recommend discussions occur with the NSW Government for a budget allocation. The Foundation could also ask the Government to consider the use of fees levied on identified court lists – but this would be a longer term prospect.
10. The Foundation's recent annual income of approximately \$1.5m seems disproportionate to the opportunities for generating a return on investment within a \$1.8b system – even acknowledging that others make significant contributions in this regard. For the combination of functions canvassed in Chapter B we suggest that a budget of about \$2.5m pa would be a proportionate scale for a refreshed Foundation - allowing it to demonstrate results and, if warranted, grow further. Achieving this budget level could be staged as the Foundation is likely to need two years to grow to this scale from its current position.

The Foundation has positioned NSW at the forefront of international and domestic empirical and applied research regarding legal needs and access to justice. Its work has informed a range of solutions to the issues identified, and the Foundation continues to translate its research into practical tools and guidance for legal assistance providers. A genuine reset is needed for the Foundation to deliver better value for a wider range of issues and stakeholders relevant to improving the resolution of people's legal needs – most notably the NSW Government. With such a reset the Foundation is well positioned to continue to deliver value for NSW and Australia.

A. Is there a compelling need for the Foundation?

Would the NSW Government establish a body such as the Law and Justice Foundation of NSW today due to compelling needs? The answer is probably no. In part because the income source which enabled the establishment of the Foundation is diminished, and in-part because government rarely chooses to establish independent bodies of this nature today. However, while the Foundation would not be established in its current form today, what this review finds is that the existence of the Foundation is an unusual and valuable asset for NSW, providing a deep foundation suitable for harnessing according to contemporary priorities. That asset is comprised of: the expertise and reputation it has built; its ongoing capacity to attract quality researchers due to its role and independence; the body of work which it has generated and on which it is able to build further; its network of trust and relationship across relevant national sectors; and its existing infrastructure.

Functional access to justice and the resolution of legal needs for small businesspeople, consumers, tenants, landlords, families and individuals is foundational to public trust in government, the operation of the economy, and a coherent society. Independent, reliable data and research regarding our legal systems and other means for resolving legal needs positions government to make difficult, evidence informed choices regarding legislation, investment, strategy and delivery. The Foundation has unique capabilities to deliver just this kind of work - work which is both strategic to government and necessary for good government.

While a very small number of stakeholders questioned the ongoing relevance of the Foundation, most saw it as an essential part of the infrastructure supporting access to justice in this State. Most of these stakeholders observed that a refresh of the organisation was overdue and noted several issues for the Foundation to address. This review finds a pressing need for the Foundation to reset how it operates twinned with an expectation that the Foundation can offer significant value to NSW.

Through the Foundation NSW has become an international leader in understanding the real legal needs of people and informing innovation to improve the resolution of those needs. Hence, in the context of finite government resources, the Foundation provides a sound base from which NSW can continue to pioneer efficient solutions to legal needs which otherwise inhibit economic activity, undermine social wellbeing, and contribute to costs for government.

The objects of the Foundation remain important for NSW.

Being grounded in people's legal needs and their access to justice, the objects describe a remit for the Foundation which goes beyond either formal legal systems, the legal assistance sector, the wider legal profession, or the role of government. It is this holistic, cross-sectoral perspective which outlines the Foundation's scope. Within that scope some organisations already have a niche (eg. BOCSAR), but the Foundation's scope is not defined by existing systems or stakeholders – rather by whatever contributes strategically *to a fair and equitable justice system which addresses the legal needs of the community or improves the access to justice by the community*. The assessment of what is most strategic to focus on within that scope relies on deep engagement with stakeholders.

While there are a range of bodies relevant to the Foundation's objects – some of them pioneered by the Foundation – strategic gaps remain regarding empirical, multidisciplinary and applied research, reliable data, and innovation. Community access to justice, and a fair and equitable justice system which addresses the legal needs of the community, continue to be essential foundations for governance, economic activity, social cohesion and social inclusion. This is so in the regions, the suburbs and the city.

Although NSW lacks a range of indicators regarding access to justice and the resolution of people's legal needs, expert input to this review confirms that the challenges regarding these needs are currently as great as ever and affect many people – including and beyond the socio-economically disadvantaged. Many

stakeholders raised issues regarding people who do not qualify for legal assistance but who also do not have the resources or knowledge to resolve their disputes in other ways³.

No other organisation has the breadth of remit ascribed to the Foundation through its legislation. It is useful for the Foundation to be responsible to consider the whole landscape regarding access to justice and a fair and equitable system for it to then ground its research and innovation activities to what is most important for people's legal needs. Other organisations contribute to specific parts of the puzzle, but the Foundation is positioned to own the whole picture and respond strategically.

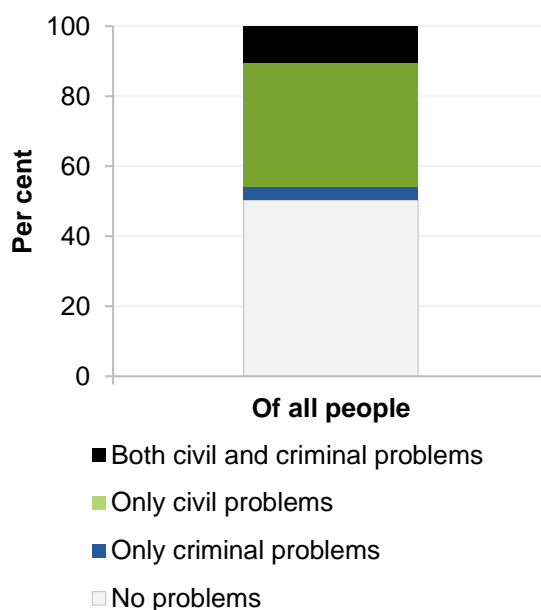
NSW Government needs reliable data and analysis to inform decision making

The NSW Parliament and NSW agencies need high quality data and research to guide their budget and strategy decisions regarding the administration of justice. This includes the ways justice outcomes connect to downstream outcomes for people and government. The justice sector is far less researched than other fields, and therefore lacks the evidence for government to know with confidence what works to improve performance or outcomes.

In 2021-22 the NSW will invest \$1.8b for “an efficient and effective legal system” – excluding policing, corrections, etc⁴. Nationally, the Commonwealth will invest \$2.3b into legal assistance over the five years to 2025⁵. The Foundation plays a key role informing the Commonwealth investment as both an independent researcher and as a source of contracted policy advice. This national integration is strategic for NSW – as is the Foundation's international work - but it also requires some delineation of the Foundation's roles.

Established two years after the Foundation, the Bureau of Crime Statistics and Research (BOCSAR) has provided valuable data regarding the operation of the criminal legal systems for fifty years. Comparable data systems and reporting have not been established for the civil justice landscape, despite civil law undergirding the operation of the economy, and civil needs comprising the clear majority of people's legal needs – as the below outlines.

Figure 4: The composition of legal problems, nationally⁶



³ See also references to the “missing middle” in Victorian Government, 2016 and Productivity Commission, 2014.

⁴ NSW Outcomes Statement, Budget Paper 2

⁵ Attorney General's Department, *Commonwealth Budget 2021, Fact Sheet*. DCJ Media Release, 30 Sept 2021: *Record \$95m boost to legal help sector*.

⁶ Productivity Commission 2014, *Access to Justice Arrangements: Overview*, p.4 Estimates based on unpublished LJF LAW Survey data

As the 2018 NSW Civil Justice Action Plan notes:

The civil justice system provides a legal framework to help people and businesses solve ... 'everyday' issues that we face in our daily lives ... around 2.8 million people in NSW experience a legal problem every year. Around 85 per cent of all legal problems are civil.

Not all legal problems need to be resolved through formal court and tribunal processes ... just over 30 per cent of legal problems are resolved through discussions with the other side, and only around 3 per cent of legal problems ever reach a court or tribunal.

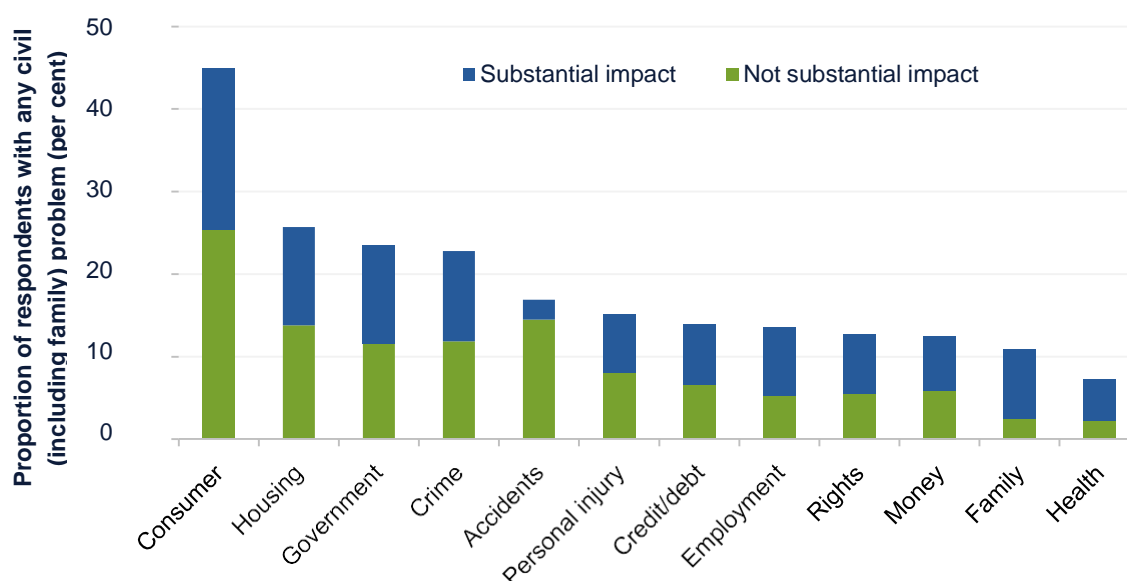
Improving access to justice is therefore not just about making our courts and tribunals more accessible. It is also about making it easier for people to resolve disputes as early as possible, and in a manner that suits them.

Table 1: Prevalence of legal problems by problem group, in NSW

| Problem group | Respondents % |
|-------------------|---------------|
| Accidents | 7.5 |
| Consumer | 21.0 |
| Credit/debt | 6.3 |
| Crime | 14.0 |
| Employment | 6.2 |
| Family | 4.3 |
| Government | 10.7 |
| Health | 3.6 |
| Housing | 13.0 |
| Money | 5.9 |
| Personal injury | 7.7 |
| Rights | 6.2 |

(N=4113 respondents). Coumarelos et al 2012

Figure 5: Prevalence of legal problems and severity, nationally



Data source: Productivity Commission national estimates based on unpublished LAW Survey data.⁷

⁷ Productivity Commission 2014, *Access to Justice Arrangements: Overview*, p.4, based on research by Coumarelos et al 2012.

One half of the NSW population experiences at least one legal problem in a 12-month period, and these were substantial legal problems for more than one quarter of the population.⁸ In 2019 (pre-pandemic) Civil matters accounted for about 20% of matters in the Local Court and 75% of matters in the District Court⁹.

Expert stakeholders and previous research attest that there is significant room for improving access, efficiencies and outcomes regarding people's civil justice needs, including within formal civil justice systems. Because there has been so little empirical research to date – even internationally – substantive gains are likely to be made from the first rounds of research.

For example, the Foundation's 2018 research to inform the NSW Civil Justice Strategy for the Department revealed that

*In NSW, more than a third of all civil claims in the Local Court involve local councils pursuing unpaid council rates, and more than 80 per cent of these claims are worth \$2,000 or less. NSW government agencies also pursue small debt matters in court.*¹⁰

By changing practices, a significant proportion of the Local Court's civil matters were avoided. Similarly,

... consumer disputes account for 21 per cent of legal problems experienced by NSW citizens. The 2016 Australian Consumer Survey found that 60 per cent of people have experienced at least one problem relating to the purchase of a product or service in the last two years ... The current process for obtaining an enforceable remedy ... involves three separate steps and takes an average of 100 days. This can discourage people from attempting to resolve low-value consumer problems, and limits the ability of consumers and traders to achieve a quick and efficient outcome.

From this research the Department introduced changes to give consumers and businesses a free, fast and accessible dispute resolution process, reducing the number of matters that need to be filed in the NSW Civil and Administrative Tribunal and the Local Court. In these ways the 2018 work of the Foundation demonstrates the potential gains from further research. Such research needs to connect to reform for improvement and/or savings to be realised, and for reform it is advantageous at times for government to be able to rely on independent findings from institutions who are respected and trusted by key stakeholders.

Several stakeholders noted climate change, economic/employment transformations, increasing natural disasters and/or the post-pandemic rebuild as foreseeable sources of legal needs requiring new solutions for a new context. Future reform in civil justice will rely on a history of collected data, research, analysis and innovation. There is value in increasing investment in this work now – so that accumulated data is available for future reform, as well for ongoing improvement in the meantime.

It would be strategic to embed well-selected access to justice indicators into administrative data across the NSW justice system so it is publicly accountable and driven to improve. This could start in the civil justice sphere. Routinely collecting and reporting access to justice data would be a powerful tool for improving efficiency, outcomes and performance.

Beyond a focus on civil justice, there are a range of policy priorities to which the capabilities of the Foundation are strongly positioned to contribute. (See Chapter B, pp.21-22 below)

Some form of independence is seen by most stakeholders as critical for public trust in justice data and analysis - as a field where active stakeholders can be conflicted. (See Chapter C, pp.23-24 below)

⁸ Substantial problems are those having a moderate or severe impact on daily life. Coumarelos et al 2012

⁹ Local Court of NSW Annual Review 2019; Supreme Court of NSW Annual Review, 2019. Data from 2019 has been used due the impact of the pandemic on Civil filings in 2020.

¹⁰ NSW Department of Justice, 2018, *Civil Justice Action Plan*

There is a dearth of relevant multi-disciplinary research expertise

Domestic and international researchers consulted by this Review attest that the Foundation is regarded internationally as a thought-leader in relation to access to justice research and the policy implications that arise and is indeed unique in the international landscape. The Victorian Law Foundation (VLF) and Health Justice Australia (HJA) – as emerging bodies which have themselves learned from the Foundation - can be expected to add to this domestic expertise.

Respondents from the tertiary sector, and most of those who commission and use research, described a lack of comparable local expertise, and a corresponding need for the Foundation to cultivate wider networks of expertise through active engagement. While there was some room for improvement, respondents saw relative strength in the applied, empirical, multi-disciplinary and expert nature of the Foundation's research, in contrast to what they experienced from other sources.

Currently there are very few researchers or consultants able to deliver the specialised work of the Foundation with the same level of depth or quality assurance. Without the Foundation there would be even greater gaps in the capabilities and body of research necessary to inform future policies, programs, reform and innovation.

The Foundation's research is used and/or cited extensively by legal assistance providers, courts, legal professionals, academics, government agencies, international agencies and social service providers. It is used to inform submissions regarding law reform, policy, program design or reform, service delivery and resource allocation, among other matters. Most stakeholders referenced how they had used the Foundation's research and/or gained value from the Foundation in other ways.

Where the Foundation's data and analysis have been subjected to expert review – as by the Productivity Commission in 2014 – their work has proved to be of the highest reliability and quality. Stakeholders with current knowledge of the Foundation's work consistently rated the quality of its research at very high levels – including those critical of other aspects of the Foundation.

There are substantive gaps in qualitative research, especially that relevant to the experience of the users of legal systems and other people seeking to resolve their legal needs. For example, the Foundation's recent literature review, commissioned by Legal Aid NSW, revealed a lack of qualitative research with families regarding coronial processes generally, and especially with First Nations people:

*Of the primary research reviewed, only six qualitative research papers were found that described the experiences of, or impact on, families involved in the coronial process. Being observational studies only, none explicitly interviewed Aboriginal and Torres Strait Islander families about their experiences*¹¹

The below diagram (following page) represents only some of the very broad scope relevant to the Foundation, centred on the Civil justice system and the legal assistance sector, but also reaching into the areas of qualitative research and policy translation relevant to the criminal systems and Family Law. Beyond all of that is the much bigger domain of people's legal needs and the legal frameworks and alternative resolution mechanisms which enable those needs to be addressed without recourse to the courts.

¹¹ Butler, K., 2021, *Aboriginal and Torres Strait Islander families in Australian Coroner Courts*, The Law and Justice Foundation of NSW

Figure 6: How the Foundation complements existing research and innovation capacity

| Expertise | NSW Civil and Coronial Systems | NSW Criminal System | Family Law System |
|---|---|------------------------|----------------------------------|
| Quantitative and economic research | | BOCSAR | AIFS |
| Qualitative research especially with system users and key cohorts (First Peoples, disability) | | BOCSAR ANROWS | AIFS |
| Policy and program translation <i>Person centred and outcomes approaches, systems thinking, implementation science, improving access, practice, pilots, etc.</i> | Legal Aid NSW | BOCSAR ANROWS | AIFS Health Justice Australia |
| Two-way engagement with the legal assistance sector and non-traditional partners for access - research, innovation, evaluation and improvement | Health Justice Australia Legal Aid NSW | | |
| Key: | Nil or limited LJF role | Some scope for the LJF | Significant scope for LJF |

Note: Beyond this diagram is the larger Foundation domain regarding people's legal needs and the legal frameworks and alternative resolution mechanisms which enable those needs to be addressed without recourse to the courts. This diagram represents how the Foundation complements key organisations conducting research relevant to the Foundation's objects.

Several stakeholders in government, the legal assistance sector and academia emphasised qualitative research with people affected by legal systems as an important focus for the Foundation.

For example, while BOCSAR delivers excellent data analysis it does not focus on qualitative research to complement that analysis, nor the translation of research implications for policy and program application. Hence there is scope for the Foundation to complement BOCSAR's work, and to integrate that analysis with considerations of access to justice and people's legal needs. This review therefore looks to build on the Foundation's existing quantitative and qualitative strengths, and add expertise regarding policy translation, economic analysis and Indigenous research.

There is a compelling strategic rationale for close multi-disciplinary collaboration between the Foundation, the VLF and HJA into the future – building on that which already occurs. In a similar way, the Foundation ought to complement the work of the NSW Bureau of Crime Statistics and Research (BOCSAR) – potentially with qualitative research - and of the Australian Institute of Family Studies (AIFS - regarding family law).

That Victoria, in its 2016 review of access to justice in that state, identified the NSW Foundation as the “blueprint” for the research function subsequently added to the Victorian Law Foundation, provides further confirmation of stakeholder analysis to this review that more research expertise in this field is needed and that the Foundation has continuing value to offer NSW¹².

According to most stakeholders with the relevant expertise, there is strong case for a national body like the Foundation – specifically in relation to people's legal needs, legal assistance and Commonwealth jurisdictions. However, achieving that would be a long-term project and is beyond the scope of this review. Instead, the NSW and Victorian Foundations have the potential to form a critical mass of research to inform

¹² Victorian Government, 2016, p.52.

state and national decision making relevant to legal needs and access to justice, grounded in the priorities of their states. The Foundation's work is already much valued in other Australian jurisdictions— with inter-state stakeholders noting an absence of others doing empirical access-to-justice or other research relevant to their needs. Without the Foundation there would be significant gaps for NSW and nationally regarding the research and analysis required to inform legal assistance strategies, services and other means to address legal needs.

Access to justice generates net benefits to the community

Better addressing people's legal needs through efficient access to justice is a core responsibility of government and generates net benefits to the community – benefits which need to be better quantified.¹³

There is no more authoritative voice on economic benefits than the Australian Productivity Commission, who observed regarding civil justice:

... a well-functioning civil justice system ... promotes social order, and communicates and reinforces civic values and norms. A well-functioning system also gives people the confidence to enter into business relationships, to enter into contracts, and to invest. This, in turn, contributes to Australia's economic performance. There can also be fiscal benefits. Prompt, affordable and well understood dispute resolution arrangements can help avoid issues escalating into more serious problems that can place burdens on health, child protection and other community welfare services ... not providing legal assistance ... can be a false economy as the costs of unresolved problems are often shifted to other areas of government spending ... Numerous Australian and overseas studies show that there are net public benefits from legal assistance expenditure.

We note that providing legal assistance services is but one way to improve access to justice. Within constrained resources there is a need for continuing innovation in the legal frameworks that enable prompt resolution of disputes, legal assistance and non-traditional access to justice methods. Such innovation

- Includes options for resolving people's legal needs which avoid unnecessary costs for consumers and for government
- Is enabled by the kind of test-and-learn grants offered through DCJ's access to justice innovation fund
- Is occurring within legal assistance providers, in partnership with health and social service providers and businesses
- Is best informed by robust research regarding legal needs and access issues

Better understanding and measurement of the downstream impacts of legal assistance and other means of accessing justice, using an evidence-based Theory of Change, will be important for informing future decisions regarding finite resources. There is likely scope for utilising DCJ's Human Services Dataset, which links data from NSW and Commonwealth repositories, to map the downstream impacts and quantify the value of effective access to justice. This would further operationalise DCJ's Human Services Outcomes Framework within the justice sector.

The legal assistance sector

Stakeholders consistently attested that the legal assistance sector – encompassing Community Legal Centres, the Aboriginal Legal Service and Legal Aid - has a long history of valuing the Foundation's roles

- As an honest broker and critical friend, facilitating evidence informed collaboration and coordination

¹³ Productivity Commission 2014, pp.30-31 & Appendix K. See also: Law Council of Australia, 2018, pp. 48-51; and OECD 2019.

- Informing service delivery from data, and
- Stimulating evidence-based innovation

This provides a strong basis for the Foundation to continue its work.

We note that some of the Foundation's sector relationships are currently challenged by perceptions regarding the Foundation's dual roles with the Commonwealth as both a source of independent analysis and an advisor to the Department. This may be the result of the Foundation providing robust independent advice based on the data and unaligned to interests.

Maintaining close relationships between the Foundation and the sector is useful for informing and shaping the Foundation's research, dissemination and translation, and in turn for its research to be utilised by relevant audiences and contribute to on-the-ground improvement and innovation. While there are some current challenges, the Foundation has extensive national relationships, a strong history with the sector, and its resources are utilised across jurisdictions.

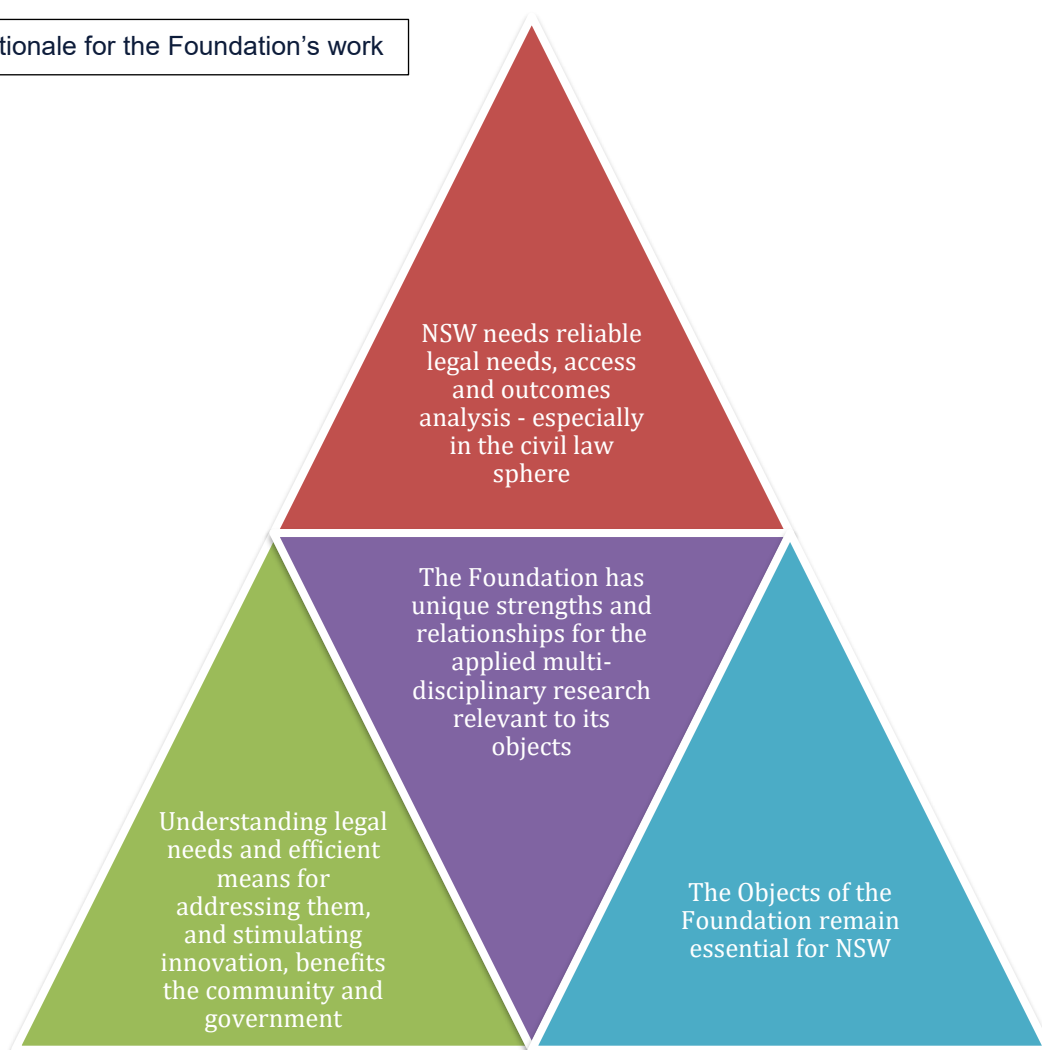
Most members of the legal assistance sector and legal profession we consulted valued the previous grants and awards programs and urged their reinstatement. The grants program was seen as: an important way for the Foundation to be aware of where innovation was most needed and/or already occurring; as a means for connecting research to practice; and as a stimulant for innovation. The Awards program similarly provided the Foundation with networks and a deep awareness of what was happening across the access to justice landscape – including beyond the legal assistance sector; and provided meaningful recognition of the work of people who are otherwise poorly rewarded. Several stakeholders, including some within the legal assistance sector, saw the awards as beyond the core business of the Foundation and/or not now necessary. Stakeholders did not offer comment on the current Access to Justice Innovation Fund NSW administered by the Department.

While we can see the value of both these past programs, we do not conclude that they are essential elements of the Foundation's future – if the research and evaluation of the Foundation can be adequately connected to other innovation programs such as the Access to Justice Innovation Fund (see next chapter). Beyond the Awards, the Foundation does need to invest in a range of strategies for adequately engaging its stakeholders.

In summary, the rationale for an ongoing, refreshed and capable Foundation lies in:

- The value of having an independent institution which owns a very broad remit grounded in people's legal needs and access to justice solutions, and which refines its focus in consultation with all key stakeholders – not any one sector or set of interests.
- The paucity of existing research and innovation capable of reliably informing policy, strategy and reform regarding the ongoing development of a fair and equitable justice system which addresses the legal needs of the community and improves access to justice by the community
- The scarcity of relevant research expertise within Australia and internationally
- The incomplete coverage of key research areas through existing institutions
- The significant gaps in our knowledge regarding the civil justice system and what is needed to meet the evolving legal needs of people in a rapidly changing world
- The benefits for people, government, the profession and the justice system which are derived from effective research and the innovation or reform it informs
- Its existence as a unique asset available for leveraging further value from into the future.

Figure 7: Rationale for the Foundation's work



B. How ought the Foundation pursue its statutory Objects?

While there is ample strategic rationale for the Foundation to value-add in NSW, it cannot do so unchanged. Several matters need attention.

i. **Income source, scale and certainty**

While there are several issues with how the Foundation operates, nothing has impaired its work as significantly as: failing to adequately engage key stakeholders around the value the Foundation can deliver, and subsequently declining income adequacy and security. See Chapter D below. Limited and uncertain resources have contributed to several of the following concerns but are not the only contributing factors.

ii. **Stakeholder engagement in the Foundation's agenda setting and delivery**

A strength of the Foundation has been the independence to conduct research according to its objects, grounded in people's legal needs, rather than according to the agendas of governments, the legal assistance sector, academia or the legal profession. While stakeholders across those sectors valued this independence, they also observed an unnecessarily low level of engagement regarding

- Research and translation priorities
- Dissemination strategies
- External collaboration

The guiding lights for the Foundation's core work must be the needs, experiences and capabilities of people with legal needs, and the experience and insights of those who work with them: legal assistance providers, pro-bono providers, health services, social services and others.

In that context, a core research capacity which is independently and strategically focussed on pursuing the Foundation's objects does not preclude consulting wider stakeholders on how best to direct that capacity and regarding opportunities to leverage greater value through collaboration. This requires appropriate expectations and engagement on all sides.

For the Foundation to effectively complement and, where appropriate, leverage value from other research bodies its planning needs to be mutually informed by organisations such as the VLF, HJA, Legal Aid NSW, BOCSAR, AIFS, ANROWS, the Indigenous Justice Clearinghouse and universities.

If the Public Purpose Fund and/or DCJ are to be key funding sources into the future, then the Trustees, DCJ and the profession more broadly also need to be engaged in regular dialogue with the Foundation as to its research directions. This ought not compromise the Foundation's independence or expertise, but ensure that the Foundation's work is both understood and adds substantive value from multiple perspectives. These are also important audiences for dissemination.

We recommend that the Board establish suitable consultation mechanisms and specifically consider the establishment of an Advisory Group for regular consultation on research priorities, directions, partnerships/ collaboration, dissemination and continuous improvement.

iii. **Improved dissemination and translation – especially for policy audiences and purposes, but also for legal assistance providers, non-legal partners, the legal profession and academia**

iv. **Appropriate engagement in public discourse**

Prior to 2018 the Foundation's grants program and Justice Awards were key strategies for disseminating research, understanding current needs and innovations in the legal assistance sector, and for having research applied to service delivery. These activities were discontinued in the context of declining income and reserves. Numerous stakeholders observed a lack of effective dissemination strategies and

encouraged the Foundation to be more active in connecting with: parliamentarians, academics, legal professionals, courts and policy makers.

Legal assistance stakeholders, policy makers and others observed that the Foundation's literature and website is often dense and difficult to engage with. While a strength of the Foundation is that it writes for audiences who will use its research, not just academic audiences, most stakeholders saw many of its products as not well shaped for key audiences, including policy audiences.

Respondents experienced within government expressed surprise and disappointment at the virtual absence of the Foundation from NSW policy processes over many years. This corresponded with input from stakeholders from all other sectors who wished for the Foundation to do more to inform policy processes and public discourse. Participation in public dialogue was seen by many (in and outside of government) as necessary to: effective dissemination, demonstrating relevance, and influencing the policy environment.

To this point the Foundation has chosen not to participate in public discourse or actively engage with parliamentarians, preferring its research resource others in those tasks. This has left the Foundation vulnerable to low levels of awareness of its impact and left its story to be told by others. It has also deprived decision makers, policy professionals and others of awareness of the research itself and opportunities to engage around its application.

To effectively translate its research for policy purposes the Foundation will need to increase its internal policy and program expertise through its recruitment and development of relevant staff and the role of the Director.

v. The capacity to leverage maximum value from its research through inter-connection to test-and-learn innovations

There is a risk that research grounded in people's legal needs and focussed on effective access to justice is seen by some stakeholders primarily as a search for problems rather than a route to innovation and efficient solutions. That most legal needs never need touch the formal justice system but do need to be supported by well-designed legal frameworks, means that there is significant scope for research and experimentation to minimise the administrative burden on courts and tribunals while maximising people's outcomes and user-experience. This includes technological innovation, further evolution of alternative dispute resolution models and better mechanisms for direct and early resolution between parties.

International researchers consulted for this review were focussed on this development of solutions and advocated for experimentation and evaluation as the means for this work. Similarly, policy makers placed a premium on research which helps

- find solutions to policy challenges which intersect with the Foundation's objects
- understand effective interventions, technologies or services - what works – for improving access to the appropriate and efficient resolution of people's legal needs
- direct resources strategically

This is congruent with much of the work the Foundation has done using the Legal Australia-Wide Survey of legal needs, through its engagement with the OECD, and through its previous grants program. However, the development of solutions which respond to people's legal needs has not been well resourced to this point, and is part of why enhanced resourcing for the Foundation is strategic. It is important that the Foundation does not retreat to just being a research body. Active engagement with diverse stakeholders, and an ability to test-and-learn through innovation and evaluation, will leverage maximum value from its research and inform that research as to the needs/priorities of its end users. The Foundation's *utility* will always rest on the quality of its research, but its *identity* needs to be grounded in the search for solutions and impact – as articulated by its objects.

The Foundation does not need to administer grants itself to connect research, innovation and evaluation in a virtuous cycle. It would however be strategic for the Foundation to stimulate and inform innovation and evaluation from its research and from its connection with legal assistance providers, pro-bono programs and non-traditional partners. To effectively stimulate experimentation and evaluation requires some means to address the inherent costs. Hence, a combination of evaluation capacity within the Foundation working with internal or external innovation funds would be an effective approach.

vi. Adequate succession planning for both the Director role and the Board

Several stakeholders noted the longevity of previous Board members and the current Director. While they saw significant strength in all of the individuals, they saw a number of risks in such combined longevity if not twinned with adequate review and renewal processes. Most stakeholders welcomed this review as a necessary and overdue process for the Foundation.

Under legislation the Director is appointed for up to five years, and this can be extended. The current Director has been in place for twenty years and is a valued expert in the Foundation's work. Looking ahead, stakeholders raised several considerations for the selection of future Directors – beyond core management and leadership skills - including capabilities regarding:

- Policy translation and strategic policy sense
- Public communication, including media skills
- An ability to use independence to appropriately advocate and influence
- External collaboration
- Stakeholder relationship building and management skills, including with government and the profession
- Legal needs and legal assistance understanding
- Research and evaluation capability/understanding (less important if there is a research manager role)

In terms of the Board, stakeholders were concerned for it to become too dominated by legal professionals, seeing a mix of skills and experience as useful. Most also advised against the Board largely being comprised of stakeholder representatives – preferring members to bring a strategic view for the Foundation rather than the sectional view of their sector.

The *Law and Justice Foundation Act 2000* (NSW) requires

- (1) The Board is to consist of 8 members.
- (2) Seven of the members are to be appointed by the Attorney General and of them:
 - (a) 4 are to be persons who have, in the opinion of the Attorney General, special expertise, and
 - (b) one is to be a person nominated by the Leader of the Opposition in the Legislative Assembly who has, in the opinion of the Leader, special expertise, and
 - (c) one is to be an Australian legal practitioner who:
 - (i) is appointed from a panel of 6 persons nominated by the New South Wales Bar Association, and
 - (ii) has, in the opinion of the Attorney General, special expertise, and
 - (d) one is to be an Australian legal practitioner who:
 - (i) is appointed from a panel of 6 persons nominated by the Law Society of New South Wales, and
 - (ii) has, in the opinion of the Attorney General, special expertise.
- (3) The other member is to be the person for the time being holding the office of Director.
- (4) Not more than 3 of the 4 persons referred to in subclause (2) (a) may be an Australian legal practitioner, and at least one of the 4 persons must be an Aboriginal person or a Torres Strait Islander.

To provide sound advice to the Attorney General, we recommend the Foundation undertake an audit of Board capabilities and attributes for the future, with consideration of the following input received through this review. Beyond the usual board skills (risk, finance, leadership, etc.), the kinds of capabilities or attributes often mentioned as potentially advantageous were:

- Knowledge of civil law, including beyond courts and tribunals
- Legal assistance experience
- Able to position the Foundation for innovation and adaptation
- Able to mentor/add-value regarding key functions
- Political networks
- Diverse community connections, including First Peoples and culturally diverse
- User experience and design
- Social policy and social justice
- Strategic planning
- Communication and marketing expertise
- Research skills and academic rigour
- Community services sector expertise: child protection, tenancies, homelessness, domestic and family violence, disability, refugees, etc.
- DCJ connection – at a senior policy level
- Legal Aid NSW connection at a senior level
- Commercial nous

Another way to bring some of the above expertise into the Foundation's strategic planning and review would be through an expert advisory group. Several stakeholders recommended such a forum to bring together relevant expertise and stakeholders to inform the Foundation's work. Hence, consideration of the Board's composition should also factor in how it may be complemented by an appropriate Advisory Group.

vii. Regular review and measurement of the Foundation's own impact

Annual reporting captures much of the Foundation's activity but does not provide measurement of the impact of the Foundation's work – much of which is cumulative impact over several years. For example, the 2012 Legal Needs Australia-Wide Survey (LAWS) research is more than a decade old but continues to be an important source – as evidenced by its ongoing citation in research, program and policy documents in NSW, Australia and internationally. It will be important to track how well the Foundation's work contributes to the development of solutions and assists demonstrate the effectiveness of different interventions.

The degree to which the Foundation influences policy, practice, innovation, academic research, resource allocation and other outcomes are important metrics for assessing its value and return on investment over time.

Scope of the Foundation's work

The focus of the Foundation's work needs to be negotiated with its ongoing funding sources in the context of wider consultation, through the Advisory Group we recommend. Grounded in the Foundation's objects and just what is strategic for government, the legal assistance sector and the legal profession, the potential scope of the Foundation's work is significant – but resourcing will never fully match that scope. Hence it is necessary for the Foundation's work to be planned in consultation with key partners.

We make no recommendations on this front, but from the input obtained from experts across the sectors consulted, and to complement the work of other bodies, the following are some potential dimensions for the Foundation's future work which offer value aligned to the purposes of the PPF and/or aligned to the

priorities of DCJ. The following are listed simply to demonstrate the potential scope for the Foundation to deliver work which is valuable to DCJ and justice in NSW, and to inform future negotiation.

- a. Inform improved access, equity and efficiencies in civil courts and wider justice systems. This requires qualitative as well as quantitative research.
- b. Justice Reinvestment: data and analysis to inform strategic investment and to measure the financial and social returns on investment, including downstream outcomes for people and government
- c. Development, tracking and analysis of indicators regarding the downstream outcomes of effective access to justice, including forms of legal assistance and technological solutions, and in doing so further operationalise DCJ's Human Services Outcomes Framework in the justice sector
- d. Embed access to justice indicators into administrative data across the NSW justice system so it is accountable and driven to improve. Regularly analyse and report on that data.
- e. Further development and analysis of indicators regarding First Nations peoples and justice
- f. Domestic and Family Violence: systemic research regarding legal needs and access
- g. Research regarding non-traditional and cost-efficient means for access to justice for common and strategic legal needs
- h. Innovation and evaluation
- i. Plan for strategic legal needs and solutions research for a post-pandemic environment – complementing that of the VLF. Strategic empirical research will provide valuable data in a world which is much changed since the 2008-2012 legal needs survey (LAWS), and a long-term rolling agenda of analysis connected to solutions development.
- j. Development of a “what works” clearinghouse of research and resources for improving access to justice and resolving people's legal needs with innovation

Capabilities required

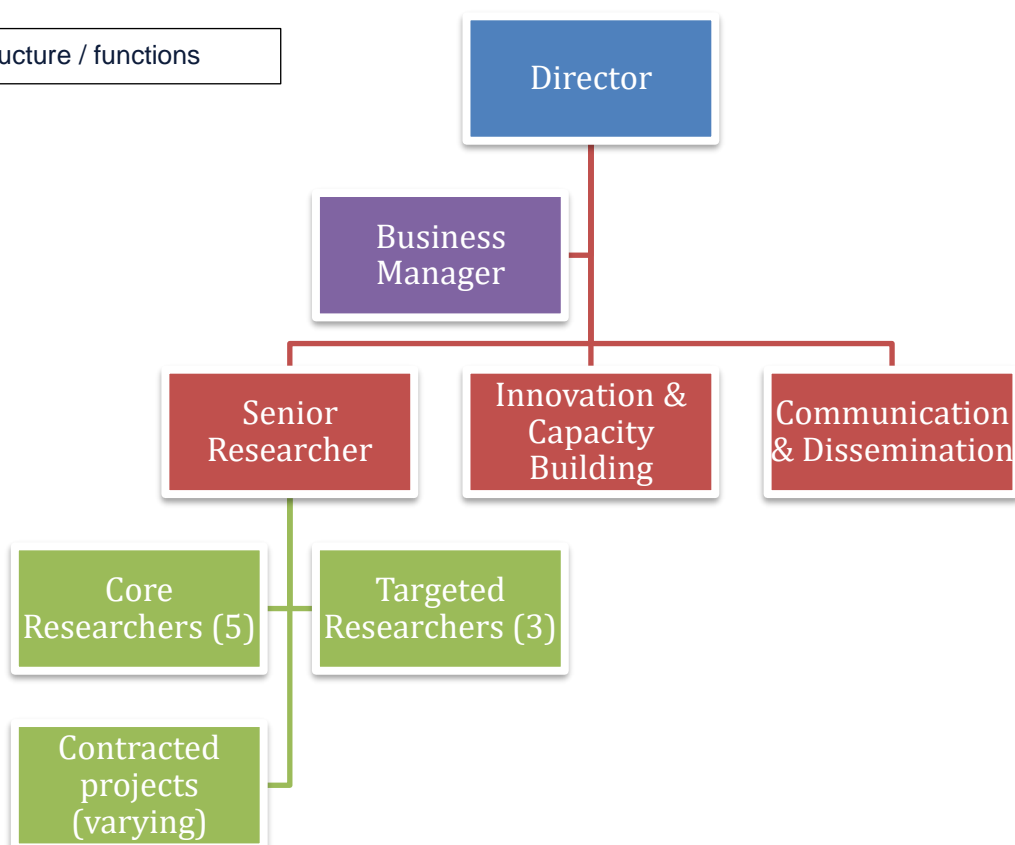
To be able to deliver in relation to the functions supported by the stakeholders consulted, a number of capabilities are strategic for the Foundation's future.

- A research team with a mix of the following expertise would be advantageous, as relevant to people's legal needs, access to justice, legal assistance, and a fair and equitable justice system
 - Quantitative research
 - Qualitative research
 - Economic research
 - Evaluation
 - First People's research expertise or partners
 - Policy translation
 - Technological innovation research
- Assuming there is sufficient scale, it would be strategic to separate the function of research coordination from the Director role – to provide specialist leadership to the research team and to allow the Director's role to be shaped around other priorities, including policy integration, effective research dissemination, contribution to public discourse, and stakeholder relationships.
- A function which connects with, builds capacity, and fosters innovation in legal assistance services, pro-bono providers, corporations, and non-traditional partners. This function could manage internal innovation and research/evaluation grants and/or connect with programs run elsewhere. It would also seek to foster and leverage value from research expertise in academia and other bodies

- A function which enables effective dissemination and communication.
- Internal capacity for First Nation's research is warranted by the specific needs of First Nations people and the clustering of legal issues experienced.

We recognise that further development of the Foundation's capabilities for policy translation and for being responsive to the needs of government are required. Hence, we include within the role of Director (p.20) and the expertise of the research team (p.22) important competencies to ensure the Foundation's research is well shaped to practical application within policy and strategy. We do not recommend the below structure but provide it as an indicative approach for a reinvigorated Foundation. This set of functions and capabilities informs our recommendation regarding organisational scale and budget. The budget proposed is primarily consumed by the staffing costs for a cluster of functions, capabilities and capacity comparable to the below.

Figure 8: Indicative structure / functions



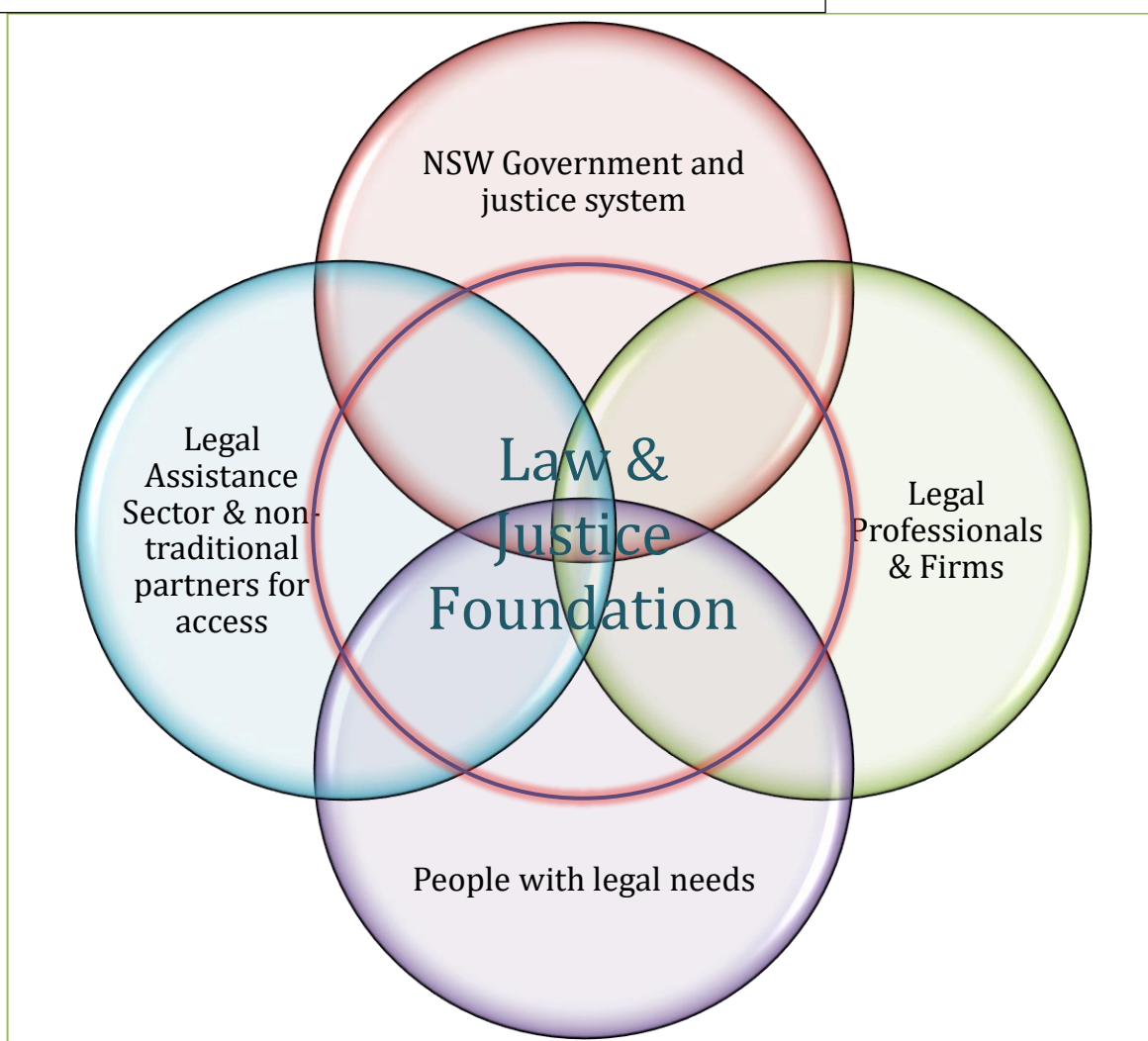
C. What ought the Foundation's organisational context be?

The following findings are our conclusions arising from expert stakeholder input and the literature reviewed but, to varying degrees, are more contested than the previous chapters.

There are several possible options for the Foundation's future organisational context. We recommend the Foundation remain independent to harness the trust the Foundation has from diverse stakeholders, and to fulfill the expectations of its legislation. We were not asked to consider legislative change, and nothing in the consultations flagged compelling reasons for legislative change.

The remit of the Foundation, according to its objects, expects a focus driven by people's legal needs and the access to justice which enables resolution of those needs, through a fair and equitable justice system. This leads the Foundation to work closely with and across several sectors – something which is enhanced by being independent of each of them (see below diagram).

Figure 9: Stakeholders who use or benefit from the Foundation's work



Other key users: the Commonwealth Government and legal systems, international policy (via OECD), and academia.

The vast majority of stakeholders expressed a strong assessment that, for the Foundation to deliver what is required into the future, it ought to continue as a statutorily independent body in its current state – specifically outside of any government agency and outside of the tertiary sector. This included people with

substantive experience in all sectors consulted. This approach is somewhat confirmed by the 2016 revamp of the Victorian Law Foundation – retaining its statutory and organisational independence¹⁴.

Part of the value of independence is the ability to receive data from bodies – such as legal assistance providers and courts - who will only provide the data if they have confidence in the independence, integrity and capability of the research body. While the Department usually needs to request the information, part of stakeholder willingness to provide the data is their confidence in the analysis that will result.

The BOCSAR experience demonstrates that a level of perceived and actual independence is achievable within government. However, its operations may also illustrate there are some limits to that in terms of an internal body then being able to provide independent comment or advice regarding policy and program implications arising from the research.

There are potential benefits from being located as a statutory independent entity within DCJ. Notably, location within the Department is more likely to lead to the Foundation being a consistent resource to policy processes. DCJ has a culture of hosting statutory independent bodies – with several current examples. With adequate safeguards in place as to the independence of the Foundation's work, and with adequate explanation to stakeholders, the Department is a possible context, and one which would make some sense if the Foundation were resourced through the Department.

Regardless of how the Foundation is resourced, deliberate and routine engagement with the Department's policy processes and structures should be developed as a mutual expectation between DCJ and the Foundation.

While there are fewer benefits from being in a university context, we also outline the pros and cons of that option (below and next page).

Table 2: Pros and cons of potential organisational contexts

| Context | Pros | Cons | Analysis |
|---------------|--|--|---|
| Current state | <ul style="list-style-type: none"> Reflects the very broad cross-sectoral remit of its objects. Able to operate as a resource to State and Commonwealth government, the legal assistance sector, the profession, and formal legal systems. Independence – for stakeholder engagement, reliability/quality of research and ability to set agenda according to objects and multi-party engagement, rather than a single sector's agendas or interests. Trust and access to data. Clarity of purpose/function and governance. Ability to deliver trusted independent evaluations for government. Able to place things onto the policy agenda which government may find difficult to raise. Agility. Easier to establish formal partnerships/ agreements. Ability to attract and retain high quality researchers committed to the objects. | <ul style="list-style-type: none"> Vulnerable funding. Not integral part of DCJ policy structures. Small scale. | <ul style="list-style-type: none"> Recommended, but requires adequate connection into policy processes and to partners, and security of funding. |

¹⁴ Victorian Government, 2016

Table 2 continued.

| Context | Pros | Cons | Analysis |
|--|--|---|--|
| Within DCJ as a statutory independent body | <p>Easier to increase engagement with policy processes and maintain DCJ valuing of LJF.</p> <p>Easier to partner with BOCSAR or other DCJ units.</p> <p>May be easier to access court data.</p> <p>May improve staff recruitment and retention and would enable public service secondments.</p> <p>Able to leverage value from communications and other corporate functions.</p> | <p>Decreased actual or perceived independence – less stakeholder trust and engagement.</p> <p>Unable to contract with the Commonwealth for some types of work currently delivered.</p> <p>Risk of loss of focus within wider Departmental context. Participation in daily administrative Departmental business.</p> | <p>Possible and has some advantages.</p> <p>If the Department funds the Foundation then this context may maximise value for DCJ.</p> <p>Would need to actively safeguard and explain genuine independence to stakeholders.</p> |
| Hosted by one or two universities (like AustLII) | <p>Able to leverage value from communication and dissemination functions.</p> <p>Connection to academic discourse.</p> <p>Ability to foster wider expertise within the tertiary sector.</p> <p>More likely to retain trusted independence.</p> | <p>University's financial constraints and cost-recovery practices.</p> <p>Academic nature of published work expectations and orientation to different audiences/purposes.</p> <p>Funding mechanisms and internal politics.</p> <p>Complex governance.</p> <p>Limited academic expertise which would genuinely add-value</p> | <p>Possible but seems unlikely to generate net benefits for the Foundation's work – would depend on securing a committed and generous partner (there are possibilities to explore).</p> |
| Other options: national body; Legal Aid | <p>While many stakeholders saw a need for the Foundation's functions to be exercised at a national level, there is not obvious and ready interest from the Commonwealth.</p> | <p>Positioning in Legal Aid or professional bodies would not align with the Foundation's objects and functions.</p> | <p>A national body would be appropriate but would be a long-term process. It may not replace the value of a NSW body.</p> |

D. How can the Foundation be resourced appropriately?

The Foundation has been a discretionary recipient of funding through the Public Purpose Fund since 2000, having previously been a non-discretionary recipient. Since 2000 the Foundation has cost about 4% of all funds distributed annually. Its total income from the PPF in 2020/21 was about \$1.5m, with funds contingent on annual decision making. There is uncertainty as to any future funding from this source, with no allocation made for the current financial year.

Few organisations can attract and retain quality specialist staff without some security of purpose and income. Uncertain year to year funding will not enable the Foundation to refresh and reinvigorate its activities. Further, the nature of its research requires multi-year commitments to maximise the value obtained. Hence a number of approaches are recommended regarding the Foundation's future resourcing.

11. Set the Foundation up to succeed and deliver value for NSW - according to agreed value propositions for government, the legal assistance sector and wider profession, and for the people of NSW - including
 - a. Three-to-five-year funding and delivery cycles, and sufficient security to attract and retain high quality researchers to continue to deliver excellence
 - b. A mix of core and targeted funding – both being stable sources.
 - i. Core funding to support research and innovation based on (legal needs and access to justice) evidence and input from expert stakeholders (for example via an Advisory Group), and determined by the Foundation
 - ii. Targeted funding to deliver research contributing to innovations or reforms which improve efficiency within NSW' justice investment, and which enable more people to resolve their legal needs without additional cost to the State. The use of targeted funding to be determined by DCJ, with expert input from the Foundation. In this way the Foundation's independence is not an impediment to ensuring a proportion of its work directly addresses NSW Government priorities within its ongoing budget. The Foundation's broader work will also be of value to the Government and justice system.
 - c. Sufficient resourcing and scale for key functions to enable the Foundation to maximise the impact of its research, including via dissemination, policy translation, participation in public discourse, and connection to test-and-learn innovation
12. Require the Foundation to report regularly on its impact, the return on investment it achieves, and the social return on investment to which it contributes
13. Enable the Foundation to develop a robust strategic plan and commercially savvy business plan
14. Review the Foundation every five to ten years - in alignment with its funding and delivery cycle. The first review will be an important test of the reset undertaken following this review, allowing sufficient time for change to be implemented and impact measured.

In that context there are a limited number of options for resourcing the Foundation's work.

- (A) The Public Purpose Fund: Whether the Foundation should continue to be a recipient of the PPF into the future is a matter for the Trustees and the Attorney General. While the Foundation strongly aligns with the intent and purposes of the Fund the PPF does not yet appear to be a reliable source of income into the future, capable of providing adequate certainty over 3 – 5 year cycles. Legislative change would be required to make the Foundation a non-discretionary recipient.

- (B) NSW budget allocation: This seems to be the most reliable potential source of resources and, if the funding were delivered through DCJ, there would be strong alignment with the directions emerging from this review, including: greater connection of the Foundation into policy processes; greater contribution to civil justice improvements; and a focus on efficient access to justice solutions. As outlined above, this stable income could be divided into core and targeted amounts.
- (C) A filing levy on corporations or on selected courts or lists. Introduction of a levy would require a period of consultation and implementation, so this is not an option for the immediate term. However, in the context of declining PPF income, appropriately targeted levies need not impair access to justice and have the potential to make a substantial contribution to annual core funding while also providing a slightly greater degree of independence from funder decision making. Purely by way of example, a \$100 filing fee on Equity matters has the potential to raise in excess of \$400 000pa.

Stakeholders identified a number of ways in which well targeted levies could be beneficial and/or appropriate in themselves. A levy would have a clearly identified purpose which members of the profession could support – such as to enable research to improve access to justice and the outcomes achieved.

Table 3: Volume of selected matters filed in NSW Courts

| Court | Civil Matters Filed 2019 |
|-----------------------------|--------------------------|
| Local Court | 87210 |
| District Court | 4295 |
| Supreme Court | |
| Common Law Civil | 3826 |
| Equity | 4253 |
| Commercial | 171 |
| Technology and Construction | 178 |
| Corporations | 1211 |

Data drawn from the (pre-Covid) 2019 Annual Reviews from each Court

- (D) Contracted projects. The Foundation has attracted contracted projects from organisations in NSW and other jurisdictions. Projects have contributed between 15-25% of total income in recent years. While this can assist maintain an adequate scale and contribute to the ongoing development of the Foundation's expertise, networks and products, projects do not provide the Foundation with
- the resources needed to genuinely pursue its objects strategically rather than reactively
 - security for the attraction and retention of quality staff
 - the research needed by wider stakeholders

The Foundation's recent annual income of approximately \$1.5m seems disproportionate to the opportunities for generating a return on investment within a \$1.8b system – even acknowledging that others make significant contributions in this regard. The following is provided for information only – there is no suggestion that the Foundation (of 6.5 FTE currently) is comparable to these bodies which have different functions and responsibilities:

- BOCSAR is comprised of just over 40 positions, 10 of which are temporary

- Family and Community Services Insights Analysis and Research (FACSIAR) in DCJ is comprised of about 70 positions
- The Australian Institute of Family Studies (AIFS) has a team of about 90, of whom two thirds are temporary
- Australia's National Research Organisation for Women's Safety (ANROWS) has a team of about 28, of whom 15 are in research positions
- The Victorian Law Foundation (VLF) is comprised of 13 positions, four of which are for research
- Health Justice Australia (HJA) has a team of eight, two of whom are for research.

For the combination of functions canvassed in Chapter B, and allowing for some internally managed grants, we suggest that a budget of about \$2.5m pa would be a proportionate scale for a refreshed Foundation, allowing it to demonstrate results and, if warranted, grow further. It may need to grow to \$2.5m over 2 years from its current position.

We propose \$2.5m as a base level with consideration of:

- The **mix of expertise and functions** required for the Foundation to pursue its objects and offer genuine value for money to NSW (see the discussion of scope and capabilities above). On the basis of past experience, at that scale we expect more than 80% of the budget to be expended on staffing and any external research expertise required. Very little of the overall budget could be saved if the Foundation were incorporated as an independent part of the Department.
- The importance of enhancing the effort applied to developing solutions and demonstrating what works to address people's legal needs efficiently and effectively – including through quality evaluations and translating research for policy/program purposes
- The scale of the NSW justice system and the paucity of research and evidence for decision making regarding significant dimensions of that system
- The need to invest now for future decision makers to have the data, analysis and research they need for difficult decisions regarding resources and strategy
- Sufficient scale to attract quality researchers and to attract contracted work
- Setting up the Foundation to succeed, so that it can demonstrate results and subsequently make its case for future growth.

We note that the Foundation has been using savings to continue operating on a reduced budget, and that \$2.5m is not very different from the resourcing applied to the Foundation ten and twenty years ago in today's terms.

For the Foundation to deliver value for money for NSW requires it now be set up to have the range of functions it needs to maximise the value obtained from its research, and to have the range of research expertise appropriate to its objects and the needs of its key stakeholders.

E. Conclusion

In consulting more than 80 expert stakeholders we found the majority were critical of aspects of the Foundation as it currently operates but saw it as a necessary and/or strategic entity for NSW and Australia. A few stakeholders did not see the Foundation as likely to offer any further significant value that others could not also offer, while another small set of stakeholders did not see any need for substantial change in the Foundation's operations – beyond better resourcing. We have relied on the specific expertise of each stakeholder, along with the literature, to develop and test our analysis. We have appreciated all respondents' honesty, good faith and insights.

The following summarises our analysis for the Board's consideration and discussion with relevant funding sources.

1. The objects of the Foundation remain important for NSW.
 - a. While there are a range of bodies relevant to the Foundation's objects – some of them seeded by the Foundation – strategic gaps remain regarding empirical, multidisciplinary and applied research, reliable data and innovation.
 - b. Community access to justice, and a fair and equitable justice system which addresses the legal needs of the community, continue to be essential foundations for economic activity, social cohesion and social inclusion. This is so in the regions, Greater Western Sydney and the city.
 - c. While NSW lacks a range of indicators regarding access to justice and the resolution of people's legal needs, expert input to this review suggests that the challenges regarding these needs are currently as great as ever and affect many people beyond the socio-economically disadvantaged.
2. The NSW Parliament and NSW agencies need high quality data, research and analysis to guide their budget and strategy decisions regarding the administration of justice. This includes the ways justice outcomes are interconnected with downstream outcomes for people and government. The justice sector is far less researched than other fields, and therefore lacks the evidence for government to know with confidence what works to improve performance or outcomes.
 - a. There are currently significant gaps in our knowledge of civil justice needs, access, operations and outcomes. This is despite civil law undergirding the operation of the economy, and civil needs comprising the majority of people's legal needs.
 - b. Expert stakeholders and previous research attest that there is significant room for improving access, efficiencies and outcomes regarding people's civil justice needs, including within formal civil justice systems. Because there has been so little empirical research to date – even internationally – substantive gains are likely to be made from the first rounds of research.
 - c. The 2018 work of the Foundation to inform the NSW Civil Justice Strategy demonstrated some of the likely gains from early research. That work could be used to inform further research – through negotiation with the Department. Research then needs to connect to reform for improvement and/or savings to be realised.

- d. Future reform in civil justice will rely on a history of collected data, research, analysis and innovation. There is value in increasing investment in this work now – so that accumulated data is available for future reform, as well for ongoing improvement in the meantime.
 - e. It would be strategic to embed access to justice indicators into administrative data across the NSW justice system, so it is accountable and driven to improve. This could start in the civil law sphere.
 - f. Beyond a focus on civil justice, there are a range of policy priorities to which the capabilities of the Foundation are uniquely positioned to contribute.
 - g. Some form of independence is seen by most stakeholders as critical for public trust in justice data and analysis - as a field where active stakeholders can be conflicted.
 - h. The Foundation currently plays a prominent role in providing an independent evidence base for difficult decisions as to the allocation of significant resources across the legal assistance sector, for NSW, nationally and for individual providers. Its research capabilities could be used by the NSW Government to inform difficult resource allocation decisions in other relevant fields.
3. Apart from the Foundation, there is a dearth of accumulated multi-disciplinary research expertise relevant to its Objects.
- a. Domestic and international researchers attest convincingly that the Foundation is an international thought-leader in relation to access to justice research and the policy implications that arise, and is indeed unique in the international landscape. The Victorian Law Foundation (VLF) and Health Justice Australia (HJA) – as emerging bodies which have themselves learned from the Foundation - can be expected to add to this domestic expertise.
 - b. Respondents from the tertiary sector, and most of those who commission and use research, described a lack of comparative local expertise beyond the Foundation. While there was room for improvement, respondents saw strength in the empirical, applied and expert nature of the Foundation's research, in contrast to what they experienced from other sources.
 - c. There is a strong strategic rationale for close multi-disciplinary research collaboration between the Foundation, the VLF, Legal Aid NSW, and HJA into the future – building on that which already occurs. In a similar way, the Foundation ought to complement the eminent work of the NSW Bureau of Crime Statistics and Research (BOCSAR), the Australian Institute of Family Studies (AIFS - regarding family law) and Australia's National Research Organisation for Women's Safety (ANROWS – regarding domestic and family violence and sexual assault).
 - d. There is strong case for a national body like the Foundation but achieving that would be a long-term project and beyond the scope of this review. Instead, the NSW and Victorian Foundations have the potential to form a critical mass of research to inform state and national decision making relevant to legal needs and access to justice. The Foundation's work is much valued in other Australian jurisdictions already. Without the Foundation there would be significant gaps for NSW and nationally regarding the research and analysis required to inform legal assistance strategies, services and other means to address legal needs.
 - e. Currently there are very few researchers or consultants able to deliver the specialised work of the Foundation to similar quality. Without the Foundation there would be even greater

gaps in the capabilities and body of research necessary to inform future policies, programs, reform and innovation.

4. Better addressing people's legal needs through efficient access to justice is a core responsibility of government and generates net benefits to the community – benefits which need to be better quantified¹⁵.
 - a. Within constrained resources there is a strategic need for continuing innovation in legal assistance and non-traditional access to justice methods. Such innovation
 - i. includes options for resolving people's legal needs which avoid unnecessary costs for consumers and for government
 - ii. is enabled by the kind of test-and-learn grants offered through the Access to Justice Innovation Fund
 - iii. is occurring within legal assistance providers and in partnership with health and social service providers
 - iv. is best informed by robust research regarding legal needs and access issues
 - b. Better understanding and measurement of the downstream impacts of legal assistance and other means of accessing justice will be important for informing future decisions regarding finite resources. There is likely scope for utilising the Department of Communities and Justice (DCJ's) Human Services Dataset to this end.
 - c. The legal assistance sector has a long history of valuing the Foundation's roles
 - i. As an honest broker and critical friend, facilitating evidence informed collaboration and coordination
 - ii. Informing service delivery from data, and
 - iii. Stimulating evidence-based innovation

This provides a strong basis for the Foundation to continue its work.

5. While there is ample strategic scope for the Foundation to continue in NSW, it cannot do so unchanged. Several matters need attention:
 - a. Income source, scale and certainty
 - b. Stakeholder engagement in the Foundation's agenda setting and delivery
 - c. Improved dissemination and translation – especially for policy audiences and purposes, but also for legal assistance providers, non-legal partners, the legal profession and academia
 - d. Appropriate engagement in public discourse
 - e. The capacity to leverage maximum value from its research through inter-connection to test-and-learn innovations
 - f. Adequate succession planning for both the Director role and the Board, and consideration of the establishment of an Advisory Group.
 - g. Regular review and measurement of the Foundation's own impact

¹⁵ Productivity Commission 2014, *Access to Justice Arrangements: Overview* p31, & Appendix K

The following findings are our conclusions arising from expert stakeholder input and the literature reviewed but, to varying degrees, are more contested than the above.

6. There are several possible options for the Foundation's future organisational context. We recommend the Foundation remain independent to harness the trust the Foundation has from diverse stakeholders, and for the Foundation to fulfill the expectations of its legislation. We were not asked to consider legislative change, and nothing in the consultations flagged compelling reasons for legislative change.
 - a. The vast majority of stakeholders expressed a strong assessment that, for the Foundation to deliver what is required into the future, it ought to continue as a statutorily independent body in its current state – specifically outside of any government agency and outside of the tertiary sector. This included people with substantive experience in all sectors consulted.
 - b. There are potential benefits from being located as a statutory independent entity within DCJ, and we canvass that option. While there are fewer benefits from being in a university context, we also outline the pros and cons of that option.
 - c. The remit of the Foundation, according to its objects, expects a focus driven by people's legal needs and the access to justice which enables resolution of those needs, through a fair and equitable justice system. This leads the Foundation to work closely with and across several sectors – something which is enhanced by being independent of each of them
7. The focus of the Foundation's work needs to be negotiated with ongoing funding sources. Grounded in the Foundation's objects and in what is strategic for government, the legal assistance sector and the legal profession, the potential scope of the Foundation's work is significant – but resourcing will never fully match that scope. Hence it is necessary for the Foundation's work to be planned in consultation with key partners.
8. Few organisations can attract and retain quality specialist staff without some security of purpose and income. Uncertain year to year funding will not enable the Foundation to refresh and reinvigorate its activities. Hence a number of approaches are recommended regarding the Foundation's future resourcing.
 - b. Set the Foundation up to succeed and deliver value for NSW - according to agreed value propositions for government, the profession and for the people of NSW - including
 - i. Three-to-five-year funding and delivery cycles, and sufficient security to attract and retain high quality researchers to continue to deliver excellence
 - ii. A mix of core and targeted funding – both being stable sources.
 - Core funding to support research and innovation based on evidence and input from expert stakeholders (for example via an Advisory Group), and determined by the Foundation
 - Targeted funding to deliver research contributing to innovations or reforms which improve efficiency within NSW' justice investment, and which enable more people to resolve their legal needs without additional cost to the State. The use of targeted funding to be determined by DCJ, with expert input from the Foundation.

- c. Achieve sufficient scale and resourcing of key functions to enable the Foundation to maximise the impact of its research, including via dissemination, policy translation, participation in public discourse, and connection to test-and-learn innovation
 - d. Require the Foundation to report regularly on its impact, the return on investment it achieves, and the social return on investment to which it contributes
 - e. Enable the Foundation to develop a robust strategic plan and commercially savvy business plan
 - f. Review the Foundation every five to ten years - in alignment with its funding and delivery cycle. The first review will be an important test of the reset undertaken following this review, allowing sufficient time for change to be implemented and impact measured.
9. In that context there are a limited number of options for resourcing the Foundation's work. We recommend discussions occur with the NSW Government for a budget allocation. This seems to be the most reliable potential source of resources and, if the funding were delivered through DCJ, there would be strong alignment with the directions emerging from this review, including: greater connection of the Foundation into policy processes; greater contribution to civil justice improvements; and a focus on efficient access to justice solutions. This income could be divided into core and targeted amounts so that a proportion of the Foundation's work is tightly focussed on DCJ priorities while also contributing to a satisfactory organisational scale. The Foundation could also ask the Government to consider the use of fees levied on identified court lists – but this would be a longer-term prospect.
10. The Foundation's recent year to year income from the PPF of approximately \$1.5m seems disproportionate to the opportunities for generating a return on investment within a \$1.8b system – even acknowledging that others make significant contributions in this regard. For the combination of functions canvassed in Chapter B we suggest that a budget of about \$2.5m pa would be a proportionate scale for a refreshed Foundation, allowing it to demonstrate results and, if warranted, grow further. Achieving this budget level could be staged as the Foundation is likely to need two years to grow to this scale from its current position.

The Foundation has positioned NSW at the forefront of international and domestic empirical and applied research regarding legal needs and access to justice. Its work has informed a range of solutions to the issues identified, and the Foundation continues to translate its research into practical tools and guidance for legal assistance providers. A genuine reset is needed for the Foundation to deliver better value for a wider range of issues and stakeholders relevant to improving the resolution of people's legal needs – most notably the NSW Government. With such a reset the Foundation is well positioned to continue to deliver value for NSW and Australia.

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- NSW Department of Communities and Justice
- The Law Society of NSW
- Victorian Law Foundation

Appendix 1: Review interviewees and people consulted

The following stakeholders appear in no particular order. Where the organisational cells are merged, these people were interviewed together.

| Name | Position | Organisation |
|-------------------------------------|---|---|
| Alan Cameron AO | Chair | NSW Law Reform Commission |
| John McKenzie | NSW Legal Services Commissioner | NSW Office of the Legal Services Commissioner |
| Dr Warren Mundy | Former Commissioner | Productivity Commission |
| Emeritus Prof. Rosalind Croucher AM | President | Australian Human Rights Commission |
| Michael Coutts-Trotter | Secretary | NSW Department of Communities and Justice (DCJ) |
| Paul McKnight | Deputy Secretary, Law Reform and Legal Services | DCJ (interviewed as a team) |
| Sarah Dobinson | Assistant Policy Manager, Legal Assistance, Courts, Access to Justice | |
| Alexandra Vaughan | Access to Justice | |
| Kimberlee Hunter | Access to Justice | |
| Thulasi Wigneswaran | Access to Justice | |
| Maureen Tangney | Former Executive Director, Civil Justice Strategy (to 2019) | DCJ |
| Louise Blazejowska | Director Courts, Tribunals and Service Delivery | DCJ |
| Kathrina Lo | NSW Public Service Commissioner (Former Dep. Sec. Justice Services) | NSW Public Service Commission |
| Jackie Fitzgerald | Director | NSW Bureau of Crime Statistics and Research (BOCSAR), DCJ |
| Caroline Anderson | Manager, Research and Knowledge Translation | Family and Community Services Insights Analysis and Research (FACSIAR), DCJ |
| Christie Robertson | Manager, Strategy and Evidence | |
| Don Weatherburn | Previous Director (now Adjunct Professor at UNSW) | Bureau of Crime Statistics and Research (DCJ) |

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|------------------------|---|--|
| Brendan Thomas | CEO | Legal Aid NSW |
| Jane Cipants | Director, Client Service | Legal Aid NSW |
| Steve O'Connor | Former Deputy CEO | Legal Aid NSW |
| Naomi Cheetham | Manager, Planning & Review Unit | Legal Aid NSW |
| Iain Anderson | A/Secretary | Commonwealth Attorney-General's Department |
| Tamsyn Harvey | First Assistant Secretary, Legal Services Policy Division | Commonwealth Attorney-General's Department |
| Adam Nott | Assistant Secretary, Legal Assistance Reform and Policy | Commonwealth Attorney-General's Department |
| Joan Jardine | Director, Community Legal Services | Commonwealth Attorney-General's Department |
| Kate Halliday | Project Manager | Cooperative Legal Service Delivery Program (Legal Aid) |
| Janet Wagstaff | Director | Law Access |
| Nadine Miles | Principal Legal Officer | Aboriginal Legal Service (NSW/ACT) |
| Alistair McEwin | Former Director Former Disability Discrimination Commissioner | CLCs NSW |
| Helen Campbell OAM | CEO (also former Chair, CLCs NSW) | Women's Legal Service |
| Melanie Kallmier | Legal Services Coordinator | Mid North Coast CLC |
| Robert Pelletier | CEO | Macarthur CLC |
| Leo Patterson Ross | CEO | Tenants' Union of NSW |
| Julie Forman | Former CEO | Tenants' Union of NSW |
| Jonathon Hunyor | CEO | Public Interest Advocacy Centre |
| Assoc. Prof. Anna Cody | Dean of Law. Previously Director at Kingsford Legal Centre, and member or Chair of relevant legal assistance boards | Western Sydney University |
| Philippa Scarf | Consultant | Legal Information Access Centre State Library |
| Chris Povey | CEO | Justice Connect |

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|---------------------------------|--|--|
| Gabriela Christian-Hare | CEO | Australian Pro Bono Centre |
| Matthew Keeley | Director | Youth Law Australia |
| David Woodroffe | Principal Solicitor | North Australian Aboriginal Justice Agency |
| Peter Collins | Director, Legal Services | Aboriginal Legal Service of WA |
| Tessa Boyd-Caine | CEO | Health Justice Australia |
| Suzie Forell | Research Director | |
| Annette Bain | Pro Bono Senior Consultant | DLA Piper |
| The Hon. Ronald Sackville AO QC | Chairman | Disability Royal Commission |
| Prof. Pascoe Pleasance | Co-director, Centre for Empirical Legal Studies, Faculty of Laws | University College London |
| Louise Glanville | Managing Director | Victoria Legal Aid |
| Peter Noble | Executive Director | Victoria Legal Aid |
| Suzan Cox QC | Director | NT Legal Aid Commission |
| Ashwinny Krishna | Director | Federations of Victorian CLCs |
| Rosslyn Munro | Director | Community Legal Centres Queensland |
| Lynne Haultain | Executive Director | Victoria Law Foundation |
| Prof. Nigel Balmer | Research Director | Victoria Law Foundation |
| Kenneth Tickle | COO | Law Society of NSW |
| Juliana Warner | President | |
| Arthur Moses SC | Former President | NSW Bar Association |
| Alastair McConnachie | Deputy Executive Director | NSW Bar Association |
| Arlia Fleming | Chair | Community Legal Centres NSW |
| Tim Leach | Executive Director | |
| Leonie Campbell | Deputy Director, Policy | Law Council of Australia |
| Hayley Foster | CEO | Women's Safety NSW |
| Mark Grierson | CEO | Disability Advocacy Network |

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| Tatyana Teplova | Head of Division, Policy Coherence for SGDs, Senior Counsellor Gender, Justice and Inclusiveness | Organisation for Economic Co-operation and Development |
| Janet McIntyre | Deputy Director General | Department of Justice Canada |
| Alejandro Ponce | Chief Research Officer | World Justice Project |
| Zaza Namoradze | Director | Open Society Justice Initiative |
| Prof. Tania Sourdin | Dean of Law | University of Newcastle |
| Judge Peter Johnstone | Chief Magistrate | NSW Local Court |
| Rosemary Davidson | Executive Officer | NSW Children's Court |
| Judy Duncan | Community Engagement Officer | JustReinvest |
| Jenny Lovric | Manager, Community Engagement & Partnerships | |
| David Shoebridge | Member of the Legislative Council | NSW Parliament |
| Michael Talbot | Non-executive Director. Former Dep. Sec. Courts and Tribunals (DCJ) | Australian Disputes Centre |
| Anne Cregan | Partner, Pro Bono | Gilbert + Tobin |
| Sharon Cook | Group Executive, Legal & Commercial Services, NAB | Chair, LJF Board |
| Prof. Julie Stubbs | UNSW | LJF Board |
| Michael Fordham SC | NSW Bar Association | LJF Board |
| Stephen McAuley | Councillor of the Law Society of NSW | LJF Board |
| Jackie O'Brien | National Pro Bono partner, Norton Rose Fulbright | LJF Board |
| Dr Hugh McDermott | Member of the Legislative Assembly, NSW Parliament | LJF Board |
| Andrew Smith | NSW Bar Association | LJF Board |
| Hon. Paul Stein | Former Chair | LJF Board |
| Geoff Mulherin | Director | LJF |

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|-------------------------|------------------------------------|-----|
| Catriona Mirrlees-Black | Snr Principal Researcher | LJF |
| Delphine Bellerose | Snr Researcher | LJF |
| Dr. Kerryyn Butler | Snr Researcher | |
| Maria Karras | Snr Research Fellow | LJF |
| Richard Wood | Finance and Administration Manager | LJF |