

An evaluation of Legal Aid NSW's Family Law Early Intervention Unit Duty Lawyer Service



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Law and Justice Foundation of New South Wales

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November 2012



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Executive Summary

The Family Law Early Intervention Unit (EIU) is a state-wide specialist service of Legal Aid NSW, funded under the National Partnership Agreement on Legal Assistance Services (NPALAS). Among other services, the EIU provides duty lawyer services (duty services) in a number of Family Law Courts in New South Wales. At the request of Legal Aid NSW, the Law and Justice Foundation of NSW (the Foundation) examined the role and impact of the EIU duty service at the Parramatta Family Law Courts.

The broad goals of Family Law EIU duty services are to:

- increase access to earlier, expert legal assistance for self-represented individuals seeking legal help at Family Law Courts in NSW
- assist these clients to take timely and appropriate action to progress or resolve their family law matters efficiently and effectively
- help reduce the impact of self-represented litigants on the workload of the Family Law Courts.

The key questions addressed in this report are:

1. Who is assisted by the Family Law EIU duty service?
2. How does the EIU duty service differ from the previous duty service?
3. What does the EIU duty service do to assist unrepresented litigants?
4. Has this assistance made a difference to clients and to the courts?
5. What features or activities of the EIU duty service contribute to its outcomes?
6. How does the EIU duty service work as an early intervention strategy?

Who is assisted by the EIU duty service?

This evaluation examined whether the EIU duty service at the Parramatta Family Law Courts was focused on ‘disadvantaged’ Australians, in line with the corporate priorities of Legal Aid NSW and the NPALAS. This question is relevant because duty services are not means tested and, therefore, are open to any person representing themselves at the court. Our assessment is that the EIU duty service does appropriately reach and assist disadvantaged clients, by virtue of:

- the placement of the EIU duty service in Family Law Courts, locations where multiple and complex legal and other needs are often dealt with
- the location of the Parramatta Family Law Courts, which is geographically accessible to a range of relatively disadvantaged areas, communities and clients
- the ‘triage’ function of the EIU duty lawyers, to prioritise matters according to urgency, capacity and need, and tailor legal assistance services accordingly.

How does the EIU duty service differ from the previous duty service?

From 14 March 2011, when the EIU duty service commenced, to 31 March 2012 (a period of 12.5 months), the EIU duty lawyers at the Parramatta Family Law Courts assisted 2070 clients in relation to 2742 matters. With increased hours, more staff and a broader remit, this represented an increase of more than 160 per cent in the volume of duty matters dealt with at the Parramatta Family Law

Courts by Legal Aid NSW in the first year of the EIU duty service compared to the year before it commenced. Specifically, this represented an increase from an average of 83 duty matters per month to an average of 219 duty matters per month in its first year of operation.

Without a breakdown of data from the year prior, we cannot analyse whether the *types* of assistance provided differed from what was provided previously. However, a 'snapshot' dataset of EIU duty activities and actions, supported by stakeholder interviews, has indicated that work undertaken by the EIU duty service at the Parramatta Family Law Courts is well beyond the scope, guidelines and capacity of the previous duty service, which the EIU duty service replaced.

What did the EIU duty service do to assist clients?

Snapshot data collected by EIU duty lawyers in the months of July and August 2012 has provided insight into the range of activities being undertaken by the EIU duty service.

Bearing in mind that in four out of five matters, clients received more than one type of assistance from the EIU duty service, advice was provided in almost 84 per cent of all matters. Advice was provided to clients who had walked into the court for the first time, having just separated from their partner/spouse, through to clients finalising matters before the court. Some clients were advised on how to proceed with their matter through the courts, while others, particularly those commencing a process that was not appropriate to progress their matter, were redirected to alternative pathways. Of note, in more than one-third of matters seen in the two-month snapshot period (July – August 2012), clients had been seeking to commence an action that was not appropriate to progress their family law matter.

Minor assistance was provided to clients in over 45 per cent of the matters dealt with by the EIU duty service at Parramatta, most commonly in the form of drafting and amending documents. Our interviews indicate that this type of assistance, particularly if provided at the point of filing, may make a material difference to the efficient progress of these matters through court. Representation, provided in 12 per cent of matters, remained a core element of the EIU duty service work and included some complex and time-sensitive matters, such as child recovery and Airport Watch List matters.

The EIU duty service is designed to provide short, timely intervention, rather than ongoing casework or assistance. For this reason, onward referral is seen as a central aspect of the EIU duty work. In the snapshot period, one or more 'cold referrals' to another legal or non-legal service was provided to clients in just over half of all matters, while a subset of particularly high-needs clients (in terms of urgent legal need and/or limited capacity) were assisted with 'warm referral' to ongoing legal casework in 13 per cent of matters. In nearly all cases, these referrals were provided in addition to advice or other assistance.

What difference has this assistance made to clients and to the courts?

EIU duty lawyers, the judiciary and the staff at the Parramatta Family Law Courts have identified a range of ways in which the EIU duty lawyer has contributed to the effectiveness and efficiency of court processes, not least by diverting matters that should not be in the court, at the point when documents are being filed, and in advising and assisting clients to take the most appropriate course of action. During the two-month snapshot period, duty lawyers recorded that in 14 per cent of all

matters, they helped to negate the need for a new court application and in a further three per cent of matters, the application that was before the court was discontinued with their assistance.

Importantly, however, the EIU duty lawyers also assisted clients to *progress* their matters through the court. In 12 per cent of matters during the snapshot period, duty lawyers noted that the matter was finalised by the court, following the assistance of the EIU duty lawyers that day. In a further four per cent of matters examined, the matter was finalised by consent. Bearing in mind that a range of factors influence the finalisation of a matter in court, stakeholders reported that the EIU duty lawyers contributed to the resolution of matters by drafting documents that allowed the judicial officer to make a decision on the day, advising the client (including providing a ‘reality check’) so that they could reach an agreement, explaining processes and implications to clients so that judicial officers were confident the unrepresented litigant was appropriately informed, and by negotiating with other parties for the client.

It has been beyond the scope of this study to *quantify* the benefits of this work, particularly for clients. The study’s scope was limited by the data available when the evaluation commenced and the additional program data that could be collected by the EIU duty service in the timeframe presented. However, the feedback from stakeholders does suggest that the impact of the EIU duty service, particularly on assisting the courts, could be considerable. Any future monitoring should focus on how better to capture data to measure this contribution. A modified version of the data collection sheet piloted for this study (Appendix 1) could assist in achieving this.

Indeed, one of the Foundation’s aims in undertaking this evaluation project for Legal Aid NSW was to highlight the opportunities for evaluation and ongoing data collection that can inform best practice. Ideally, evaluation should form part of planning before a project is established. This will allow for baseline data to be collected and for ongoing data collection in order to measure the differences the project hoped to make. While there were questions, primarily regarding the outcomes of the EIU, that we could not answer, the information collected for this evaluation provides a solid base for future work.

What features or activities of the EIU duty service contribute to its outcomes?

There are several key features of the EIU duty service that appear central to its capacity to assist unrepresented people in the Parramatta Family Law Courts. These are:

- its location at the court, for the full day of court, enabling a timely response to assisting clients with their family law needs
- the EIU duty service being ‘firewalled’ from the rest of Legal Aid NSW’s files, reducing the scope for conflict of interest and thereby enabling lawyers to assist a greater range of clients
- the broad remit and capacity of the unit so that the assistance provided is driven by the immediate needs of the clients
- its high calibre staff, in terms of legal skills and experience, maturity and common sense, and the capacity to communicate with and support high-needs clients
- the strong relationships built and maintained with the court at all levels (from front desk staff, to registry and judicial officers) which facilitate referrals from these sources to the duty service at any point of the legal process
- the capacity to provide warm referrals to legally aided casework, where required.

How does the EIU duty service work as an early intervention strategy?

The EIU duty service fits squarely within the definition of ‘early intervention services’ as stated in its funding agreement, the NPALAS. The EIU duty service assisted some clients early in the life of their family law problem, particularly those who used the Family Law Courts as a first port of call. These clients were provided with advice and, where necessary, referred to alternative pathways to resolution as appropriate. The EIU duty service also intervened early in the life of some legal processes, specifically at the point of filing when a new legal process was being commenced at court.

Equally, however, duty lawyers provided assistance to people whose family law problems remained unresolved, and may have been ongoing for years. They assisted clients who were well advanced in the legal process, but needed assistance to further progress or finalise their matters. They assisted clients for whom family law processes were apparently finalised, only for the issue to resurface. If a service aims to support disadvantaged clients with complex needs, this constitutes important work — irrespective of whether it is ‘early’ intervention or otherwise. This takes us to one of the challenges for the notion of early intervention: the tension between a strategic focus on providing less intensive assistance early and the reality of providing necessary services to a group of clients who are more likely to wait until a crisis has hit before seeking assistance.

Previous research has consistently demonstrated that the types of people who present for ‘early’ assistance may be quite different to those who do not. We know that people with complex needs tend not to seek help until a crisis hits (Coumarelos et al. 2012; Forell, Schetzer & McCarron 2005). In general, if agencies are focused on service provision before the crisis, there is the risk that target clients who ‘don’t come in early’ will be missed. Furthermore, research has identified that disadvantaged clients are less likely than others to have the skills and psychological readiness required to achieve legal resolution on their own or with minimal assistance (Coumarelos et al. 2012, p. 30). These are clients who may require more intensive support than just information or advice — regardless of whatever point their legal matter has reached.

Returning to the EIU duty service, the features that make it work as a legal assistance service for disadvantaged clients are its placement in a site of ‘crisis’ at a time when direct assistance is being sought by clients. Another important feature is its triage function allowing the immediate assessment and prioritisation clients’ matters and needs. The EIU duty service provides timely assistance to high-needs clients exactly when and where it is required. Assistance provided even late in a legal process may be the earliest assistance available to some clients, and this assistance can make a real difference to the progress of their matter thereafter.

Introduction

The Family Law Early Intervention Unit and this evaluation

The Family Law Early Intervention Unit (EIU) is a specialist service of Legal Aid NSW. The EIU provides:

- outreach advice and minor assistance to people with family law problems in a range of locations, such as local courts, neighbourhood centres and Aboriginal Legal Services in suburban Sydney and regional and rural NSW
- lawyer assisted dispute resolution services including the Court Ordered Mediation Pilot (COMP)
- duty lawyer services in a number of Family Law Courts¹ (Legal Aid NSW 2011a, pp. 6–9).

The EIU duty lawyer service (hereafter referred to as the EIU duty service) commenced at the Parramatta Family Law Courts in March 2011 and has since been rolled out to a number of other Family Law Courts, including those in Sydney and Newcastle.

The EIU is funded under the National Partnership Agreement on Legal Assistance Services (NPALAS). The Unit is funded as an early intervention strategy to meet one of the stated priorities for the NPALAS, the “earlier resolution of legal problems for disadvantaged Australians that, when appropriate, avoids the need for litigation” (COAG 2010, p. 4). Under the agreement, early intervention services are described as “legal services provided by legal aid commissions to assist people to resolve their legal problem before it escalates, such as legal advice, minor assistance and advocacy other than advocacy provided under a grant of legal assistance” (COAG 2010, p. 3).

In each of the EIU’s three broad areas of work the notion of early intervention is interpreted slightly differently. The outreach services aim to reach people when and where family law issues may be emerging, such as in local courts on list days for Apprehended Violence Orders, and at a variety of other “venues that are accessible to communities” (Legal Aid NSW 2011a, p. 6). The COMP scheme provides court-based mediation services for clients whose very complex circumstances may have excluded them from other or ‘earlier’ avenues of family dispute resolution (FDR).² Even though the COMP service may be provided relatively ‘late’ in the legal process, it provides clients with an opportunity to reach agreement on family law matters before the matter is finalised by the court.³

The EIU duty service as a form of early intervention is the subject of this report.

The NPALAS is currently under review by the Commonwealth Attorney-General’s Department. To inform this review, Legal Aid NSW requested that the Law and Justice Foundation of NSW (the Foundation) evaluate the role and impact of the EIU duty service as part of Legal Aid’s broader

¹ The Family Law Courts include the Family Court of Australia (FCA) and the Federal Magistrates Court (FMC). The FCA is the superior court in the family law jurisdiction. The FMC supports and helps to ease the workload of the FCA (FMC, 2012). At Parramatta, the FCA and FMC share a building and registry.

² Litigants can only apply to a family law court for a Parenting Order after making a “genuine effort” to resolve their dispute through FDR, except in limited circumstances including: if the matter is urgent; there has been, or there is a risk of, family violence or child abuse; a party is unable to participate effectively (e.g. due to incapacity); or a person had contravened and shown a serious disregard to a court order made in the last 12 months (Australian Government 2012). COMP will mediate matters for parties in these excluded circumstances.

³ In 2011–2012, 129 mediations were run by the COMP mediator: 43.3% resulted in full agreement, 8.5% resulted in a partial agreement and 30.2% resulted in an interim agreement (management data provided to the Foundation by Legal Aid NSW).

family law early intervention strategies. This evaluation focused on the duty service operating at the Parramatta Family Law Courts complex as this was the first site at which the EIU commenced a duty service, therefore enabling the Foundation to access a full year of data.

The scope of this evaluation project has also been framed by several further considerations:

- the limited time available to collect new data, due to the timeframe in which a report was required to inform the review of the NPALAS
- limitations in the data available and challenges in accessing these data
- a focus on building capacity for ongoing monitoring and evaluation.

The project was conducted in two stages, with an interim report provided to Legal Aid NSW in June 2012. The first stage involved:

- identifying the goals, features, activities and possible measurable objectives/intended outcomes of the EIU duty service
- reviewing the available data and the questions that could be answered using these data
- commencing qualitative interviews with stakeholders
- designing and piloting the collection of additional data by EIU duty lawyers.

This second stage focused on analysing the available qualitative and quantitative data on the EIU duty service as an early intervention strategy, and piloting enhanced data collection for ongoing monitoring and future evaluation.

The goals of the EIU duty service

The broad goals of the EIU duty service are to:

- increase access to earlier, expert legal assistance for self-represented individuals seeking legal help at Family Law Courts in NSW
- assist these clients to take timely and appropriate action to progress or resolve their family law matters efficiently and effectively
- help reduce the impact of self-represented litigants on the workload of the Family Law Courts.

The intended beneficiaries of the duty service are:

- self-represented individuals seeking legal assistance at or resolution through Family Law Courts
- Family Law Courts staff, registry and judiciary
- stakeholders interested in the efficient and effective resolution of family law matters.

Self-represented litigants are individuals who are litigating without their own lawyer.⁴ A range of reasons have been identified in the literature for people self-representing in courts (see Stratton 2007, pp. 12–15) and family courts in particular (see Dewar, Smith & Banks 2000; Hunter, Giddings & Chrzanowski 2003). A recent literature review on self-represented litigants noted a broad conceptual distinction occasionally being made:

... between those litigants that choose or prefer self-representation and those that are self-represented by circumstances beyond their control such as a lack of financial resources. (Richardson, Sourdin & Wallace 2012, p. 10)

The profile of self-represented litigants who appeared in the Parramatta Family Law Courts is described later in this report.

⁴ Also described as litigants-in-person, pro se litigants or unrepresented litigants. For literature on the definition, characteristics and impact of self-representation for litigants and the courts see (Farrow et al. 2012; Richardson, Sourdin & Wallace 2012; Stratton 2007; Williams, 2011).

The goals of the EIU duty service extend beyond the traditional function of duty lawyer work, to provide assistance and advocacy for self-represented litigants with matters before the courts. With a focus on early intervention, the EIU duty service also aims to reach this client group before they become litigants before the court. To achieve this end, the EIU duty service was structured differently to the more traditional duty services, including the original duty service which preceded it at the Parramatta Family Law Courts.

We first provide a brief overview of duty lawyer services more broadly before describing the features, resourcing and activities of the EIU duty service, including how it differs from the previous duty service at Parramatta.

Duty lawyer services

Duty lawyer services in family courts are one response to concerns about the increasing numbers of self-represented litigants in family courts, the impact of self-representation on the efficiency of family court processes (affecting litigants and the courts) and the outcomes for these litigants (Dewar, Smith & Banks 2000; Farrow et al. 2012; Hunter, Giddings & Chrzanowski 2003; Richardson, Sourdin & Wallace 2012 for discussion):

Self-represented litigants add a layer of complexity because they need more assistance to navigate the court system and require additional help and guidance to abide by the Family Law rules. (Family Court of Australia, 2011, p. 68)

Duty lawyer services provide advice or representation to self-represented litigants who have matters currently before the court (e.g. Legal Aid Commission of South Australia 2012; Legal Aid Queensland 2012; Victoria Legal Aid 2012). However, there are several examples, particularly in Canada, of more comprehensive or expanded duty services being developed in family court settings (Clairmont & Joyce 2006; Farrow et al. 2012; Focus Consultants 2004, 2006; PRA Inc. 2002). There is no single type of ‘expanded’ service, with programs adapted to suit the local needs and subject to different implementation issues (PRA Inc. 2002 p. i). Expanded models vary to include one or more of the following features:

- the capacity to create and carry client files
- the capacity to draft court documents, negotiate and provide representation
- the capacity to provide a defined number of hours of advice, assistance and representation based on an intake assessment of client need (Focus Consultants 2004; PRA Inc. 2002)

Relevant to the EIU duty service is the observation in the evaluation of one of these projects:

Family Law issues are arguably more complex than those in criminal court and certainly appear to entail, on an everyday basis, more emotion, engagement and crisis whether material, personal or social. Early legal advice there may be especially relevant for the time-sensitive issues that are routinely handled in the family court setting. (Clairmont & Joyce 2006, p. 4)

The EIU duty service at the Parramatta Family Law Courts

The EIU duty service commenced at the Parramatta Family Law Courts complex on 14 March 2011, replacing a duty service that had been staffed by lawyers from the in-house family litigation practice at Legal Aid NSW’s Parramatta office. Like the service that preceded it, the EIU duty service is located on-site in the Family Law Courts building. However, as detailed on Table 1, the EIU duty service differs from the previous service in terms of its level of resourcing, its structure and the scope of its activities and, therefore, its client base.

Table 1: Operational differences between the Parramatta EIU duty service and its predecessor

	<i>Previous duty service (to March 2011)</i>	<i>EIU duty service (March 2011 onwards)</i>
Hours	Monday–Friday, 9am–1 pm.	Monday–Friday, 9am– 4pm.
Staffing	One solicitor from the family law litigation practice. Each solicitor would be rostered on once every few weeks. Skilled and experienced duty lawyers.	Two family law solicitors solely providing duty services. Solicitors are rotated in from the family law litigation practice every 18 months. Skilled and experienced duty lawyers. Information and Referral Officer (IRO) role as part of Administrative Officer function.
Clients	Primarily clients with matters before the courts.	Any unrepresented person or litigant in the Family Law Courts, including those who have not yet filed.
Firewalling	No firewalls to rest of Legal Aid.	Firewalled from Legal Aid practice, to address conflict issues and increase the range of clients that can be provided with assistance.
Range of matters	Mainly children.	Mainly children, divorce and some property.
Range of services	Mainly focused on in-court support for self-represented litigants. Note: duty lawyers also did 'agencies': appearances (mentions etc) for the in-house family litigation practice, resulting in less time for duty work.	Greater scope to provide a range of services, including information, advice, minor assistance, representation and referral to mediation or other legal or non-legal services as required. The EIU will also refer and, where necessary, assist clients to access longer term legally aided representation. The duty service also takes bookings for the COMP scheme.
Referral capacity	Any referral support provided at discretion of the duty lawyer, subject to competing priorities. Streamlined referral to family litigation practice (lawyer could take matter back and manage it on ongoing basis).	An IRO to facilitate warm referrals for longer term legal casework, particularly for urgent matters requiring ongoing assistance. This can involve coordinating access to Legal Aid grants, the in-house family law practice and/or private solicitors. Duty lawyer can refer clients to Family Relationship Centres, police and other services as required.

The activities of the EIU duty service

Triage, advice and minor assistance

With a broader client base and a wider range of issues with which they may assist clients, the EIU duty lawyers need to assess and prioritise or 'triage' the needs and capacity of people seeking assistance. On the basis of this assessment duty lawyers may:

- assist clients with legal information or advice
- recommend clients take alternative pathways to resolution
- provide minor assistance or representation to assist clients to progress their matters
- refer clients to the most appropriate or ongoing alternative legal assistance, alternative dispute resolution (ADR) or non-legal services
- in urgent matters, act immediately to commence legal proceedings.

Diversion

The duty service can provide advice to clients on applications they are seeking to file in the family courts. An application to file signifies the commencement of a new legal process or action. The provision of legal assistance at this key point in time can potentially:

- divert inappropriate matters from being commenced in the family courts (matters which could be more efficiently resolved in the clients' interests, using another legal or non-legal process, or by the client not taking any action at all)

- improve the quality/appropriateness of documentation filed, allowing the matters to progress more efficiently
- resolve the issue by assisting the client with negotiations with other parties as alternative to filing.

Representation

EIU duty lawyers are still able to assist self-represented litigants (at the request of the litigant or the judicial officers) with matters currently before the court. This may take the form of representation on the day for hearings (but not ongoing representation) or providing advice or assistance to self-represented litigants at particular points in the hearing process.

Streamlined onward referral

The EIU duty service does not provide ongoing legal assistance (that is, casework) to clients; however, it does provide a pathway for ongoing support where this is required. Depending upon the needs of the client and the nature of their matter, the duty service can:

- suggest that a client apply for a grant of legal aid
- assist a client to complete an application for a grant of aid (involving either the duty lawyer, a law student working with the EIU or the IRO)
- facilitate a warm referral to a private or in-house legally aided lawyer.

Methodology

Key research questions

The key questions addressed in this report are:

1. Who is assisted by the EIU duty service?
2. What does the EIU duty service do to assist unrepresented litigants?
3. Has this assistance made a difference to clients and to the courts?
4. How does the EIU duty service differ from the previous duty service?
5. What features or activities of the EIU duty service contribute to its outcomes?
6. Is the EIU duty service an early intervention strategy?

Data sources

Legal Aid NSW administrative data

Legal Aid NSW provided the Foundation with de-identified unit record data from CASES⁵ on matters dealt with by the EIU duty service for the period between 14 March 2011 and 31 March 2012. The relevant variables provided included: month and year of matter; unique matter ID; unique person ID (de-identified); actions for each client and each matter (e.g. information only, advice only, negotiation/draft terms, adjournment/mention, urgent hearing, conflict); demographic information (e.g. gender, age, ATSI status, main language spoken); residential postcode; and the court location at which services were provided. These data were analysed using SPSS and Excel.

Unfortunately, comparable data for the year prior to the EIU duty service could not be provided in the timeframe required to undertake this evaluation.⁶ The only pre-EIU duty service data available was a count of matters per month for the year prior to the new service. These data were drawn from the standard management reports that classify data by work units within the organisational structure, whereas the data analysed by the Foundation were categorised by the court at which the duty services were provided. This variation in how the data were categorised means that a small proportion (on average 2.5%) of the difference in matters seen between the pre- to post- period was due to variations in the way the data were classified, rather than an actual change in activity level.⁷ This difference, in part, has been accounted for in the results section.

Snapshot data (new data collection)

Initial discussions and interviews with EIU duty service staff indicated that they are undertaking a range of activities — with very clear intended outcomes — that are not reflected in detail by the administrative data described above.

An additional data collection sheet was developed in consultation with the EIU duty lawyers, which allowed them to record data in greater detail, including the range of activities undertaken for clients

⁵ CASES is the Legal Aid NSW administrative data system.

⁶ Our request for pre-EIU data coincided with upgrades to the Legal Aid NSW IT systems that were occurring in 2012, meaning the comparative information we required could not be provided in time.

⁷ Management data that separately identify the EIU duty service at Parramatta was only available for the first three months of the EIU duty service, after which duty services commenced at other courts and individual courts were not separately identified. Our analysis indicates that this difference varied considerably from month to month, from less than one per cent to a high of 12 % in one month (April 2011), with an average difference of 2.5%.

and potentially, the desired impact of these activities (see Appendix 2). Activities recorded and the types of benefits that duty lawyers anticipated may result from these actions are described in Table 2 below.

During the months of July and August 2012, duty lawyers completed the additional data sheet, appended to the duty law application form, for every matter dealt by the EIU duty service at Parramatta. In this two-month period 412 data sheets were completed, 232 (56.3%) in July and 180 (43.7%) in August. A senior duty solicitor checked each sheet for accuracy and to ensure that all duty lawyers were recording matters in the same way. Half of the completed sheets were cross checked with the completed duty form by Foundation researchers. The information recorded on the additional data sheets were entered into Survey Monkey and then analysed using SPSS and Excel.

While only a short snapshot of the activities and potential outcomes of the EIU duty service, this data collection sheet has provided more detailed information for inclusion in this report, as well as functioning as a pilot for any longer term monitoring of this service.

Table 2: Additional activities recorded by EIU duty lawyers and the intended benefits of these actions

<i>Activity</i>	<i>Intended benefits</i>
Advice: dispense with documents or processes	To divert inappropriate applications from being filed.
Advice: to change orders or processes	Client steered to a more appropriate legal process.
Advice: to undertake FDR	Client steered to a more appropriate pathway to resolution.
Referral to Family Relationship Centre for FDR	Divert inappropriate matters from progressing to court.
Advice: not to undertake legal action	Client advised legal action not in their interests at this point in time. Often coupled with a referral to more appropriate service.
Referral to other service	Client directed to a more appropriate pathway to assistance or resolution.
Minor assistance: negotiation with other parties	Progress in a matter (and potentially, resolution).
Minor assistance: amending existing documents	Documents presented to court are accurate and appropriate. Matter may be progressed more quickly.
Minor assistance: drafting new documents (urgent)	Client has the appropriate documents to progress an urgent matter. Matter may be progressed immediately.
Minor assistance: drafting new documents (not urgent)	Client has the appropriate documents to progress a matter. Matter may be progressed more quickly.

Data from the Family Court of Australia

To provide context to the work of the EIU duty service at Parramatta, the Statistical Services Unit at the Family Court of Australia, and the registry manager at Parramatta Family Law Courts provided the Foundation with data on:

- the monthly numbers of filings and finalisations for interim, final and divorce applications in the Parramatta Family Law Courts (FCA and FMC) for the year prior to and for the first year of the EIU duty service (April 2010 – March 2012)
- the proportion of finalisations for interim, final and divorce applications that involved self-represented litigants (both parties, applicant only, respondent only) in the Parramatta Family Law Courts, by month for the year prior to and the first year of the EIU duty service (April 2010 – March 2012)
- numbers of persons assisted at the counter (filing desk) at the Parramatta Family Law Courts monthly during the first year of the EIU duty service (April 2011 – March 2012).

Key stakeholder interviews

In-depth interviews were undertaken with a range of stakeholders working at the Parramatta Family Law Courts.

The following Legal Aid EIU staff were interviewed as part of the evaluation:

- Four EIU duty solicitors, including the solicitor-in-charge of the EIU
- EIU IRO
- EIU COMP mediator

The following judicial officers and staff of the Family Law Courts at Parramatta were also consulted:

- one judge
- two federal magistrates
- one registrar
- two former registry managers
- team leaders, customer services (filing desk).

Discussions (phone, email and face to face) were also held with the Director, Grants, Legal Aid NSW, a solicitor in Grants and the Director, Family Law, Legal Aid NSW.

While we cannot use qualitative interviews to *quantify* the outcomes of the program, they do provide a very valuable picture of the range of activities being undertaken by the EIU duty service and the types of outcomes that these activities may contribute to. The interviews provide rich context and added meaning to the snapshot data analysed. Together, the data collected provides insight into the work and impact of the EIU duty service at Parramatta, and a vital base from which to establish an ongoing monitoring framework.

Results

Context: self-represented litigants in the Parramatta Family Law Courts

To provide context for the current evaluation we examined how many litigants at the Parramatta Family Law Courts were self-represented and potentially in need of duty lawyer assistance. However, as the status of being self-represented is not static, there is no single answer to this question:

The status of a litigant's legal representation may change during their case. For example, a litigant may commence proceedings without legal representation and then have legal representation at the final hearing. (Federal Magistrates Court of Australia, 2011, p. 47)

The Family Law Courts provided data on the numbers of those self-represented at the point where an order had been made (finalisation) for divorces, interim hearings and final hearings at the Parramatta Family Law Courts.⁸ During the first year of the EIU duty service, the Parramatta Family Law Courts finalised a monthly average of 430 divorces, 155 interim hearings and 155 final hearings.

As indicated on Table 3, in more than two-thirds of divorce finalisations (67.5%), neither party was represented. Both parties were represented in only 5.5% of these matters. This low rate of representation is likely to reflect the fact that only a small number of divorce finalisations involve contested applications (Federal Magistrates Court of Australia, 2011, p. 32).

For interim orders, neither party was represented in one quarter of these finalisations (24.4%) and in a further third of these matters (32.3%), only one party was represented (most commonly the applicant). It is in these types of hearings — where matters were contested — that the EIU duty lawyers were more likely to assist.

Neither party were represented in only seven per cent of final order finalisations. Duty lawyers reported that they tend not to get involved in the finalisation of final orders, as it is generally too late in the process for them to commence assistance or to refer the client elsewhere. Further, they will not assist if there is a solicitor already on the record.

Table 3: Family law finalisations, Parramatta Family Law Courts April 2011– March 2012, indicating the proportion of parties represented

	<i>Finalisations for divorce</i>	<i>Finalisations for interim hearings</i>	<i>Finalisations for final hearings</i>
	N=5165 mean = 430 per month	N=1865 mean = 155 per month	N=1856 mean = 155 per month
Neither represented	67.5%	24.4%	7.0%
Respondent only	1.3%	6.4%	3.9%
Applicant only	25.8%	25.8%	18.9%
Both	5.5%	43.4%	70.3%

Source: Family Court of Australia Statistical Services Unit, National Support Office

The above figures only report those represented at the point of finalisation. EIU duty lawyers also assisted clients who did not yet have matters before the courts (pre-filing and at the point of filing).

⁸ Monthly data were provided for the year prior to and for the first year of the EIU duty service (April 2010 – March 2012). As figures were similar in both years, we report data for the period of April 2011 – March 2012, when the EIU duty service was operating.

Our interviewees consistently suggested that at the Parramatta Family Law Courts people were *less* likely to be represented at these earlier points in the process, resulting in a greater pool of clients for the EIU duty service. These can be people simply seeking advice or people seeking to file documents in the court. For these reasons, the figures tabled above should be viewed as conservative and that, during the first year of the EIU duty service, there was a considerable group of unrepresented individuals turning up at the Parramatta Family Law Courts who could potentially use the EIU duty service.

Who was assisted by the EIU duty service?

In its corporate plan, Legal Aid NSW lists as the first of its four priorities, “prioritising services for people at greatest risk of social exclusion” (Legal Aid NSW 2011b, p. 5). The NPALAS also focuses squarely “on providing services for disadvantaged Australians” (COAG 2010, p. 4).

A key question for this evaluation was whether the EIU duty service was serving this priority target client group. This question is particularly relevant to services such as this, which are not means tested, to assess whether the service maintained a focus on reaching and assisting clients who are particularly disadvantaged in their access to legal assistance services.

Here we report available administrative data on the profile of clients assisted in the first year of EIU duty service at the Parramatta Family Law Courts, and use the qualitative interviews to examine the particular needs and challenges of these clients. Tables detailing all the administrative data reported below are listed in Appendix 2.

Residential locations of clients

As might be expected, most clients attending the EIU duty service at Parramatta in its first year were from localities in Western Sydney. Three-quarters of all clients for whom a postcode was recorded⁹ came from 10 nearby local government areas (LGAs), the top five of which were:

- Blacktown (16.1%)
- Parramatta (11.7%)
- Holroyd (8.4%)
- Liverpool (7.6%)
- Penrith (7.3%).

Overall, however, the Parramatta EIU duty service assisted clients from a total of 75 different local government areas in NSW as well as 19 clients living interstate.

Age and gender

Nearly one in five clients (18.8%) seen by the duty service in its first year were aged in their 20s, just over a third of clients (34.6%) were in their 30s and 27.8 per cent were aged in their 40s. However, with 11.4 per cent of clients aged in their 50s and 5.7 per cent aged 60 or older, the range in ages probably reflects the involvement of both parents and grandparents in family court matters. Duty lawyers also reported helping parents as young as 15 years of age.

In its first year, the EIU duty service assisted more women (55.9 %) than men (44.1%). However, the proportion of EIU duty service clients who were women was lower than the overall proportion of women provided with family law duty and casework services by Legal Aid NSW more broadly (60.8%) (Legal Aid NSW 2011b, p. 21). Gender differences in income levels may be relevant here:

Women ... are usually in so many cases completely pension dependent whereas the men have some source of income which puts them on that terrible cusp for Legal Aid. (Judicial officer 1)

⁹ Postcode information was missing in 140 matters (6.8%).

The higher proportion of male clients assisted by the duty service, compared to the family law practice as a whole, may reflect the profile of self-represented litigants more broadly (see Richardson, Sourdin & Wallace et al. 2012, p. 28) and/or the fact that duty lawyer assistance is not means tested.

ATSI status

In the first year of the service, 3.6 per cent of EIU duty service clients at Parramatta (75 individuals) identified as Aboriginal or Torres Strait Islander people. This proportion is smaller than the overall proportion of Aboriginal people provided with family law duty and casework by Legal Aid more broadly (12.7%; Legal Aid NSW 2011b, p. 21). This may in part reflect where clients attending the Parramatta Family Law Courts resided, which were predominately localities with relatively low populations of Aboriginal people (between 0.4% to 3.2% in the top 10 LGAs where EIU duty clients reside (Australian Bureau of Statistics 2011).

Country of birth

Among those clients for whom country of birth was recorded, 59.9 per cent were born in Australia.¹⁰ The next most common countries of birth were India (3.7%), Lebanon (3.7%), Fiji (2.8%) and the Philippines (2.6%). In total, over 90 different birth countries were listed. Overall, nearly two-thirds (63.9%) of clients were born in English-speaking countries (including Australia), with nearly one-third (32.0%) born in non-English speaking countries.

The relatively high proportion of clients born in non-English speaking countries, compared to 10.3% for all family law cases and in-house duty matters dealt with by Legal Aid more broadly (Legal Aid NSW 2011b, p. 21), reflects the high cultural diversity of the areas surrounding the Parramatta Family Law Courts. The particular needs of these client groups were noted by court staff:

With Parramatta, we get a lot of people who are socially disadvantaged, and also from non-English speaking backgrounds. ... so, we spend a lot of time — sometimes, we have to get interpreters on the phone. (Filing desk staff)

I think the multicultural range of clients now is on the rise. It was always significantly high but, of course, now you've got challenges with clients from Southern Africa or Africa in general through the refugee program, who just have no sense of the complexity [of the family law system]. (Registry manager 1)

Income and welfare benefits

In the first year of the EIU duty service at Parramatta, benefits status was recorded for 91 per cent of all clients. Of this group:

- 53.2 per cent of clients (1002 people) were recorded as receiving some form of means-tested welfare benefits, while 46.8 per cent (882 clients) were recorded as receiving no benefits.
- The benefit types recorded for the 1002 clients in receipt of full or part payments were:
 - parenting payments (40.4%)¹¹
 - Newstart (25.7%)
 - Disability Support Pension (13.7%)
 - Carer Payment (4.0%)
 - Aged Pension (3.5%)
 - Abstudy/Austudy/Youth Allowance (3.0%)
 - other (9.7%).

¹⁰ Country of birth was not recorded for 4.1 % of clients.

¹¹ Of these, 87% were recorded as 'parenting payment – single'.

The proportion of EIU duty service clients receiving some form of benefit is less than the proportion of all clients provided with family law duty or casework assistance from Legal Aid (63.9%; Legal Aid NSW 2011b, p. 21). This is not surprising as casework assistance (a grant of aid) is means tested, while duty services are not.

Due to the amount of missing data, administrative data on the income of EIU duty service clients is not reported here. However, as observed by judicial officers in the stakeholder interviews, many of the unrepresented clients appearing at the Parramatta Family Law Courts — from whom the EIU duty service clients are drawn — have low incomes but are ineligible for a grant of legal aid:

It's the socio-economic mix of the area. People who are working, and working hard, but are just above the real poverty line — but even that's sufficient to make them ineligible on a strictly applied means test. (Judicial officer 1)

The Judge and Federal Magistrates interviewed observed that most of those who were unrepresented in their courts were doing so for economic reasons:

There are a proportion of people who have been through the system before and think that only they can do justice to their case. They're the minority. There are people who choose not to obtain legal advice, even though they probably could afford it, on the basis of the cost-benefit analysis that they undertake. Then there are those people who would be desperate to obtain legal advice, but simply cannot afford it because they earn a little bit too much money, or they have a house or something of that nature [and are ineligible for legal aid]. [Interviewer question: Would that be the bulk of them?] That's the bulk of them. (Judicial officer 3)

You get the occasional difficult person who just wants to [self-represent] but ours are mainly on an economic basis. (Judicial officer 1)

One duty lawyer observed how the experience of family breakdown could impact upon income — particularly for clients who are not eligible for benefits:

It's that window of time where people are impoverished, that you see more and more in the city, I think. In Parramatta, you ... get a lot of clients who are in receipt of Centrelink benefits. So they will adjust their Centrelink benefit to reflect their relationship status. There's a different economic element there I think, definitely. So it's sort of those moments of impoverishment that are very stark I think for people who are used to having a much higher financial pool. (EIU duty lawyer 4)

The broader needs of clients assisted by the EIU duty service

There are multiple dimensions of disadvantage that can impact upon the capacity of individuals to address their legal needs (see Coumarelos et al. 2012). These include characteristics such as illness and disability, education levels and literacy; about which we did not have administrative data. However, the stakeholder interviews provided further insight into the profile of clients assisted by the duty service at Parramatta:

We've got clients with very low literacy and very low English levels. We see a lot of clients from CALD communities, for whom even coming into court is a big deal. (EIU duty lawyer 1)

Often we see people who don't speak English. We see a lot of people with mental illness, people with [developmental] delay and those sort of issues — illnesses that will stop them from properly engaging with the system in an easy-going way. (EIU duty lawyer 4)

Stakeholders suggested that, in part, the profile of clients reflected the location of the court in Western Sydney, a location that includes areas of relatively high disadvantage (Australian Bureau of Statistics, 2006). However, the high-needs of clients may also be a reflection of the jurisdiction itself. The Family Law Courts primarily assist clients with the most complex, volatile and intractable

family law matters.¹² As final ‘ports of call’ for resolving family law matters, the Family Law Courts are almost by definition, sites of complex legal need. A judicial officer described a coalescence of legal need and disadvantage:

The people we usually get here at Parramatta, we have the highest —in terms of percentage of work ... highest filings of notice of risk and abuse of children anywhere in the country ... So the people we get here in court, the Family Relationships Centre is not for them ... It’s drugs, alcohol, mental health, abuse — years of abuse. Children have got problems — it’s just terrible. (Judicial officer 2)

In this often volatile context, stakeholders reported the prevalence of emotions such as anger and intransience, fear and desperation as well as despair and passivity:

So we see a good proportion of people in that situation [without representation], a lot of them angry, a lot of them sad and a lot of them frightened. (Judicial officer 1)

A lot of them can lose perspective, and ... if I’m trying to deal with somebody, especially if it’s an upset dad, they can get really irate with you. (EIU duty lawyer 4)

They can often be clients with mental health problems. That can be anything from women with significant depression ... [where] there’s been critical intervention points that have been missed by them because they’ve not been able to action them. They’re overwhelmed by the situation. (EIU duty lawyer 1)

The data and observations above indicate that the EIU duty service is accessible to and does reach and assist disadvantaged clients. Not only is the service located in a geographical location where it is accessible to a range of relatively disadvantaged parts of Sydney, it is located in the Family Law Courts building, itself a site of complex legal need. The impact of the stress and emotion of complex family law matters on the capacity of litigants should also be factored into the picture. As a service available to all unrepresented litigants, the capacity of clients will vary from those able to help themselves to those requiring more assistance. As will be described below, the EIU duty lawyers considered the capacity of clients, together with the urgency and complexity of each of their family law matters, to prioritise and tailor the level of assistance accordingly.

What does the EIU duty service do to assist unrepresented clients?

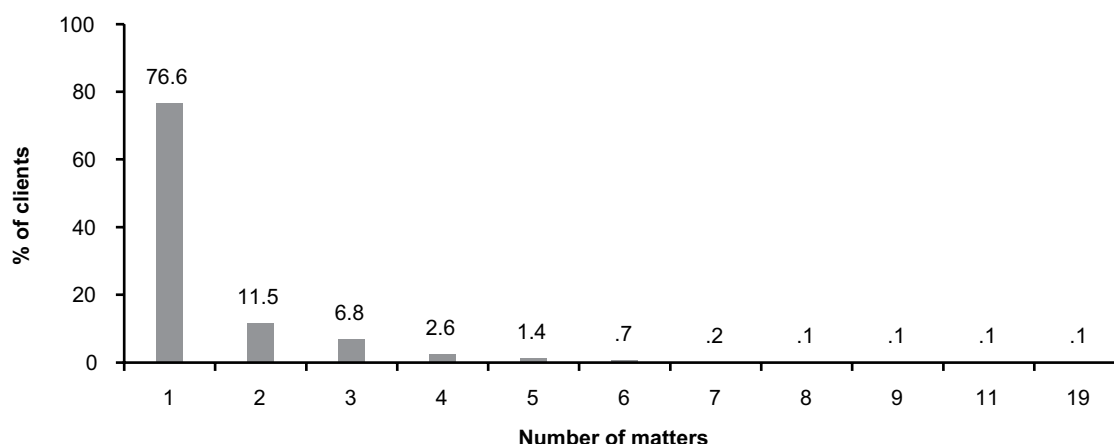
To explore the work of the EIU duty service we will first discuss the volume of matters dealt with during the first year of the service before exploring the nature of this work in more detail.

The volume of work undertaken by the EIU duty service

From 14 March 2011, when the EIU duty service commenced, to 31 March 2012 (12.5 months), the EIU duty lawyers at Parramatta Family Law Courts assisted 2070 clients with 2742 matters. This represented an average of 160 unique clients per month and 219 unique matters per month. This monthly average increased to 224 duty matters per month if the month of January was excluded, when the court was closed for a period and staff were on leave. There was no significant increase in the number of clients or matters per month during the first year of the EIU duty service.

Each matter reflects one occasion of service to a client. However, one client may be assisted on more than one occasion (have more than one matter). As indicated on Figure 1, more than three-quarters of all clients (76.6%) were assisted with only one matter over the reporting period. Only 11.5 per cent of clients were assisted with two separate matters and less than three per cent of clients (2.7%) were assisted with five or more matters.

¹² The FCA, with the support of the FMCs, assist Australians to resolve their most complex legal family disputes (FCA 2012).

Figure 1: Number of matters per client (repeat clients), Parramatta EIU duty service, March 2011 – March 2012

Notes: N=2742 matters for 2070 clients.

Source: Legal Aid NSW, CASES data, 14 March 2011 – 31 March 2012.

Types of assistance provided

For each matter, duty lawyers also record ‘actions’ or in broad terms, the type of legal assistance provided. The available categories on CASES are: information only, advice only, adjournment/mention, negotiation/draft terms, urgent hearing and conflict. During the reporting period a total of 3215 actions were recorded for these 2070 clients and 2742 matters.

As Table 4 shows, advice was the most common form of assistance provided (in 82.5% of all matters), followed by ‘negotiation/draft terms’ (13.7% of all matters). In around five per cent of matters, clients could only be provided with information and referral due to conflict issues.

Table 4: Assistances provided, Parramatta EIU duty service, March 2011 – March 2012

	<i>Number of assistances</i>	<i>% of assistances (n=3215)</i>	<i>% of matters (n=2742)</i>
Advice	2263	70.4	82.5
Negotiation/draft terms	376	11.7	13.7
Adjournment/mention	202	6.3	7.4
Conflict	147	4.6	5.4
Information only	147	4.6	5.4
Urgent hearing	80	2.5	2.9
Total assistances	3215	100.0	-

Note: Percentages equal more than 100 as a client may receive more than one type of assistance in a single matter.

Source: Legal Aid NSW, CASES data, 14 March 2011 – 31 March 2012

In the vast majority of matters (85.6%) dealt with by the EIU duty service in its first year, clients received one type of assistance per matter. However, in 11.8 per cent of matters, two types of assistance were provided (e.g. negotiation/draft terms and adjournment/mention or two advices) and in 2.5 per cent of matters, three or four different types of assistance were provided.¹³

The above data give a good sense of the volume and broad types of matters dealt with by the EIU duty service in its first year of operation. But without more detail, it is difficult to appreciate how exactly this work may have made a difference to clients and the court.

¹³ Further analysis of the CASES data indicated that in around 10% of matters, two of the same type of assistance (e.g. two advices or two adjournments/mentions) were listed in the same matter. It is not clear from the data whether this reflects practice or in some cases, a result of the way the data were downloaded. While this does not change the proportions of each type of assistance, it does increase the overall count of ‘advices’ in particular.

The matters and activities of the EIU duty service: the detail

To gain a more granulated picture of the type of matters dealt with, and activities and potential impact of the EIU duty service, we drew upon a snapshot of data of the 412 matters dealt with by the EIU duty lawyers during the months of July and August 2012. The snapshot data are supported by observations made by duty lawyers and other stakeholders. Differences between the snapshot data reported here and the administrative data reported above reflect both a different time period as well as variations in how information was classified and recorded.

The type and urgency of the matters

As part of the two-month snapshot data collection, EIU duty lawyers recorded additional details about the types of matters they dealt with, including categories that are not listed on the current duty form completed for all clients. Duty lawyers were able to record more than one matter type per matter. Table 5 indicates that 578 matter types were recorded for the 412 matters. While more than half (52.4%) the matters were recorded as assistance related to children, several other categories also involve children (e.g. recovery, airport watch list, passport and travel, Hague Convention, care and protection, immigration, change of name).

Of note, the EIU duty service was able to provide assistance in matters that are outside the guidelines for a grant of aid. These matter types included divorce, for which assistance was provided in nearly one-third (32.0%) of matters and property, an issue in 14.6 % of matters.

Table 5: Additional matter types recorded, Parramatta EIU duty service, July – August 2012

	<i>Number of matter type</i>	<i>% of all matters' N=412</i>	<i>% requiring 'immediate assistance'²</i>
Children: BIOC, s60CC; S61DA	216	52.4	58.8
Divorce	132	32.0	44.7
Property	60	14.6	40.0
Recovery	36	8.7	75.0
Airport watch list	30	7.3	70.0
Contravention order	20	4.9	*(n=7) ³
Passport/travel	11	2.7	*(n=8) ³
Hague convention	8	1.9	*(n=5) ³
Care and protection	5	1.2	*(n=3) ³
Immigration	4	1.0	*(n=3) ³
Other	56	13.6	55.4
All matter types	578	-	-

¹ Figures add up to more than 100% as duty lawyers could record more than one matter type per matter.

² Percentage of all matters, with that matter type. Note that in 26 matters (some of which had multiple matter types) 'immediate assistance' information was not recorded.

³ Numbers too small to report percentages.

Source: Snapshot data collected by EIU duty lawyers, 1 July – 31 August 2012.

Duty lawyers also recorded whether, in their view, the assistance was required immediately (or urgently). Immediately was defined as help that solicitors judged as required within 24 hours. Half (50.5%) of the 412 matters dealt with in this period were assessed as requiring immediate assistance, 44.2 per cent were assessed as less urgent and in 5.3 per cent of matters this information was not

recorded. While a proportion of all matter types were noted as in need of immediate assistance, three-quarters of the recovery matters and 70 per cent of airport watch list matters were noted as needing immediate assistance.

Categories of assistance provided

During the snapshot period, duty lawyers recorded both the broad category of assistance (e.g. information, advice, minor assistance, representation and referral) as well as the specific type of assistance (e.g. procedural advice, drafting new documents or warm referral for a grant of aid and casework). Clients could have received more than one category of assistance (e.g. minor assistance and referral), as well as multiple types of assistance within these categories (e.g. procedural advice plus drafting new documents).

Table 6 indicates that in 44.7% of all matters during the snapshot period, clients were provided with two broad categories of assistance, while in more than one-quarter of matters (28.4%) clients received three broad types of assistance (e.g. advice, minor assistance and referral). In four matters, no assistance was recorded and these forms were excluded from further analysis. These clients may have had a conflict or, in error, no information was recorded against these matters.

Table 6: Number of categories of assistance per matter, Parramatta EIU duty service, July – August 2012

	<i>Number of matters</i>	<i>% of matters (N=412)</i>
1 category of assistance	82	19.9
2 categories of assistance	184	44.7
3 categories of assistance	117	28.4
4 categories of assistance	25	6.1
5 categories of assistance	4	1.0
Total	412	100.0

Source: Snapshot data collected by EIU duty lawyers, 1 July – 31 August 2012.

The types of assistance provided varied depending upon the matter types. As might be expected, a higher proportion of recovery matters (28.6%), airport watch list matters (23.3%) and children's matters (17.6%) involved representation. In contrast, only 3.9 per cent of divorce matters involved representation.

Table 7 indicates that the most common category of assistance provided by EIU duty lawyers was advice, with advice provided in 84 per cent of matters. The next most common form of assistance was referral to another legal or non-legal service (51.9%) followed by minor assistance (45.4% of matters).

Table 7: Number of matters involving at least one of each category of assistance, Parramatta EIU duty service, July – August 2012

	<i>Number of matters</i>	<i>% of matters¹ (N=412)</i>
Information	72	17.5
Advice	345	83.7
Minor assistance	187	45.4
Representation	48	11.7
Warm referral to solicitor with grant of aid	54	13.1
Other referral (to legal or non-legal service)	214	51.9

¹ Percentages add up to more than 100 as more than one broad type of assistance may have been provided in each matter.

Source: Snapshot data collected by EIU duty lawyers, 1 July – 31 August 2012

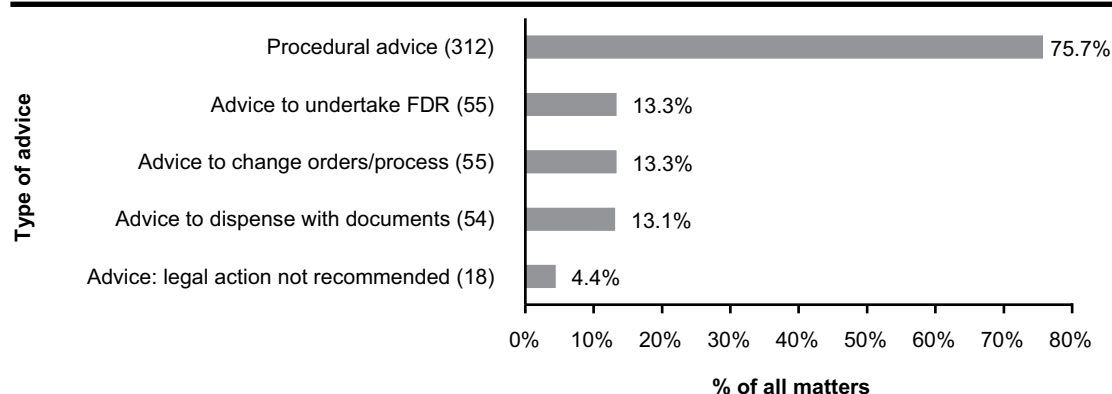
Information

In 72 matters (17.5% of all matters), clients were provided with information. Some of these clients would have only received information because there was a conflict; that is, for example, the other party had already received assistance by the EIU duty service.¹⁴

Advice

Duty lawyers were also asked to record the specific assistance provided. In three-quarters (75.7%) of all matters, clients assisted in the snapshot period received procedural advice. In 45 matters (10.9%), clients received procedural advice only and no other type of assistance (Figure 2).

Figure 2: Types of advice provided as % of all matters, Parramatta EIU duty service, July – August 2012



Note: N=412. Of all matters, 84% involved at least one advice. Percentages add up to more than 100 as more than one broad type of advice may have been provided in each matter.

Source: Snapshot data collected by EIU duty lawyers, 1 July – 31 August 2012.

Procedural advice generally involves explaining to a client the legal framework (e.g. the principle of the best interests of the child), what their options are at that point and how they could proceed. Court staff described the nature and importance of this type of assistance:

Family law is complex and any opportunity, with the type of client we have, to explain appropriate filings and applications, and just whether in fact they were in the right court and doing the right thing [is important]. Having Legal Aid presence there was very helpful. So, from the client perspective, it's just getting the right advice at the right time. (Registry manager 1)

Duty lawyers were able to provide advice at any point in the legal process. While they provided advice pre-filing and at the point of filing, they were also called upon to provide advice to clients who have matters currently before the court. The advice was provided at the request of the client or at the request of the bench:

An applicant who starts something and suddenly finds the whole thing overtaking them and consuming them, and they have no real appreciation of the process they've started which is now rolling down the hill like a giant snowball at them. That is one of the real situations where assistance is invaluable to explain 'this is next, this is next, this is next'. (Judicial officer 1)

Advice to change their approach

Keeping in mind that clients could receive more than one type of advice, in 40 per cent of matters recorded in the snapshot period, clients were advised to change their approach to their issue in some way. Specifically:

- In 13.3% of all matters, clients were advised to change orders/process

¹⁴ We did not record conflict issues on this data sheet. In future monitoring, information on the data sheet could be linked to information on conflict held on CASES.

- In 13.1% of all matters, clients were advised to dispense with documents
- In 4.4% of all matters, clients were advised not to pursue legal action at this point in time
- In 13.3% of all matters, clients were advised to undertake FDR.¹⁵

Clients seeking to commence an 'inappropriate' action

A key reason that clients were advised to change their approach, was that the action they were seeking to commence was not the most appropriate to address their particular legal problem and their circumstances. For each matter, duty lawyers recorded whether, in their view, the client was seeking to commence an 'inappropriate action' in the court: that is, an action, such as filing a particular application, that was not the most appropriate to progress or resolve their family law problem (e.g. Case study 1).

Case study 1: advice and minor assistance

A father had orders for three children to reside with him. As agreed, the children went to stay with their mother interstate in the school holidays. However, only one of the three children was returned after this first contact visit. The father's income put him just over the legal aid threshold. The father came into court with contravention orders drafted, and was referred to duty service by counter staff at the court. The duty solicitor advised the father not to proceed with contravention orders, which would re-open all the children's proceedings, and instead re-drafted the application and orders for recovery. The father was advised on how to run the recovery proceedings. The duty solicitor assisted with filing and sought urgent short service. The father had the documents served and represented himself in the urgent hearing. Orders were made for the children to be returned.

Duty lawyers assessed that in 36.9 per cent of matters (152 matters) during the snapshot period, clients were seeking to commence an 'inappropriate action'.¹⁶ We found that in these matters, compared to those already on the right path, clients were more likely to be advised:

- to change orders or process
- to dispense with documents (they were seeking to file or use)
- that legal action was not recommended (to do nothing at this point).

Minor assistance

As indicated in Figure 3, the most common types of minor assistance provided by the EIU duty service in the snapshot period were drafting new documents to be filed in the court, either urgently (48 matters, 11.7 % of matters) or on a more routine basis (52 or 12.6% of matters).

EIU duty lawyers described this type of work and how it could make a difference:

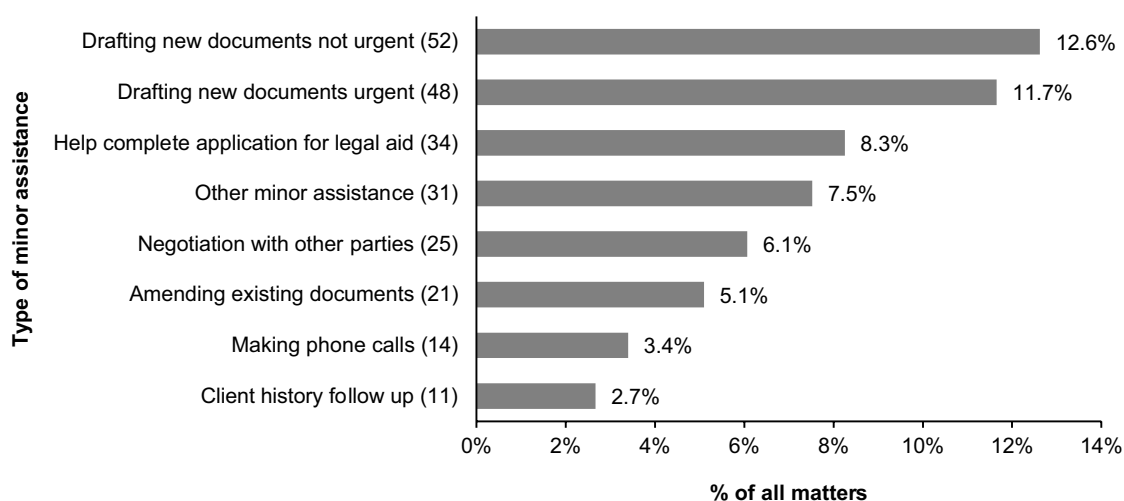
We would draft the documents for them, so at least at that first instance — when they go into court on the first occasion — the orders are appropriate and the affidavit actually addresses things that the court needs them to address, so that at that first day the judge can then start managing that case, even if that client's then self-represented. (EIU duty lawyer 1)

Case study 1 (previous page) provides an example of this work.

¹⁵ The percentage of matters in which clients received three discrete forms of advice listed above is similar. However, it is not the case that the same 55 matters are being counted three times as receiving each form of advice. For instance, 14 matters were recorded as being advised to dispense with current documents and change their orders; six were advised to dispense with documents and to pursue FDR and six were advised to dispense with documents and not pursue legal action.

¹⁶ In 58% of matters, clients were not seeking to commence an inappropriate action and in 5% of all matters, this information not recorded.

Figure 3: Types of minor assistance as a % of all matters, Parramatta EIU duty service, July – August 2012



Note: N = 412. Of all matters, 45% involved at least one minor assistance. More than one type of minor assistance may have been provided in each of these matters. Source: Snapshot data collected by EIU duty lawyers, 1 July – 31 August 2012.

In 21 matters (5.1%), EIU duty lawyers assisted clients to amend documents they had already drafted. EIU duty lawyers described this work:

Well they might have their orders drafted really badly and the counter staff will look at it and go “oh look, go and see the duty lawyer”. So we can help draft their orders properly, we can help file urgent applications and get them listed. Divorce applications — if they don’t know where the other party is — we can help do all that documentation. So the filing process is assisted as well because people can get assistance on the day with whatever problems they’ve got. Also filing consent orders — their orders mightn’t be drafted properly and we can help them redraft their orders. All that just streamlines the process, really. (EIU duty lawyer 2)

To understand the potential impact this type of assistance, we asked stakeholders what happened when litigants filed documents that were badly drafted:

People come to court and they file documents, affidavits and things, and they just ... don’t cut it: they’re not pertinent, they’re not relevant and the judge — or the magistrate — it’s overlooked. “Sir or madam, if you go away and do this correctly, it might change the way we look at this case” or “your evidence needs to be put in a form that it can be submitted into evidence”. (Registry manager 2)

Filing desk staff spoke about the prevalence of badly drafted applications being filed by unassisted litigants at the Parramatta Family Law Courts:

It’s most of them — if they get it right, that’s a bonus It’s poorly drafted, and it wouldn’t have all the supporting documents needed, so that’s a very common thing with self-represented clients. (Filing desk staff)

Representation

In the two-month snapshot period, representation on one or more occasions was provided to clients in 48 matters (a total of 59 ‘representations’; see Figure 4). Representation could have been provided to progress relatively routine matters involving self-represented litigants who were already before the court, or could have been commenced on behalf of the client by the duty lawyers in more urgent situations, such as a recovery matter.

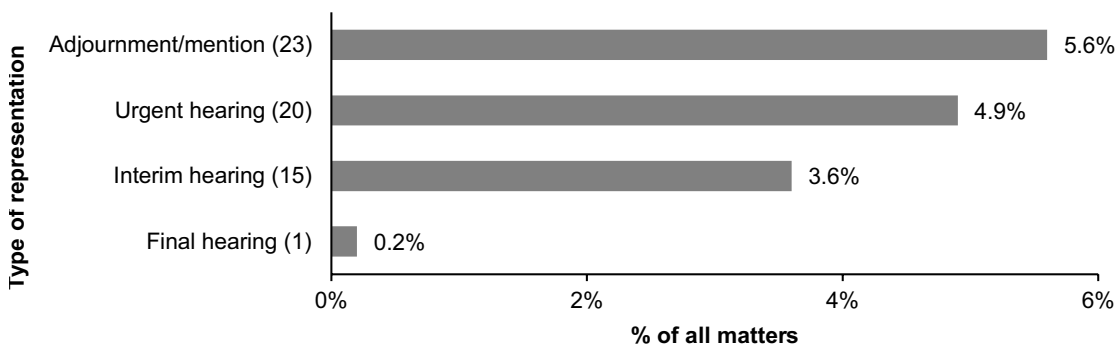
In more urgent matters, such as case study 2, EIU duty staff may:

- advise and take instructions from the client
- prepare documents for filing
- liaise with the registry for documents to be filed on short notice
- liaise with other agencies to have the child placed on the airport watch list
- arrange service of the documents
- represent the client in short notice hearings on the matter
- facilitate a grant of legal aid to progress the matter further
- hand the matter over to a legally aided solicitor who will have ongoing responsibility for the matter.

Case study 2: representation

A young mother arrived at the EIU duty service about 12.30 pm. She had been given a half-day treatment package by her partner and returned home to find her partner and child's belongings gone. She was then informed by a relative of his that the father had left the country. By 4 pm the duty solicitor had filed documents and appeared before the Federal Magistrate to receive urgent stop list orders. Confirmation was received that the child had been removed from Australia to a non-Hague country. The duty solicitor appeared for the mother on a further three occasions over a four day period. Applications included placing a family member who had assisted the father in removing the child on the airport watch list. This assisted the duty solicitor in negotiating with the father (by phone) and his family members to return the child. The child was returned to the mother within seven days of removal.

Figure 4: Types of representation provided to clients as a % of all matters, Parramatta EIU duty service, July – August 2012



Note: N= 412. Of all matters, 12% involved at least one representation. More than one type of representation may have been provided in each of these matters.

Source: Snapshot data collected by EIU duty lawyers, 1 July – 31 August 2012

Referral

Part of the 'triage' role of the EIU duty service is to assess the needs of the client and to help them towards the most appropriate legal or non-legal path to resolving their issue. This pathway to resolution may involve assistance that is beyond the remit of the duty service, in which case the duty lawyers can refer clients elsewhere.

As shown in Figure 5, in the snapshot period, at least one 'cold referral' to another legal or non-legal service was provided to clients in just over half (51.5%) of all matters. In 13.1% of matters, clients received a 'warm referral'. In all but five cases, the referral was provided in addition to other assistance from the EIU duty service (e.g. information, advice, minor assistance or representation).

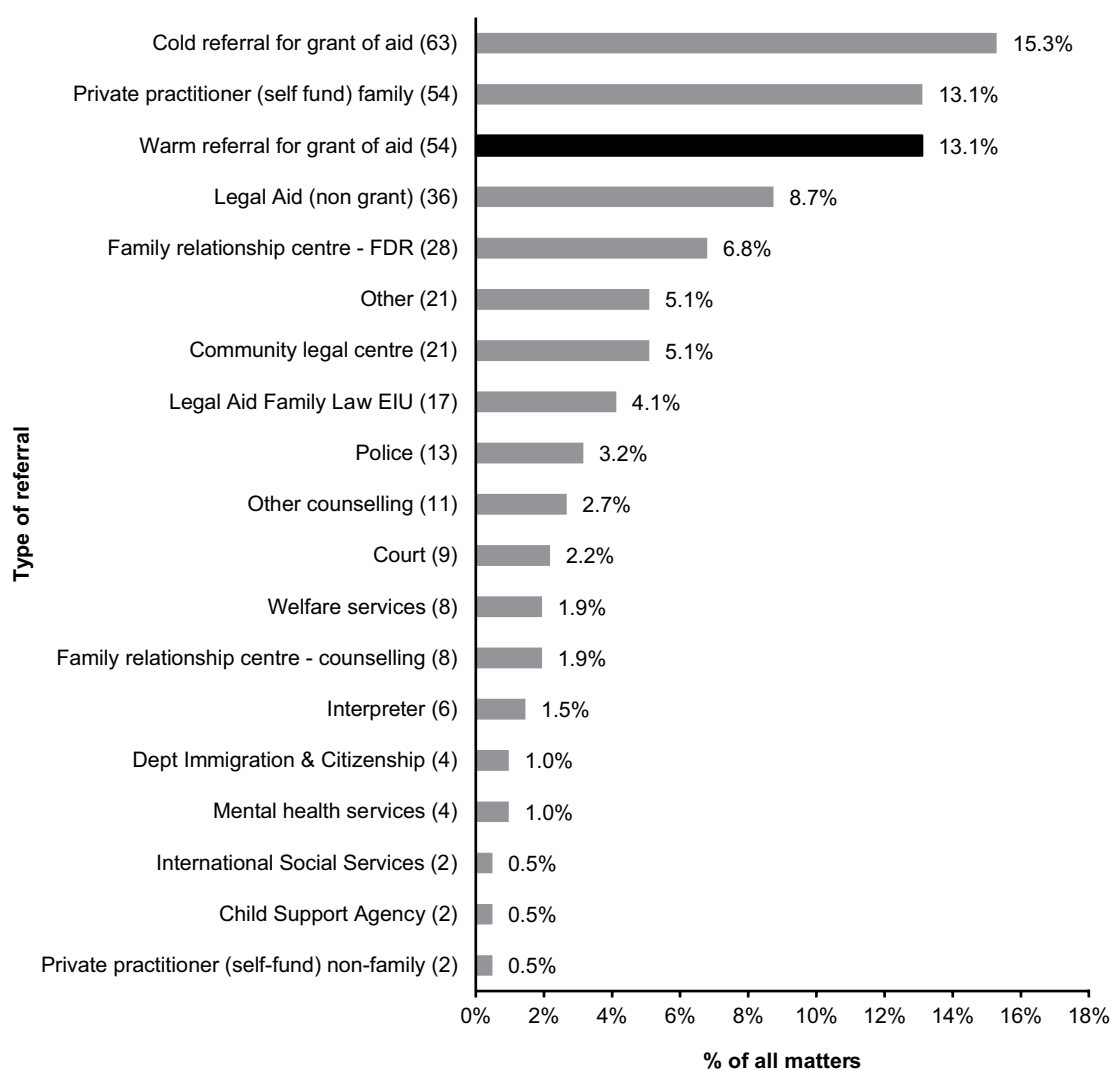
Cold referral

Cold referral involves clients being advised to seek assistance from another service and being provided with contact information. Generally, EIU staff did not make contact with the service for the client, but some of the clients advised to seek a grant of aid (but not provided with a warm referral) were assisted to complete the application form (minor assistance).

As indicated in Figure 5, referrals to ongoing legal assistance (legal aid or private solicitors) were the most common forms of referral. This reflects the limits of legal assistance that can be provided by the duty service. EIU duty lawyers do not ‘carry’ matters beyond the immediate assistance provided, usually on a single day.

Referrals to Legal Aid (non-grant) may have included referrals to divorce classes or advice clinics at Legal Aid offices (36 referrals). Referrals to the EIU included referrals for minor assistance to be provided at outreach locations by other EIU staff (17 referrals).

Figure 5: Referrals provided to clients- number of each type of referral and as % of all matters (n=412) Parramatta EIU DLS July – August 2012



Note: N=412. A warm referral (black shading) was provided in 13% of all matters. Any other referral was provided in 59% of all matters. More than one referral may have been provided in each of these matters.

Source: Snapshot data collected by Parramatta EIU duty lawyers, 1 July – 31 August 2012.

In July and August 2012, clients were referred to a family relationship centre for FDR in 28 matters and counselling in a further eight matters. A duty lawyer described referrals to non-legal services:

Sometimes clients think that coming to court is the best way. But really, what they need perhaps is some therapeutic counselling, or they need mediation or some other support services to help them cope with the dynamics of whatever is happening to them. Sometimes an AVO is what they really need, so off to the police, or a phone call to the police on their behalf ... and again, that gets them out of this jurisdiction and into a jurisdiction that really is the best one for them. (EIU duty lawyer 3)

Warm referral

A feature of the EIU duty service (compared to the previous service) is the role of the Information and Referral Officer. The IRO facilitates warm referral to ongoing legal casework where required. This involves finding a private or legal aid solicitor to take on the matter and, where necessary, facilitating their application for a grant of legal aid for the client. In the two-months of July and August 2012, the IRO facilitated 54 warm referrals for ongoing legal assistance.

This type of support can be critical in very urgent matters, such as recovery matters, where ongoing assistance is required in addition to the immediate assistance provided by the duty service. In these urgent matters, the IRO provided multiple and specific examples of where she had been able to find a solicitor to take on the matter and facilitated the grant of aid to that solicitor within hours of the client visiting the duty service:

There's always been a duty scheme there but there hasn't been this job attached to the duty scheme ... now they're able to give it to me and like I said, within two hours they've got a solicitor; they've got a grant, they've got documents happening. So that's a big difference in what this system provides. (EIU duty service, IRO)

The EIU duty lawyers do not necessarily have greater access to the grants process than other solicitor applicants.¹⁷ As illustrated in case study 3, duty lawyers and the IRO help to expedite matters by:

- identifying clients in need of ongoing casework assistance
- identifying what further assistance is needed and assessing the merit of the matter
- identifying a private or in-house solicitor who will accept the work
- assisting the client to complete the Legal Aid form and to include any required supporting information
- contacting Grants to let them know the urgent application is on its way from the solicitor who will do the work
- acting as a liaison point, if required, between Grants and the solicitor
- where required, briefing the incoming solicitor so they can more quickly run with the matter.

Case study 3: warm referral

One morning, a mother attended duty service seeking the urgent recovery of three of her five children, including a baby. Due to the workload at that time, the duty solicitors requested that the IRO find a private solicitor to take on the matter. Within the hour, the IRO found a solicitor and had the client attend the solicitor's office with her completed legal aid application. The IRO liaised with the solicitor and the Legal Aid Grants division, to request that the application be dealt with urgently. At 4:30 pm a grant of aid was made in favour of the client, so that the solicitor could proceed with the urgent recovery.

¹⁷ Generally speaking, applications for a grant of aid submitted by a duty lawyer is more likely to be successful than a grant submitted by an individual client. There are several contributing factors, including duty lawyers being able to apply for grants online, individual applicants not including the information necessary to make a decision, individuals seeking grants for services that don't actually need a grant (e.g. advice or minor assistance), or seeking grants for assistance or matter types outside the guidelines and therefore would not be granted in any case (personal communication, Director, Grants, Legal Aid NSW, 31 July 2012).

As a result a solicitor in Grants described getting “better referrals, so quicker determinations”. This solicitor noted that:

from a Grants perspective [the EIU duty service] help target people with the best advice and assistance early in the process, rather than people staggering through the process then submitting a late application for aid. (Solicitor, Grants)

A duty lawyer described the benefits beyond those to the client:

You know, it means that a matter can get on and it can get on quickly, and sometimes it can be disposed of quickly, which has a benefit for everybody; the court, us, the Attorney-General, because they don't have to spend as much money on the matter. (EIU duty lawyer 3)

In this section we have examined the activities of the EIU duty service in its first year of operation and during the two-month snapshot period. Overall, the snapshot data collected by duty lawyers in the months of July and August 2012 was consistent with the administrative data from the first year of the service, in indicating that advice was by far the most common form of assistance provided to clients. What the snapshot data have added, however, is greater insight into types, urgency and appropriateness of matters coming to the EIU duty service, and greater detail about the range of ways in which the EIU duty service responded to these matters. For instance, some clients were advised on how to progress their matter through the courts, while others — particularly those commencing a process that was not appropriate to resolve their matter — were redirected to alternative pathways. This advice was commonly supported with referrals to other services.

The snapshot data and interviews have also provided insight into nature and potential impact of minor assistance work, particularly the assistance in preparing documentation. While representation was provided in only 11.7 per cent of matters, this time-intensive work, particularly for urgent matters, remained a core element of the EIU duty service work. Finally, the IRO actively supported streamlined referral to ongoing legal casework, particularly for clients with urgent ongoing matters. But two further questions arise at this point:

1. Has the EIU duty service made a difference to clients and the court?
2. Is the work of the EIU duty service any different to what was available previously?

Has the EIU duty service made a difference to clients and the court?

The primary intended beneficiaries of the Family Law EIU duty services are the clients and the courts. Some intended outcomes are particular to clients, while others are particular to the courts. Often, however, the intended outcomes of the EIU duty service benefit both:

Well, court can be a very frightening place. Often people have got no concept about what's going on. I think the capacity for them to have a spokesperson is very important. It assists them. And it also assists the court. Because I know the court, when dealing with unrepresented parties, it takes a lot longer to process on the day. Whereas with the duty solicitor assisting, it allows things to flow a lot more freely. The parties— the unrepresented party—gets to know precisely what's going to happen in court, what the next step is, what they've got to do. (EIU COMP Mediator)

Information about the *scale* of difference a service has made for clients is very difficult to collect. It requires following up with clients to assess what has happened since the assistance was provided and using a method (often using a comparison group) that helps to reliably attribute an outcome (positive or negative) to the service rather than any other influence.

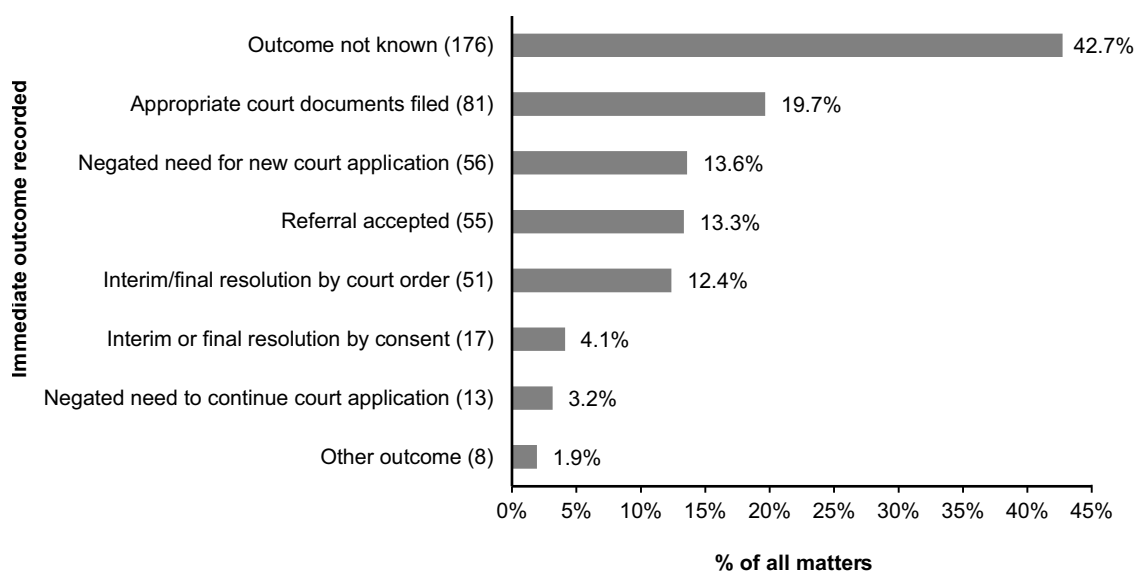
Equally, to assess the degree of impact of the duty service on the court, data on outcomes of interest (such as efficiency measures) need to be collected before and after the service commenced, with consideration of other influencing factors. It was beyond the scope of this project to collect such data and quantify any difference that the EIU duty service may have made.

Rather, we have relied on the snapshot data, supported by the views of stakeholders, to identify the likely benefits of the EIU duty service and to explore how its work contributes to these outcomes - for clients and for the courts. We suggest that this information provides a sound basis for identifying measurable outcomes for future monitoring, evaluation and research.

Immediate outcomes

As part of the snapshot data collection, duty lawyers were asked to choose from a list provided, any *immediate* outcomes that they identified as resulting from or following their assistance (Figure 6). The data only relate to immediate outcomes as EIU duty lawyers have no ongoing relationship with clients. The list was further limited to outcomes which duty lawyers could more directly relate to the assistance they provided — particularly minor assistance, representation and warm referral.

Figure 6: Immediate outcomes recorded by duty lawyers at end of assistance, Parramatta EIU duty service July – August 2012



Notes: N= 412. More than one outcome may have been provided in each of these matters. Other unique outcomes listed in free text field included adjournments (2), matter listed on urgent basis (1), client did not accept the advice (1) or complete interview (1) discontinuance withdrawn (1) and child placed on airport watch list (1). Seven matters noted as 'conflict' were included under 'outcome not known'. Source: Snapshot data collected by EIU duty lawyers, 1 July – 31 August 2012.

In 42.7 per cent of matters dealt with in the snapshot period, no outcome was identified ('outcome not known'). We would expect to see an outcome recorded as 'not known' in matters where clients were only provided with advice or a cold referral. This is because while a duty lawyer may hope and *anticipate* that a certain outcome would follow their advice, they do not know (without follow up) if the advice or referral was taken.

Diverging matters from the court

EIU duty lawyers recorded that, during the two-month snapshot period, in 56 matters (13.6% of all matters), they helped to negate the need for a new court application, and in a further 13 matters (3.2%), the application, which was before the court, was discontinued with their assistance. Duty lawyers described this work and how it can impact upon the court:

I guess we're a little bit like traffic signals ... for those matters that perhaps, had we not been here, people that had come in armed with all their documents would've filed - so that sort of clogs up the system with inappropriate matters ... they file, they get to court and the court says, "no, you've really got to go off to mediation and we're not ready to deal with this" or "this is not the right application for you to be filing". We can filter those now, so they go off. (EIU duty lawyer 3)

We're able to assist the court much more [than before] because ... for instance in the divorce list, they refer a lot of people down to us and we can fix up the problem on the day, get the matter out of their lists. (EIU duty lawyer 2)

The impact of having matters diverted out of court early in a legal process (including before the process is formally commenced in the court) can benefit the client by redirecting them to a more appropriate avenue of resolution or quickly resolving the matter. This also may have potentially sizable economic savings for the courts, as matters are taken out of the lists. To begin to appreciate the scale of this saving to the court, it is worth noting that in 2010 – 2011, the cost per finalisation of a matter before the FCA (the real net recurrent expenditure) in 2010 – 2011 was \$5315 per matter. For the same time period, the cost per finalisation of matter before the FMC was \$742 per matter¹⁸ (Steering Committee for the Review of Government Service Provision, 2012, p. 2 of Table 7A.24).

To calculate the actual net economic impact of this aspect of the EIU duty service's work, consideration would also need to be given to the costs to Legal Aid NSW of providing the duty service, the cost of the alternative pathways to resolution (including their likely success) and a breakdown by court and matter types, among other factors. But the figures above indicate the value of being able to separately identify the types of activities being undertaken by the EIU duty service in order to inform such an analysis.

When considering savings to the court, it is also important to remember that the diversion of inappropriate matters out of the court is only one aspect of the EIU duty service's work. Of equal importance is the assistance provided by the EIU duty lawyers, so that clients can progress matters through the courts. As will be illustrated below, this can involve assisting clients to file—and appropriately file — matters in court that may otherwise not have progressed.

Facilitating access to the court

In nearly 20 per cent (19.7%) of matters in the two-month snapshot period, duty lawyers reported that 'appropriate court documents were filed' following the assistance provided. Duty lawyers assisted clients by drafting new documents, redrafting documents and directing clients downstairs to the filing desk to file their documents. Court staff described the difference made by this assistance:

With the assistance of Legal Aid, clients were able to craft applications which were more accurate, more appropriate, they went through the right channels, they saved time. All in all, it was preferable for our staff as well, because it meant less mistakes as it went through the system. (Registry manager 1)

For those matters where parties possibly don't have a lot of means but can't draft up a settlement themselves, it really is helpful to be able to finalise the matter for them quickly with that assistance from the duty scheme. (Registrar)

One duty lawyer described what this kind of assistance can mean for the EIU duty service clients at Parramatta:

For many people, we are the difference between filing and not filing at all. So we are the difference between the remedy and no remedy. It's for those people who find it extremely difficult. We also have people who might not be eligible for legal aid. They might be employed, but would find it extremely difficult to prepare their own court material. We see a lot of people who are illiterate, you know, they've 'forgotten their glasses' every time. (EIU duty lawyer 4)

This duty lawyer went on to describe how this could affect outcomes for these clients, particularly in urgent matters:

¹⁸ The average cost per matter before the FMC is reduced by the high proportion of matters (64% in the FMC at Parramatta in 2010 – 2011) which are divorce matters. A high proportion of divorce matters are not contested. In 67 % of divorce matters finalised by the FMC at Parramatta during the same period, neither party was represented. (Data provided by the Family Courts of Australia)

So in terms of those short-term interim outcomes, the difference between us being there and not being there is you get an outcome. So matters would never see the light of court. They never would. The children would simply be absconded to countries that are not parties to the Hague Convention and that would be it. (EIU duty lawyer 4)

To put this comment in context, during the two-month snapshot period, the EIU duty service dealt with eight Hague Convention matters (relating to children being taken/recovered from overseas), an additional 25 airport watch list matters (in addition to five Hague Convention matters that also included putting a child on airport watch) and a further 34 recovery matters.

Helping to progress matters to resolution

In 51 matters (12.4%), duty lawyers noted that the matter was finalised by the court, following the assistance of the EIU duty lawyers that day. In a further 17 cases, the matter was finalised by consent. While we cannot assess from these data how much of a role the duty lawyer may have played in the resolution of any particular case, the stakeholder interviews provide insight into how the work of the EIU duty service contributes to the resolution of matters before the court.

As described by judicial officers in the interviews, the work undertaken by the duty lawyers to get instructions from the client and then prepare the material for court, puts the judiciary in a position where they can make decisions in the matter:

So then once [the duty lawyers] gain that information they can present that to the court in a way that you would've otherwise missed. ... in a way that I understand, I accept and I know what's happening and I can make the appropriate directions (Judicial officer 2)

The impact this can have on the efficient resolution of the matter can be considerable:

If they've come with the urgent application and have had the documents prepared, then they've got something to put before the court for the court to be able to consider in the making of the order and not just floundering around.

[Interviewer question: So how does that affect the progress of the matter?] Well in the urgent ones it's the difference between them probably getting the order made that day or not getting it made for some significant period of time. So it has a profound impact for them at that point in time.

[Interviewer question: When you say significant amount of time, is that a matter of days, weeks, longer?] Months. (Judicial officer 3)

The quality of outcomes and the integrity of the process

In the stakeholder interviews, the judiciary and court staff described how the work of the duty lawyer can improve the *quality* of outcomes for the clients and help maintain the integrity of family law processes. The judiciary, in particular, noted the value of independent legal advice on improving client outcomes, not least because duty lawyers can advise litigants about a greater range of options that may be available to progress a matter:

[Duty lawyers] can recommend services ... they'll often come back in and say well, perhaps "Your Honour, this is a matter that might be adjourned while A, B, C, D, E is tried" and that's something that no unrepresented client could be expected to think of for him or herself. It's just knowledge that he or she would never have. (Judicial officer 1)

A registrar also noted how this can, in turn, lead to further efficiencies in the court:

If a matter is allowed to drag on for a long time, with a self-represented litigant who doesn't really understand the process or doesn't understand what their entitlements are, I think there's a tendency then in those sorts of matters for there to be more applications filed than there otherwise would be, if they're able to have that quick access to someone who can say "look, this is what you need to be

thinking about. That's probably not something you can achieve, or have you considered these other options?" Because I think [self-represented litigants] tend to be very narrow in terms of the range of options they think are there. (Registrar)

One judicial officer also spoke at length about the importance, both to the client and the integrity of the court and its processes, of clients understanding the process they were involved in, as well as the orders or agreement arising from that process:

The other issue is, sometimes litigants-in-person come to an agreement. So it's absolutely crucial that they've got a lawyer who can go through the agreement with them so it's not unfair. Because although I've got to be there, I can't draft it for them as such. Also it's important, very important for people, which we get a lot of here, from other cultures, for whom English is the second language, who may not actually understand what's going on and I may not work that out. [Also those] suffering from a mental illness [or if] there's a disability and that may not be apparent ... so the issue of fairness and that sort of stuff, I think, is where the duty lawyers are great, because they actually see the people about their case, which is different to what I do. (Judicial officer 2)

Streamlined onward referral

During the reporting period, referrals were *known* to be accepted in 55 matters. These matters generally reflect the warm referrals undertaken by the IRO, to ensure that those eligible clients, who require it, are provided with ongoing casework assistance.

The discussion above has explored the link between the activities of the EIU duty service and outcomes for clients and the courts, examining how the duty service may have made a difference. The EIU duty service diverted matters from court to more appropriate pathways to resolution, but also facilitated access to court processes, including when this was the only pathway for resolution. The service also helped to progress matters that were currently before the courts and to secure ongoing legal assistance for those who required it. Members of the judiciary noted how the service may have contributed to the quality of outcomes for clients, not least by broadening litigants' minds to the array of options available to help resolve their disputes.

But the question remains, how does the EIU duty service differ from the duty service that preceded it?

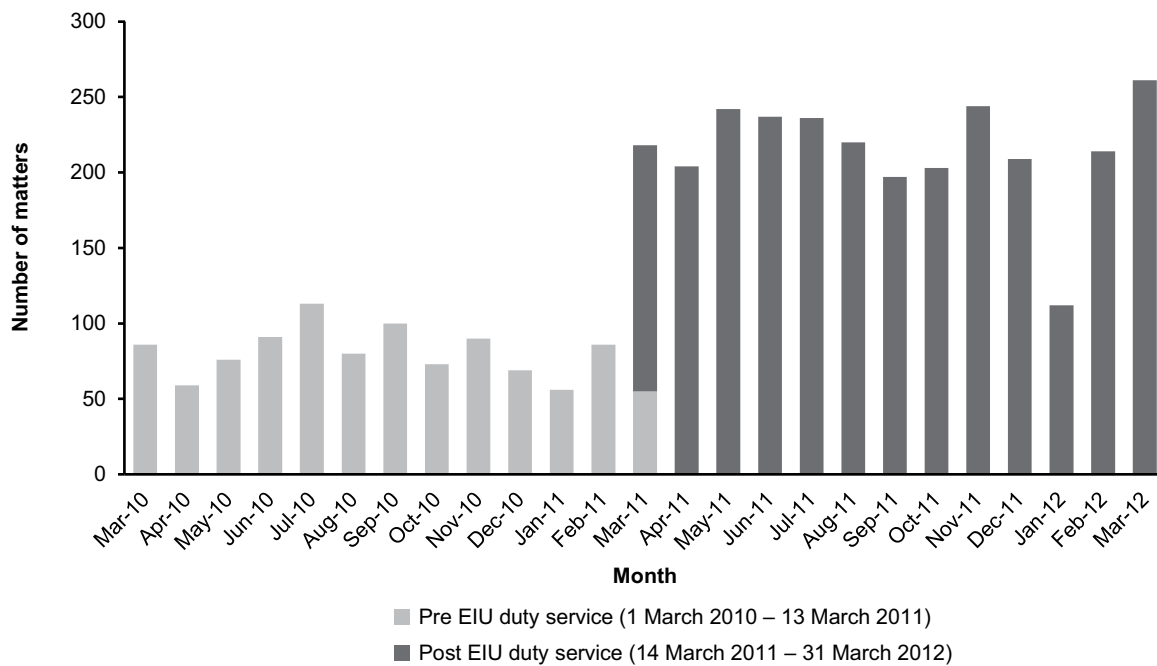
How does the EIU duty service differ from what was available previously?

As described on Table 1, the EIU duty service at Parramatta Family Law Courts has more staff, longer hours and is able to undertake a wider scope of work for a greater range of clients than its predecessor. With this increase in resourcing, Legal Aid NSW anticipated an increase in both the volume and scope of activity.

We examined available data on the volume of duty matters dealt with at Parramatta Family Law Courts in the year prior to the EIU duty service commencing, and during in the first year of the new service (Figure 7). In the year *before* the EIU duty service commenced (1 March 2010 – 13 March 2011), Legal Aid NSW dealt with an average 83 duty matters per month at Parramatta.¹⁹ By contrast, in its first year the EIU duty lawyers dealt with an average of 219 duty matters per month (14 March 2011 – 31 March 2012). This represents an average increase of over 160 per cent²⁰ in duty matters per month in the first year of the EIU duty service at the Parramatta Family Law Courts, compared to the year before it commenced.

¹⁹ Because the EIU duty service commenced in the middle of March 2011, both the pre- and post-periods described here are 12.5 months each.

²⁰ The difference identified was 165.2%. However, due to differences in the way that pre-and post- period data were collated, a proportion of this difference (on average around 2.5%) could be attributed to the way that matters were categorised rather than increased activity (see methodology for description).

Figure 7: Numbers of duty matters dealt with at Parramatta Family Law Courts before and after the implementation of the EIU duty service (1 March 2010 – 31 March 2012)

Note: Pre-EIU duty service, N = 1034; post-EIU duty service, N = 2579. The smaller number of matters in January reflects when the court is closed for the Christmas break. In 2011 – 2012, this break was from 20 December 2011 to 16 January 2012.

Sources: Legal Aid NSW, Management report for Parramatta (Philip St) In-house Commonwealth Family Law 2010 – 2011, Duty by month; Legal Aid NSW, CASES data, 14 March 2011 – 31 March 2012.

The increase in matters dealt with by the EIU duty service compared to the previous service was also strongly reflected in the stakeholder interviews, with comments consistently made about the overall increased volume of matters dealt with:

I guess the other difference [between the old and new schemes] is we probably didn't have as many walk-ins then as we do now. We weren't getting as many referrals from downstairs from the security officers, from the registry, with the pre-filing type matters. Most of the matters then were matters that were already in the system. (EIU duty lawyer 3)

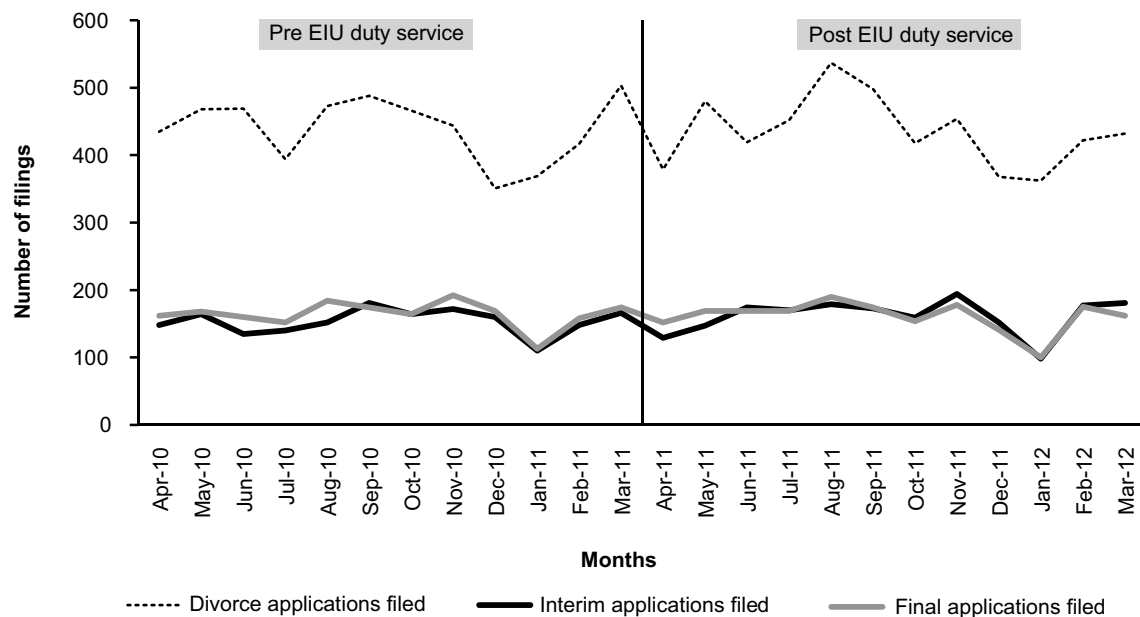
An alternative explanation for the significant increase in matters dealt with by the EIU duty service in its first year might be that there had been an overall, if incidental, increase in the numbers of matters coming through the Family Law Courts at Parramatta at the time the EIU duty service started operating. To examine this possibility, we reviewed the number of filings and finalisations at the Parramatta Family Law Courts for the year prior to the commencement of the EIU duty service and the first year of the service.²¹ However, as indicated in Figure 8, there was no significant increase in the monthly number of filings or finalisations for interim order, final orders and divorce orders in the Family Law Courts at Parramatta during this period.²² Furthermore, data provided by the Family Law Courts Registry on the monthly number of customers served at the customer service and filing desk at Parramatta Family Law Courts showed no noticeable increase in the monthly number people assisted between the relevant pre- and post-EIU period.²³

²¹ While the filings and finalisations data relate to all litigants (unrepresented and represented), they provide an indicator of the overall level of activity at the Parramatta Family Law Courts.

²² Data provided by the Family Court of Australia, Statistical Services Unit, National Support Office.

²³ An average of 1855 people a month were served at customer service or filing desk at Parramatta Family Law Courts from April 2011-March 2012. Data drawn from the QMatic Queue Management Systems, Report 009a dated 5 July 2012, provided by the Parramatta Family Law Courts registry.

Figure 8: Filings for interim and final applications in the Parramatta Family Law Courts before and after the commencement of the EIU duty service, April 2010 – March 2012



Notes: Average number of divorce applications filed per month=437; average numbers of interim applications filed per month=157; average numbers of final applications filed per month=163. The seasonal dip in January reflects the period when the court is closed for the Christmas break. Source: Family Court of Australia, Statistical Services Unit, National Support Office

These data support the suggestion that the reported increase in the numbers of matters dealt with by the EIU duty service is not simply a reflection of increased activity within the court, but that a higher proportion of the people coming through the courts are being assisted by the duty lawyers. This accords with the observations of the duty lawyers:

We didn't see the people [previously] that we're seeing now. So they were always there and they were always filing things downstairs or seeing people at the counter, but we would never have seen them in the duty service, because they weren't in court that day. (EIU duty lawyer 1).

It may be tempting to look for the impact of EIU duty service on the overall numbers of matters being filed at the Parramatta Family Law Courts before and after the EIU duty service commenced. However, far more granulated information than that provided in Figure 8 is required to explore this type of impact. To begin with, the data in Figure 8 include both represented and unrepresented parties filing in the court. The EIU duty service only assists unrepresented clients, and may provide this assistance either pre-filing or *after* filing. Among further reasons is the observation made earlier that the EIU lawyers both divert matters from court (potentially reducing the number of matters filed) and facilitate filing in the court (potentially increasing the matters filed). When looking at overall figures, these activities can 'cancel' each other out. To more fully explore the impact that the duty service could have on court processes, we would also need to look at how long matters run for (the period between filing and finalisation) and how much court time a matter consumes in this period.

Nature and scope of work

While there has been a significant increase in the number of matters dealt with by the EIU duty service compared to the old service, the degree of difference between the activity and impact of the old duty service to the new service cannot be counted in overall matters. To begin with, not all matters are of the same scale. A single matter can involve anything from ten minutes of advice to hours of minor assistance and representation.

To fully appreciate the difference in activity between the old and new duty services we need to know what types of assistance were given before and after the EIU duty service commenced. Unfortunately, we do not have this level of detail in the data provided for the period *before* the EIU duty service commenced. This means, for example, that we cannot tell from Figure 7 whether we are seeing an increase from fewer matters with longer, more intensive intervention (e.g. representation) to more short matters with less intensive assistance (e.g. advice only), or whether there has been an increase across all types of assistance.

That noted, we do have documentation and valuable qualitative information about how the EIU duty service differs in terms of resourcing, structure and activity, as well as detailed data on the first year of the new service. To begin with, we know the level of resourcing for the EIU duty service, increased from one to two duty lawyers on duty and from a half-day to a full-day presence. Duty lawyers described the impact of this on the volume of clients seen and their capacity to provide more intensive assistance (e.g. drafting documents, representation):

Well when I was rostered on when we were at Parramatta, we were only here for half a morning every other odd time, so we did some urgent applications but we didn't do many. It was more general advice work I think then and we wouldn't see the number of people that we're seeing now. We're seeing a much higher volume of clients and we're doing much more extensive work for them than we did back then. I think just because we were only here for half a day that limited the amount of time you could assist people. (EIU duty lawyer 2)

One duty lawyer also noted that while most of the matters may only involve advice (see the following section), a higher proportion of duty lawyers' *time* was spent assisting clients who require more intensive assistance:

So you'll get a lot of inquiries where people are trying to file documents and they might be defective or they've just come in with a problem ... But in terms of the bulk of the time used for our work, a lot of that is on matters that are coming from the court, because you could deal with the registry inquiry in about 10 or 15 minutes. However, when you're actually dealing with matters in the court that takes a lot more time. (EIU duty lawyer 4)

Perceptions of increased assistance across a range of activity types were also shared by staff and judicial officers at Parramatta. Summarising the differences between the old service and the new EIU duty service, a judicial officer observed:

So it's chalk and cheese. It was a real bandaid before, now it's a proper, resourced system that really does assist the court but particularly assists the litigants. (Judicial Officer 2)

We now examine the features of the EIU duty service which appear to have contributed to this difference.

Key features of the EIU duty service

Judicial officers, staff of the Family Law Courts and Legal Aid staff were asked to identify the features of the duty service which they felt were central to its capacity to:

- assist clients, particularly high-needs clients, to take the most appropriate and effective action to resolve their immediate family law matters
- contribute to the efficient management and resolution of family law matters at the courts.

Immediate accessibility (on-site, all day)

A feature identified as central to the effectiveness of the EIU duty service was its immediate accessibility. Central to this is its location at the court for the full day of court:

I think that there's a much more consistent availability of the service and the scope of the service seems to have extended and I think that that's been incredibly beneficial to the court. (Registrar)

It's different from things like the Law Society or the Bar Association pro bono service, because the duty solicitor service is so immediate. It's there and then. (Judicial officer 1)

However, the on-site location is not just important for clients with matters currently before the courts. It is also important as a site of early intervention, particularly for those clients for whom Family Law Courts are their first port of call:

[They] need the help but just don't know where to start to find that help. They'll go there - because it's the family court ... [The duty lawyers] often get people come in and say, I just separated yesterday, I don't know what to do. (EIU duty service, IRO)

Court and Legal Aid stakeholders consistently identified the importance of the extended hours of the service:

From the old duty service to this duty service were — one clock, the time was up ... [even] if there were 10 people that hadn't been seen ... I guess the difference is that under that old service, perhaps we missed a lot of the really urgent stuff. (EIU duty lawyer 3)

Stakeholders also noted the value of having two duty lawyers available rather than one, and solicitors being solely dedicated to duty services rather than also running a litigation practice and doing agencies (short court appearances such as mentions) for the Legal Aid NSW family law litigation practice while on duty.

Firewalling for conflict

The EIU duty service is firewalled from other Legal Aid services, enabling it to serve clients who would otherwise not be assisted by Legal Aid due to conflict issues:

That they're in a position now where they can do more for the parties, because they've set up their intervention unit in that firewall setting so that they can actually do something, rather than just check and see whether there's a conflict. Pre-March, if there was a conflict, well, that was it. (Judicial officer 3)

The importance of these firewalls was stressed in the context of assisting disadvantaged clients. Firewalls reduce the risk that a client appearing at the duty service cannot be assisted due to a conflict, because their partner is already being or has been assisted by Legal Aid NSW in another matter (e.g. for a criminal matter). One duty lawyer estimated from her own experience that “at least 50 per cent, possibly more, just anecdotally” may have been subject to a conflict and therefore not able to be assisted under the old service (EIU duty lawyer 2).

The scope of the EIU duty service

Another key feature of the service is its expanded scope and capacity to undertake a broad range of immediate assistance tasks on a greater range of issues. This allows the assistance provided to be primarily driven by the needs of the clients rather than the remit of the unit:

It's also allowed us to concentrate on early intervention models, in terms of ... is this client before us someone who should be filing? If they should be filing, who should be managing it? Are they eligible for a legal aid grant? Do they have merit? And if not, what can we do to assist? Do they fall into that bundle of clients that have a significant need but won't be eligible for legal aid and won't be able to manage their legal case on their own? So being able to broaden what we do out has really allowed us to take a more holistic approach to the work that's done in the duty scheme. (EIU duty lawyer 1)

Skills of staff

With a broader scope of work comes the need to identify and assist potentially high-needs clients with complex and immediate legal problems, compared to those who may require less intensive assistance or those who could afford private representation. In this context, stakeholders identified the need for high calibre staff in terms of legal skills, experience in the family law context, maturity and common sense and the capacity to communicate with and support high-needs clients. Both court and Legal Aid NSW stakeholders noted that junior staff could operate within the EIU duty service with effective supervision and support from more experienced staff.

Relationship with the court/referrals

Court and Legal Aid NSW stakeholders alike identified the strong relationships with the court at all levels as critical to the success of the EIU duty service. Good relationships have facilitated referrals to the EIU duty service and enabled the duty lawyers to efficiently access the courts on behalf of clients when urgent matters have warranted it:

I think also that they actually have a trust for the duty service. That is really prevalent with the registrars and the listing systems. We know that, when we ask for something, we're going to get it ... because they trust us. That's why we guard our reputation so jealously, because it's so important to have that proper level of trust between the court and the service. They know we will come and assist, and they know we will do a good job. (EIU duty lawyer 4)

Room for improvement

In stakeholder interviews we asked about any areas of concern or scope for improvement. The suggestions made have practical implications for others considering these types of interventions:

- As well as rostering staff in and out of the duty service each 18 months, staff noted the importance of managing rosters and workload to avoid burn out, given the intensity of the work in this volatile environment:

This is a hard job in terms of the intensity of face-to-face time ... So I think that's just a practical direction about looking after your staff for service delivery. Also because, as I said, there are people who are very difficult to communicate with and very difficult to listen to — that can really grate on the patience that you need to perform the task. So I think that's something that we need to think about as a unit. That has to come from the roster. (EIU duty lawyer 4)

- Ideally additional administrative support would be available, particularly when the IRO is busy liaising with other services and facilitating referrals, particularly in urgent cases.
- Further training would be valuable, particularly for incoming solicitors, on matters seen on duty that are outside Legal Aid guidelines (as most duty lawyers come from Legal Aid and are therefore less familiar with these matters) and on the guidelines and conflict issues (e.g. in-house conflict, EIU conflict).

Because a lot of our solicitors are pulled out of the litigation pool ... Those matters that are outside guidelines, we're feeling our way around in the dark a bit. And that's okay but in some respects, it would probably be quite efficient to have some sort of training on those outside guidelines issues that we're not as familiar with when we first start. (EIU duty lawyer 4)

- Information technology resourcing needs to take account of the fact that the EIU duty service is firewalled from the rest of Legal Aid. Issues relate to access to precedents and other legal resources.

- Continue work on building document precedents that are particular to the work of the EIU duty service, including for matters which are outside the guidelines of the family litigation practice. For example, staff reported being frustrated by having to rely on forms taken from the Family Law Courts website, which can be printed, but not saved.

Into the future, one issue that may affect the proportion of self-represented litigants that the duty service can assist early is the move of the Family Law Courts towards e-filing, where litigants file applications to commence proceedings in the Family Law Courts electronically, rather than in-person. However, as pointed out by one judicial officer, litigants would still be coming to the court with urgent matters given that:

You've got to file it and then you've got to see a registrar to get permission to either have it served with short service, or to be dealt with on an ex-parte basis. So those people tend to come in and they're typically recovery orders or location orders, or urgent orders to prevent someone removing children from the country, or something of that sort of nature. (Judicial officer 3)

The EIU duty service has a range of features that enable it to extend beyond the role of a traditional duty service to assist a broader range of clients, including those who have not yet filed in the court. The final question remains: is this 'early intervention'?

The EIU duty service as early intervention

A key assumption underpinning the notion of early intervention is that earlier and less intensive assistance, such as advice and minor assistance, may ameliorate the need for more intensive assistance (e.g. representation) later on:

An unresolved legal problem can trigger further legal problems, resulting in the experience of multiple simultaneous or sequential problems. Thus, early intervention strategies could be used to resolve legal problems before they reach crisis point, by minimising escalation, preventing flow-on effects and reducing the need for expensive court resolution. (Coumarelos et al. 2012, p. 13, see also Coumarelos et al. 2006; Currie 2007; Genn 1999; Macdonald 2005; Pleasence 2006)

Several questions arise: What is meant by early intervention? Is the Family Law EIU duty service an example of this? Is there a tension between reaching and meeting the needs of clients with complex needs and early intervention? We explore the notion of early intervention by asking the question does the EIU duty service provide early intervention?

Does the EIU duty service provide early intervention?

The Family Court of Australia is the superior court in the family law jurisdiction and "assists Australians to resolve their most complex legal family disputes" (FCA, 2011, p.21). In most cases, litigants are required to attempt to resolve their differences through alternative dispute resolution before proceeding to the Family Law Courts for orders (FCA, 2012). On first consideration, it is difficult to see how a duty lawyer service in this context could be considered 'early intervention'. Matters heard in this court are not early in the life of the problem, nor would they appear to be early in the legal process.

However, as illustrated in this evaluation, the picture is more complicated. To begin with, we have found that, for certain people and for certain types of matters, the Family Law Courts are a site of 'first contact' for people with emerging family law issues. Among duty service clients at the Parramatta Family Law Courts were people at the point of separation who did not know where to seek assistance. They came to the family court as:

... the marriage or the relationship has broken down for whatever reason, they know that there's this thing called the family court and the family court sorts it out. So they just turn up here because they don't know where else to go ... They're the most vulnerable because they're the ones that haven't had any legal advice before. (EIU duty lawyer 3)

For these clients:

Early intervention, as I see it ... is a large part of our work, which is being that first point of contact and which is making those appropriate referrals and giving appropriate, very general, very understandable advice. (EIU duty lawyer 4)

The Family Law Courts are also a site of first contact for litigants with very complex family law issues, for whom alternative dispute resolution (usually offered earlier in the family law process) is not an option. The EIU COMP mediator reflected on the clients seen both in his service and the duty service:

The matters that we see in court I think are early intervention, because they're the very matters that other agencies just don't want to know about. They look at them and [if] there's a sniff of any violence or drugs or alcohol and anything like that [it's] deemed to be inappropriate. Even the registrars of the court have deemed a lot of it to be inappropriate. But still they have to be dealt with. Because the court has to deal with them. They're going to get a decision by a judge into whatever ... I think lots of the stuff that we deal with in court, whether it's with the duty solicitors or through my program, it's the first real opportunity of intervention by a service which might possibly help them resolve their problems. (EIU COMP Mediator)

Finally, the Family Law Courts are the *only* site for legal processes such as contravention orders and recovery matters. Although these matters might appear to be late in the life of the legal problem, this might be the earliest point for assistance or resolution:

For a contravention application to be brought means that there's been proceedings, there's been orders, but I don't think you'd find it hard to argue that [when a] client comes in having been served — so they've responded in the contravention application — they've been served with it and they come and see us the next day. That's early. (EIU duty lawyer 3)

A theme common to all these examples is that clients were provided with the earliest possible assistance — irrespective of where their matters were up to, with the goal of the earliest possible resolution:

I guess it gets back to that triage analysis I think. It's just getting people in quickly that need to be in quickly, making sure that we can assist them to get the most positive outcome at the earliest possible stage. Early intervention — I still see us as early intervention, even when we come in at a really late stage, because for that client it's the earliest intervention that they've had. And sometimes it can result in the matter just being finalised, or someone who perhaps hasn't any time with their child for one year can — just by talking them through supervised contact, you know [find options to progress a matter]. (EIU duty lawyer 3)

As these examples suggest, the EIU duty service fits within the NPALAS definition of 'early intervention services', providing services "to assist people to resolve their legal problem before it escalates, such as legal advice, minor assistance and advocacy other than advocacy provided under a grant of legal assistance" (COAG 2010, p. 3). Some clients were assisted as their family law problems were emerging, particularly those who went to the Family Law Courts as a first port of call. These clients were provided with advice and referred to alternative pathways to resolution as appropriate. Other clients were assisted as they sought to commence new legal processes. Equally, however, EIU duty lawyers provided assistance to clients whose family law problems had been ongoing, and may have been so for years. They assisted clients who were well advanced in the legal process, but needed assistance to progress or finalise their matters. In some cases, family law

processes had been finalised, only for old issues to re-emerge or new ones arise. If a service aims to support disadvantaged clients with complex needs, assistance when it is required remains critical work — whether described as early intervention or otherwise.

This takes us to a note of caution for the notion of early intervention in terms of aiming to provide less intensive intervention before the problem escalates — particularly as it relates to service provision to people with complex needs.

The caution arises from the observation that the types of people who present for early assistance may differ from those who do not. We know from previous research that people with complex needs tend not to seek help until crisis point (Coumarelos et al. 2012, p. 30; Forell, Schetzer & McCarron, 2005, p. 136). If agencies are focused on service provision before the crisis hits, there is a risk that target clients who ‘don’t come in early’ will be missed.

Further, Australian and international legal needs research has consistently identified that disadvantaged clients are less likely than others to have the skills and psychological readiness required to achieve legal resolution on their own or with minimal assistance (see Coumarelos et al. 2012, p. 213). Nheu and McDonald (2010) described lower levels of ‘functional literacy’ among disadvantaged people, as the limited ability to use information in a goal-oriented way to solve problems (p. 150). These are clients who may require more intensive support than information or advice only – at whatever point they are up to. If early intervention services focus on providing less intensive services early, is there a risk that these services will not be enough to prevent the escalation of issues for disadvantaged clients, and later services will *also* be required by this target group. The Foundation’s recent LAW survey of legal need in Australia raises similar issues with regards to legal information and education as a strategy with very disadvantaged clients (see Coumarelos et al. 2012).

Returning to the EIU duty service at Parramatta. A feature that is critical to this duty service as a legal assistance service to disadvantaged clients, is its availability at times, and at a site, of ‘crisis’ (e.g., when someone is seeking a recovery order at the Family Law Courts). The EIU duty service aimed to and indeed did reach some clients ‘early’. More critically, however, the EIU duty service provided *timely* assistance to high-needs clients at *whatever* point it was sought. For some this was not *until* a point of crisis (such as when a child was taken), not before it. This evaluation has illustrated how timely assistance, even late in the process, may still be the earliest assistance available to some clients in their particular situations, and how timely assistance can assist clients to progress and potentially resolve matters earlier than may have otherwise occurred.

Conclusion

A particular feature of the Parramatta EIU duty service that makes it notable as an early intervention strategy is its placement in a site of complex and often immediate legal and other needs — the Family Law Courts at Parramatta. The EIU duty service was accessible to people with potentially critical family law issues at the time and the place that the assistance was sought. It was also available to clients at relatively early stages of their family law problem and to other clients who were seeking to progress more routine family matters. With a broad remit, the EIU duty lawyers were able to prioritise clients and shape the assistance provided according to the urgency of each matter, and the capacity and need of the client.

As we have shown, with increased hours, more staff and the capacity to assist with a broader range of matters, there was an increase of more than 160 per cent in the volume of duty matters dealt with at Parramatta in the first year of the EIU duty service compared to the year before it commenced. Without a breakdown of data from the year prior, we could not analyse if and how the types of assistance provided by the EIU duty lawyers at Parramatta Family Law Courts differed from what was provided previously. However, stakeholder interviews and the snapshot operational data obtained for this evaluation indicated a range of legal work that was well beyond the scope, guidelines and capacity of the previous duty service.

The two-month snapshot data collection undertaken by the EIU duty lawyers as part of this evaluation provided considerable insight into the range and types of activities undertaken by the EIU duty lawyers, and how these activities help to progress matters for clients and the courts.

For instance, the snapshot dataset indicated how four out of five clients received more than one type of assistance (for instance: advice and referral, minor assistance and representation, or representation and warm referral). The most common type of assistance provided during the snapshot period was advice, provided in 84 per cent of all matters. While procedural advice was the most common form of advice, the snap-shot data also indicated clients were advised to undertake FDR, to pursue different legal options or, indeed, to take no legal action at all at that point of their problem. However, in 45 per cent of matters clients received minor assistance, most commonly in the form of drafting and amending court applications and other documents. Stakeholder input illustrated how this type of assistance, particularly if provided at the point of filing, could make a material difference to the efficient progress of these matters through the courts. More intensive representation, which is often time-sensitive work due to urgency, remained a core element of the EIU duty service work and was provided in one in every eight matters examined.

Another important element of the EIU duty service work was referral on to other legal and non-legal services, nearly always in addition to advice or other assistance provided by the duty service. In the snapshot period, at least one ‘cold referral’ to another legal or non-legal service was provided to clients in just over half of all matters in the snapshot period, while clients were assisted with warm referral to ongoing legal casework in an additional one in eight matters. There were clients who required often urgent legal assistance above and beyond the short intervention provided by the duty service.

The EIU duty service aims to assist clients to take timely and appropriate action to progress or resolve their family law matters and to help reduce the impact of self-represented litigants on the workload of the family law courts. Stakeholder interviews and the snapshot data provided examples of how the work of the EIU duty service at Parramatta made a difference to clients and the courts, not least by diverting matters that should not be before the court, and advising clients to take the most appropriate course of action, sometimes a non-court alternative such as counselling or FDR. To put this work in context, in more than one-third of matters assisted during the two-month snapshot period, clients had sought to commence an action in court which was not the most appropriate to progress their family law matter. During the two-month snapshot period, duty lawyers recorded that in 14 per cent of all matters, they helped to negate the need for a new court application, and in a further three per cent, the application, which was before the court, was discontinued with their assistance.

The EIU duty service also assisted to *progress* matters through the court, streamlining the process by drafting and amending documents, by supporting clients to reach agreement through negotiation, and by providing timely advice or representation at key points of the legal process so that litigants understood the process and the agreements or orders that they were subject to. In nearly 20 per cent of matters in the two-month snapshot period, duty lawyers reported that ‘appropriate court documents were filed’ following the assistance provided.

Further work would be required to *quantify* the impact of this work, but the feedback from stakeholders suggests that its impact, particularly in terms of benefits to the courts, could be considerable. Any future monitoring should focus on how better to capture and measure the scale of this contribution. A modified version of the data collection sheet (Appendix 1) piloted for this study could assist in making these types of outcome amenable to measurement and analysis.

There are several features of the EIU duty service at Parramatta which appeared central to its capacity to provide timely and responsive legal assistance to clients, including those with complex legal and other needs. These include:

- its location on-site in the court complex with two duty lawyers, for the full day of court, enabling a timely response to need
- the broad scope and capacity of the unit so that the assistance provided can be driven by the immediate needs of the clients
- separation (‘firewalling’) from the rest of Legal Aid NSW so that a greater range of clients can access assistance
- the high calibre of duty service staff, in terms of legal skills and experience, maturity and common sense, and the capacity to communicate with and support high-needs clients
- the strong relationships built and maintained with the court at all levels, which facilitate referrals from the court to the duty service at any point of the legal process
- the capacity to provide warm referrals, including urgent referrals, to legally aided casework where required.

In conclusion, this evaluation has illustrated how Legal Aid NSW’s Family Law EIU Duty Lawyer Service has assisted some clients early in the life of their family law problem, particularly those who went to the Family Law Court as a first port of call. The EIU duty service intervened early in the life of some legal processes, specifically at the point of filing, when new legal processes were being commenced. However, EIU duty lawyers also provided assistance to people whose family law problems were ongoing, and may have been so for years. They assisted clients who were well advanced in the legal process, but needed assistance to further progress or finalise their matters.

They also assisted clients for whom family law processes had been finalised, only for the issue to resurface. In considering service delivery to disadvantaged clients, we would argue that this type of timely, responsive, client-focused assistance remains critical work. Assistance provided even late in a legal process may still be the earliest assistance available to some clients and this assistance can make a real difference to the progress of the matter thereafter.

Future research and evaluation

One of the Foundation's reasons for undertaking this project for Legal Aid NSW was to highlight the opportunities for evaluation and ongoing data collection that can meaningfully inform best practice for public legal sector agencies. Ideally, evaluation should be an integral part of project planning and an evaluation framework established before a project becomes operational. This model allows for baseline data to be established and collected, and for ongoing data collection to measure the differences the project hoped to make. The scope of what is reported here has been limited by the data available when the evaluation commenced and what additional information could be collected in the timeframe for this study. While there were many important questions, particularly around project outcomes, that we could not answer, the information collected through this evaluation provides a solid foundation for future empirical work. The valuable contribution of the Family Law Courts in providing data must also be acknowledged here, noting the shared interest in the outcomes of this work. Questions that may be of interest to Legal Aid NSW, the Family Law Courts and other stakeholders include:

- What is the impact of the work of EIU duty lawyers on the length of matters involving self-represented litigants before the Family Law Courts and the amount of court time spent on these matters?
- What is the value of the EIU duty service in savings to the Family Law Courts relative to the cost to Legal Aid NSW of providing this service?
- What is the impact of the EIU duty service on the resolution of clients' matters from the clients' point of view, and on the sustainability of agreements/orders?
- What are the relative costs and benefits of the EIU duty service model compared to alternative strategies to assist self-represented litigants in Family Law Courts, including traditional duty lawyer services, and self-help services (such as those found at www.courts.ca.gov/selfhelp.htm)?

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Appendix 1

Family EIU Duty Lawyer Scheme: Actions and outcomes

MATTER NO:

Date of assistance:

Immediate assistance? (EIU action – indicated below - required within 24 hours)

- Yes No

Additional matter details

- Airport Watch List ^{M1}
- Children: BIOC; s60CC factors; s61 DA ^{M2}
- Contravention order ^{M3}
- Divorce ^{M4}
- Hague convention ^{M5}
- Recovery ^{M6}
- Property ^{M7}
- Other (please specify) ^{M8}

Action taken

- Information only ^{A1}

Advice

- Procedural, legal, time limits explained ^{A2}
- To dispense with documents/processes ^{A3}
- To change orders/process ^{A4}
- To undertake FDR ^{A5}
- Legal action not recommended ^{A6}

Minor assistance

- Negotiation with other parties ^{A7}
- Amending existing documents ^{A8}
- Drafting new documents – urgent ^{A9}
- Drafting new documents – not urgent ^{A10}
- Client history follow up ^{A11}
- Assistance completing application for legal aid ^{A11.1}
- Other minor assistance (please specify) ^{A12}

Referrals of application for Grant of Legal Aid

	Cold	Warm (IRO)
	(tick in relevant column)	
- To in-house	A13.1	A13.2
- To private	A14.1	A14.2
- Not specified	A15.1	A15.2

Type of legal aid grant recommended

- Family - Urgent proceedings ^{A16}
- Family – FDR ^{A17}
- Family – Parenting ^{A18}
- Family - Property (urgent, injunction matters) ^{A19}
- Other (please specify) ^{A20} _____

Other referrals

- FRC for FDR ^{A21}
- Private practitioner (self-fund) family matter ^{A22}
- Private practitioner (self-fund) non-family ^{A23}
- Legal Aid (non-grant) ^{A24}
- Community legal centre ^{A25}
- FRC – counselling ^{A26}
- Other counselling ^{A27}
- Welfare services ^{A28}
- Mental health ^{A29}
- Police ^{A30}
- Child Support Agency ^{A31}
- Other (please specify) ^{A32} _____

Representation

- Adjournment/mention ^{A33}
- Interim hearing ^{A34}
- Final hearing ^{A35}
- Urgent hearing ^{A36}

Outcomes

- Negated need for a new court application ^{O1}
- Negating need to continue a court application (discontinue) ^{O2}
- Interim resolution by consent ^{O3}
- Final resolution by consent ^{O4}
- Interim resolution by court order ^{O5}
- Final resolution by court order ^{O6}
- Referral accepted ^{O7}
- Appropriate court documents filed ^{O7.1}
- Outcome not known ^{O8}

Other outcome , please specify ^{O9} _____

Was the client seeking to commence an inappropriate action? (Incorrect process to resolve issue)

- Yes No

Appendix 2

Client characteristics

Table A1: The 15 most common residential locations (LGAs) of clients, Parramatta EIU duty service, March 2011 – March 2012

<i>LGA</i>	<i>Number of clients</i>	<i>% of all clients (N=2070)</i>	<i>% of clients, postcode recorded (N=1930)¹</i>
1. Blacktown	310	15.0	16.1
2. Parramatta	226	10.9	11.7
3. Holroyd	163	7.9	8.4
4. Liverpool	146	7.1	7.6
5. Penrith	141	6.8	7.3
6. Fairfield	130	6.3	6.7
7. The Hills Shire	126	6.1	6.5
8. Bankstown	78	3.8	4.0
9. Auburn	65	3.2	3.4
10. Campbelltown	64	3.1	3.3
11. Canterbury	61	2.9	3.2
12. Hornsby	46	2.2	2.4
13. Hawkesbury	35	1.7	1.8
14. Blue Mountains	31	1.5	1.6
15. Ryde	24	1.2	1.2
Other 60 NSW LGAs	284	15.0	14.7
Missing	140	6.8%	-
Total	1930	100%	100.0

¹ Postcodes were missing for 121 matters (5.8% of matters) or were interstate postcodes (19 matters, 0.9%). The allocation of postcode to LGA was performed using a concordance table which allocated postcodes to the main LGA covering that postcode.
Source: Legal Aid NSW, CASES data, 14 March 2011 – 31 March 2012.

Table A2: Age of clients, Parramatta EIU duty service, March 2011 – March 2012

<i>Age</i>	<i>Number of clients</i>	<i>% of all clients (N=2070)</i>
Less than 20 years old	35	1.7
20 to 29 years	390	18.8
30 to 39 years	717	34.6
40 to 49 years	575	27.8
50 to 59 years	236	11.4
60+	117	5.7
Total	2070	100.0

Source: Legal Aid NSW, CASES data, 14 March 2011 – 31 March 2012.

Table A3: ATSI status of clients, Parramatta EIU duty service, March 2011 – March 2012

<i>ATSI status</i>	<i>Number of clients</i>	<i>% of all clients (N=2070)</i>
Aboriginal	69	3.3
Torres Strait Islander	8	0.4
Aboriginal or Torres Strait Islander	75	3.6
Total	2070	100.0

Note, two clients identified as Aboriginal and Torres Strait Islander.
Source: Legal Aid NSW, CASES data, 14 March 2011 – 31 March 2012.

Table A4: The 15 most common countries of birth (COB) of clients, Parramatta EIU duty service, March 2011 – March 2012

	<i>Country of birth</i>	<i>Number of clients</i>	<i>% of all clients (N=2070)</i>	<i>Percentage of clients COB recorded (N=1985)</i>
1	Australia	1190	57.5	59.9
2	India	74	3.6	3.7
3	Lebanon	74	3.6	3.7
4	Fiji	55	2.7	2.8
5	Philippines	52	2.5	2.6
6	China	41	2.0	2.1
7	New Zealand	41	2.0	2.1
8	Iran	37	1.8	1.9
9	Iraq	35	1.7	1.8
10	Egypt	21	1.0	1.1
11	United Kingdom	22	1.1	1.1
12	Afghanistan	19	0.9	1.0
13	Turkey	19	0.9	1.0
14	Vietnam	19	0.9	1.0
15	Sudan	15	0.7	0.8
	All other countries	272	13.1	13.7
	COB not stated/recorded	85	4.1	-
	Total	2070	100.0	100.0

Source: Legal Aid NSW, CASES data, 14 March 2011 – 31 March 2012.

Table A5: Benefits status of clients, Parramatta EIU duty service, March 2011 – March 2012

<i>Government benefits</i>	<i>Number of clients (2070)</i>	<i>% of all clients (N=2070)</i>	<i>% of clients with recorded benefit status (N=1884)</i>	<i>% of clients who received a benefit (N=1002)</i>
All parenting payments ¹	405	19.6	21.5	40.4
Newstart	258	12.5	13.7	25.7
Disability Support Pension ²	137	6.6	7.27	13.7
Carer Payment	40	1.9	2.12	4.0
Aged Pension	35	1.7	1.86	3.5
Abstudy/Austudy/Youth Allowance	30	1.4	1.59	3.0
Other	97	4.7	5.15	9.7
Total: benefit received	1002	48.4	53.2	100.0
Total no benefit received	882	42.6	46.8	
Total benefit status recorded	1884	91.0	100.0	
Benefit status not recorded	186	9.0		
Total client group	2070	100.0		

¹ Single parenting payments accounted for 88% of all parenting payments.

² Includes 8 clients on 'sickness benefit'.

Note: Benefit status was not recorded for 186 or 9% of clients.

Source: Legal Aid NSW, CASES data, 14 March 2011 – 31 March 2012

Snapshot data

Table A6: Whether assistance was required within 24 hours, Parramatta EIU duty service, July – August 2012

<i>Urgency of matter</i>	<i>Number</i>	<i>% of all matters (N=412)</i>	<i>% matters: immediate assistance recorded (N=391)</i>
Immediate assistance required	208	50.5	53.3
Immediate assistance not required	182	44.2	46.7
Total recorded	390	94.7	100.0
Missing (not recorded)	22	5.3	
Total	412	100.0	

Source: Snapshot data collected by EIU duty lawyers, 1 July – 31 August 2012.

Table A7: Types of advice, Parramatta EIU duty service July – August 2012

<i>Type of advice</i>	<i>Number matters receiving type of advice</i>	<i>% of advices (N=494)</i>	<i>% of matters receiving advice (N=345)</i>	<i>% of matters (N=412)</i>
Procedural advice	312	63.2	90.4	75.7
Advice to dispense with documents	54	10.9	15.7	13.1
Advice to change orders/process	55	11.1	15.9	13.3
Advice to undertake FDR	55	11.1	15.9	13.3
Advice: legal action not recommended	18	3.6	5.2	4.4
Total	494	100.0	-	-

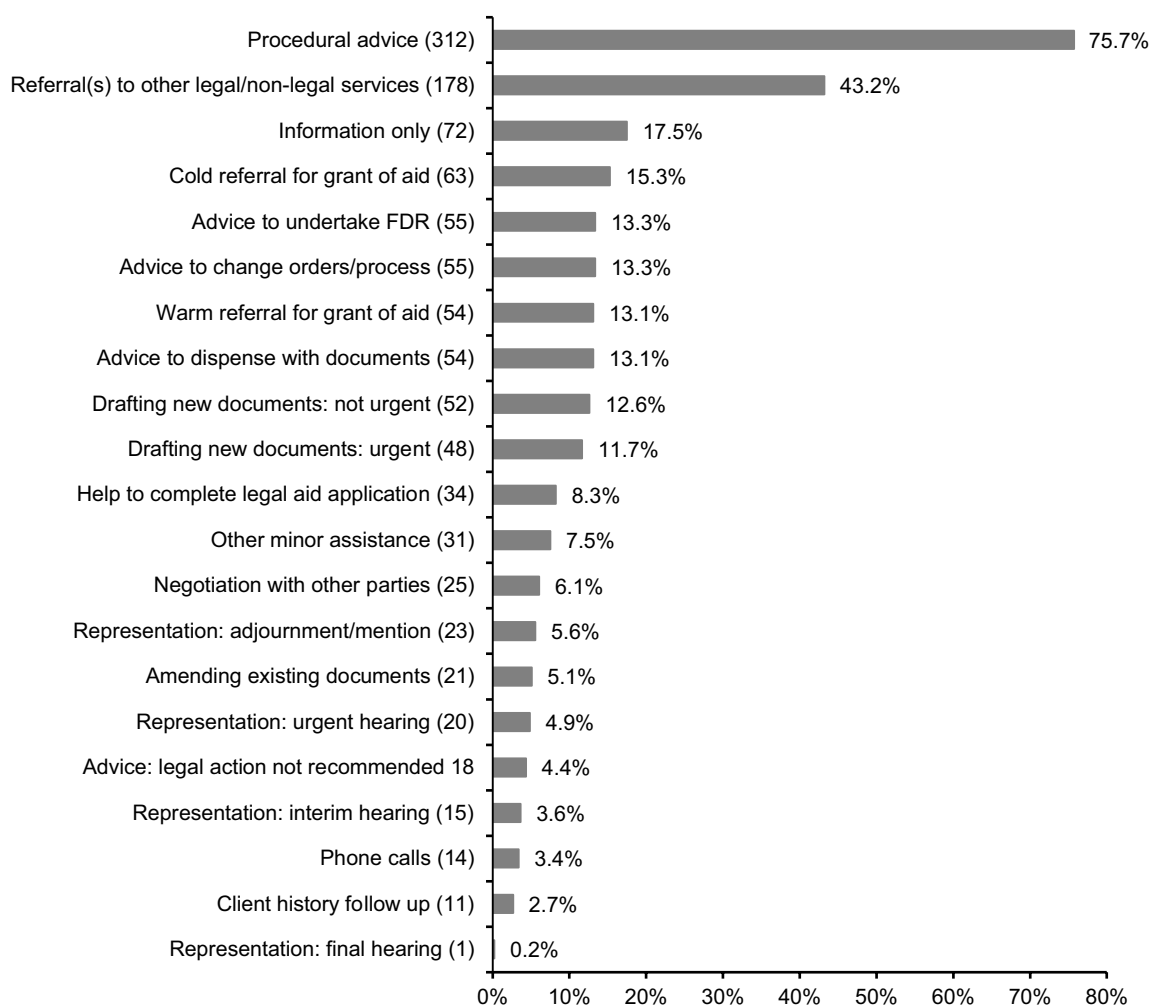
Note: Percentages of matters add up to more than 100 as more than one type of advice may have been provided in each matter. Source: Snapshot data collected by EIU duty lawyers, 1 July – 31 August 2012.

Table A8: Types of 'minor assistance' provided to clients, Parramatta EIU duty service, July – August 2012

<i>Type of minor assistance</i>	<i>Number matters receiving type of minor assistance</i>	<i>% of minor assistances (N=236)</i>	<i>% of matters receiving minor assistance (N=187)</i>	<i>% of all matters (n=412)</i>
Drafting new documents not urgent	52	22.0	27.8	12.6
Drafting new documents urgent	48	20.3	25.7	11.7
Help complete legal aid application)	34	14.4	18.2	8.3
Negotiation with other parties	25	10.6	13.4	6.1
Amending existing documents	21	8.9	11.2	5.1
Minor assistance – Phone call	14	5.9	7.5	3.4
Client history follow up	11	4.7	5.9	2.7
Minor assistance – Other	31	13.1	16.6	7.5
Total	236	100	-	-

Note: Of all matters, 45% involved at least one minor assistance. More than one type of minor assistance may have been provided in each of these matter.

Source: Snapshot data collected by EIU duty lawyers, 1 July – 31 August 2012.

Figure A1: Percentage of all matters in which each specific type of assistance was provided, Parramatta EIU duty service, July – August 2012

Source: Snapshot data collected by EIU duty lawyers, 1 July – 31 August 2012.

Note: percentages add up to more than 100 as more than one type of assistance may have been provided in each matter.

Table A9: Types of 'representation' provided to clients, Parramatta EIU duty service, July – August 2012

	<i>Number matters receiving type of representation</i>	<i>% of representation (N=59)</i>	<i>% of matters receiving representation (N=48)</i>	<i>% of all matters (N=412)</i>
Representation – Adjournment/mention	23	39.0	47.9	5.6
Representation – Urgent hearing	20	33.9	41.7	4.9
Representation – Interim hearing	15	25.4	31.3	3.6
Representation – Final hearing	1	1.7	2.1	0.2
Total	59	100.0	-	-

Note: More than one type of representation may have been provided in each matter.

Source: Snapshot data collected by EIU duty lawyers, 1 July – 31 August 2012.

