



LAW AND JUSTICE  
FOUNDATION

OF NEW  
SOUTH WALES

Submission to the Independent Review of the National  
Legal Assistance Partnership 2020-2025

**October 2023**

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## **Independent Review of the National Legal Assistance Partnership 2020-2025 Submission from the Law and Justice Foundation of NSW October 2023**

### **Required Information**

<b>Organisation</b>	Law and Justice Foundation of NSW
<b>Organisation type</b>	Independent research and support body (statutory)
<b>Funding sources</b>	The Law and Justice Foundation of NSW has not previously been granted Commonwealth funding under the NLAP. However, the Foundation has previously received funding for specific projects from Commonwealth and State governments.

The Foundation consents to this submission:

- Being published on the Review website
- Being identified in the report of the Review as having made a submission
- Being quoted with attribution in the report of the Review

### **About the Law and Justice Foundation of NSW**

The Law and Justice Foundation of NSW ('the Foundation') is an independent statutory body established to contribute to the development of a fair and equitable justice system that addresses the legal needs of the New South Wales community and improves access to justice, particularly for socially and economically disadvantaged people.

We achieve this by adopting a people-centred approach that extends beyond current justice system provision, harnessing and disseminating quality information about legal need, effective responses to legal need, and the role of the justice system and other human services in meeting that need. We seek for this information to support good decision-making and cost-effective use of resources by government, the justice sector, and the people of NSW.

The Foundation is uniquely positioned to provide a trusted source of information and independent research expertise on access to justice issues. We have a civil law focus that spans cross-sector interests, for the benefit of the NSW community and beyond. We aim to sustain a deep knowledge of the sector, and combine this with applied empirical research methods, and a people-centred approach, to generate a rigorous, practical, and meaningful evidence base to equip decision-makers.

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## **Q2. Legal needs: To what extent does current legal assistance meet the overall scale and breadth of the legal needs of disadvantaged Australians?**

### **Assessing unmet legal need: establishing an evidence base**

Legal needs arise when an individual has a legal issue, problem, or dispute that would benefit from legal assistance or justice system intervention, regardless of whether they are aware of their need.

Some types of legal need bring people into contact with the justice system, such as being prosecuted for a crime, filing for divorce, or being pursued by a landlord for unpaid rent.

However:

- not everyone with legal need has contact with the justice system
- not everyone with a legal problem seeks help, and
- if they do seek help, they don't always get that help from a lawyer.

Even when people are aware they would benefit from legal assistance, they may face personal or financial barriers to seek help and/or a lack of providers whose services they qualify for, or who have the capacity to respond to their need.

Legal need therefore comprises of:

- Serviced legal need, where sufficient assistance was provided
- Partially serviced legal need, where although contact was made with a provider, either no assistance was received or assistance was insufficient (also referred to as patent unmet need)
- Unmet legal need, where no contact was made with an assistance provider (also referred to as latent unmet need)

([Law and Justice Foundation of NSW 2023](#))

It is well understood within the sector that current public legal assistance is unable to address the volume of legal need amongst those experiencing disadvantage across Australia. As outlined in the National Strategic Framework for Legal Assistance, changes in Australian society through broader socio-demographic and population factors, as well as systemic issues, contribute to levels of unmet legal need, and directly affect the way legal problems present for individuals.

The Foundation welcomes the National Legal Assistance Partnership (NLAP) Review's emphasis on understanding the extent of unmet legal need in Australia and how this can be better addressed through future iterations of the NLAP, noting unmet legal need can multiply, escalate and resonate adversely throughout numerous life areas, and conversely, the ability

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to exercise legal rights can have profound positive impacts on individual wellbeing and quality of life (Balmer et al. 2023, Coumarelos et al. 2012, Productivity Commission 2014).

The Foundation's [Data to inform assessment of legal need in New South Wales: update on vulnerable community groups](#) (2023) provides a starting point for assessing legal need in NSW before delving deeper into the legal needs of a specific geographic area, community group, legal problem type, or area of law. It offers an overview of population changes in NSW amongst groups particularly vulnerable to experiencing legal problems, as established under the Foundation's 2012 [Legal Australia Wide \(LAW\) Survey](#). The Foundation has contributed separately as part of this review a summary of other data sources that would be relevant to producing a similar overview nationally for community groups who are vulnerable to the experience of legal problems.

The Foundation has also established [Need for Legal Assistance Services \(NLAS\)](#) indicators to offer a proxy measure of potential demand for legal assistance services. NLAS indicators generate a broad-brush picture of the relative distribution of potential legal need across geographic areas. The indicators and their suggested use are summarised as follows:

<b>Indicator</b>	<b>Description</b>
NLAS(Capability)	A count of people who are likely to require and qualify for more intensive legal assistance services.
NLAS(Community)	A count of people who could benefit from and meet the criteria for a range of legal community-based services.
NLAS(Aboriginal and Torres Strait Islander)	Potential demand for legal assistance from Aboriginal and Torres Strait Islander community members. <i>Note: there is a related publication based on 2021 Census data pending at the time of this submission, expected for release prior to December 2023.</i>
NLAS(Language)	Potential demand for legal assistance from people likely to require interpreting, translation and /or culturally appropriate services. <i>Note: there is a related publication based on 2021 Census data pending at the time of this submission, expected for release prior to December 2023.</i>

The Foundation is in the process of updating its Legal Needs dashboards, which provide a geographic based visualisation of the NLAS and other indicators of legal need, to support planning of legal assistance service delivery. The updated dashboards are due for publication at the end of 2023 and will be available via the Foundation's website.

The Foundation suggests that overlaying NLAS data with current Commonwealth and State legal assistance provision data may be a useful first step in identifying relatively under-serviced geographic populations.

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Data across courts and tribunals can further offer indication of the extent of legal need in the community. While there are relatively well-established indicators of demand for criminal law assistance, including court appearances and finalisations, arrests and breaches, the indicators of demand for civil and family law support are less defined. The Foundation suggests that the number of family law related court appearances, child access cases, and risk of serious harm reports could potentially be used as indicators of demand for family law assistance. Mental health admissions, revenue enforcement activity, school exclusions, mortgage repossessions and social housing repossession actions could be potentially used as indicators of demand for civil law assistance. The Foundation encourages consideration of such indicators when assessing unmet legal need.

### **A periodic national legal needs survey**

Because not everyone who experiences a legal problem has contact with the justice system or a lawyer, general population legal need surveys provide the most complete picture of legal need. ([Law and Justice Foundation of NSW 2023](#))

The value of legal needs surveys are that they provide:

- A comprehensive picture of the extent of ‘everyday’ legal issues experienced.
- An understanding of the types of legal issues that have the greatest consequences, and the nature and scale of that impact.
- An awareness of the options for responding to legal issues, including accessibility of legal assistance and self-help resources.
- The actions taken in response to legal problems and how successful these are in improving outcomes.
- Variations in legal issue experiences and responses across population sub-groups, and in particular how legal capability affects legal need.

(Mirrlees-Black 2023, p.1)

The Foundation believes it is important to develop a clear understanding of unmet legal need to ensure services can assess and strategically target delivery and outreach to vulnerable members of the community - particularly those who have low capability in accessing legal support and taking action on legal issues.

The Foundation commends the recommendation of a standing national legal needs survey, and refers the NLAP reviewer to the following resources on national legal needs surveys:

- [\*Conducting legal needs surveys in the Australian context: challenges and options\*](#)
- [\*Introduction to Legal Needs Surveys\*](#)
- [\*OECD Legal Needs Surveys and Access to Justice report \(2019\)\*](#)
- [\*Sustainable Development Goals \(SDG16\) Survey Initial Questionnaire \(2022\) and Implementation Manual\*](#)

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The Foundation suggests that any commissioned provider delivering on a national legal needs survey should:

- Introduce survey design processes that enable flexibility in tailoring questions year-on-year, providing agility and capacity to incorporate emerging issues into the survey scope, and to decommission questions that are no longer relevant.
- Present opportunities for continued analysis and interpretation beyond any initial or baseline reports produced.
- Possess specialist knowledge relating to legal assistance, justice systems and the interrelated systems that influence access to justice outcomes. Potential implications of leading a national legal needs survey without this contextual understanding include diminished quality of survey design (i.e., in ensuring the most needed and relevant questions are asked), and impact to interpretation and analysis, as nuances can be missed.
- Be cost competitive in delivery.
- Enable the survey to be conducted as a standalone survey. Being added to any existing survey presents several complicating factors that could impact on interpretation and the quality of analysis.

The Foundation notes that through the NLAP Review consultation process there may be interest in commissioning the Australian Bureau of Statistics (ABS) to undertake a legal needs survey. The Foundation encourages the NLAP Review to consider alternative entities and approaches in conducting a national legal needs survey, as the ABS's standard practices are likely to present challenges to several of the considerations above. Alternatives could include engaging Australia's legal research foundations (i.e., Law and Justice Foundation of NSW and Victoria Legal Foundation) in jointly designing the survey with sector input and taking on the responsibility for engaging field workers and undertaking analysis, or engaging an alternative entity that possesses empirical research capability (ideally with a strong understanding of the legal assistance and justice sector) to undertake this work.

The Foundation cautions against pre-specifying the design of any future national legal needs survey, as the design should be determined by the purpose of data collection, as well as viability and cost. For example, although we note that the 2014 Productivity Commission report recommended such a survey be conducted every five years, there are alternative designs that might better meet the knowledge requirements. The Foundation, for example, designed a smaller annual survey which would have provided sufficient information on trends in legal need, and a 'real time' barometer of the impact of external factors, such as natural disasters, cost of living crises, and pandemics. Combined multi-year data would have enabled in-depth research on the drivers of the experience of specific demographic groups, impact of specific legal issues, and jurisdictional level findings.

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Any legal needs survey design should enable the inclusion of emerging legal issue types, and aim to capture legal need as justiciable issues more broadly, given the down-stream benefits of preventing legal problems from arising or escalating to the level of a dispute.

The Foundation also recommends that Australia aims to conduct a regular survey of the legal needs of small business owners, given the potential impact on the economy of failing to support the legal needs of business. The Foundation has been assisting New Zealand's Department of Justice in the design of such a survey.

### **Q3. Roles and responsibilities: What roles should the Commonwealth and the jurisdictions play in determining or administering funding distribution between legal assistance service providers?**

The Foundation has observed that the legal assistance sector would benefit from simplification in reporting and burden attached to differing requirements across multiple funding streams. In 2023 NLAP related sector discussions facilitated by the NSW Department of Communities and Justice (DCJ), some stakeholders suggested the next funding agreement could be a tripartite agreement where the Commonwealth and State/Territories agree to provide funding to the legal assistance sector. It was suggested that the agreement could include funding sourced from different areas of government, with funding administered by an intergovernmental team. The Foundation observes that such a model could present the opportunity to integrate and / or harmonise reporting between core state and federal funding for legal assistance. This could offer a much stronger national view of legal assistance delivery, while streamlining and simplifying reporting requirements for legal assistance services.

Ultimately, The Foundation recommends that whatever model is established offers an improved jurisdictional and national view of legal assistance delivery in Australia and simplifies reporting requirements for providers.

Additionally, The Foundation suggests that there could be opportunities derived from viewing any future NLAP not just as a funding agreement framework, but as an agreement on how partnerships will work between States / Territories and the Commonwealth, irrespective of whether its funding model results in a tripartite agreement.

### **Q4. Disadvantaged groups: Are there other systematically disadvantaged groups, either existing or emerging, who are not supported adequately?**

The Foundation is of the view that prioritising response to legal assistance should centre on assessing the nature of the legal problem, and the impact of the problem on the potential client. The Foundation encourages problem duration, severity, impact, urgency, client capability and the potential of a legal response to prevent exacerbation of problems to be considered at intake. The Foundation suggests that assessment of problem characteristics

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should take precedence over prioritising the intake of people based on demographic characteristics alone (e.g., per priority groups).

Moreover, the Foundation posits that it could be beneficial to extend priority groups to be based on problem characteristics, not just demographic or personal characteristics. For example, in a review of Victoria Legal Aid's information service, it was suggested that there may be merit to including people with chronic problems as a priority group for service, because problems with longer duration had poorer outcomes (Randell 2018, p. 9).

Assessing the nature and impact of legal problems require robust and effective triage practices. *Developing a Triage Framework: linking clients with services at Legal Aid NSW* offers guidance in conceptualising comprehensive triage frameworks (Coumarelos & McDonald, 2019).

The Foundation encourages monitoring demographic characteristics and systematically disadvantaged groups to maintain a dynamic understanding of priority groups and their needs. This can enable responsiveness to changing need amongst vulnerable community groups, and the identification and remedy of any potentially inequitable access issues to legal assistance. For example, The Foundation notes that over the last 20 years, Australia's ageing population has been steadily increasing. In June 2002, the estimated resident population (ERP) of Australia aged 65+ was 2.5 million (14.5% of total ERP), and this grew to 4.4 million as at June 2022 (20.5% of the total ERP) (ABS 2023). With this increasing ageing population, there is likely to be a proportionate increase of legal issues linked to this stage of life, including elder abuse, issues with residential care, and loan guarantor issues.

Concerns relating to the increased frequency of natural disasters and subsequent implications for legal need are also mounting as a result of climate change. Key secondary legal issues attached to disasters include matters associated with insurance disputes, temporary housing, access to grants, and replacement of ID documents. The Foundation notes a need to consider proactive responses to preparedness, including managed retreat, and the associated implications for legal need.

## **Q5. Regional, rural and remote: How should the challenges of service delivery in regional, rural and remote locations be addressed through future agreements?**

### **Modes of delivery**

Several complexities impact upon legal services in rural regional and remote (RRR) areas, including conflict of interest and burn-out related issues. The Foundation's previous research identified that key drivers influencing low retention in RRR areas include lack of support, high workloads, and difficulties in finding replacements to fill in during leave breaks (McDonald et al. 2002; Miles et al. 2004; Forell et al. 2010 cited in Cain et al. 2014). We also note the unique mental health challenges experienced by lawyers delivering services in their own



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communities in response to natural disasters, while dealing with the same trauma and impact of disasters as their clients. Lawyers in RRR areas face even greater barriers to being able to disengage after hours under these circumstances, due to the propensity for interconnectedness with the local community in these areas.

The provision of services online and virtually by out of area providers may help to alleviate some of these pressures faced by lawyers in RRR areas. And, in a post-COVID-19 pandemic landscape, virtual delivery may present the most cost-effective means of delivery to RRR communities, especially given RRR areas are typically unable to sustain the full range of legal services required, nor manage conflict of interest issues through scale.

Significant shifts to online and virtual service delivery occurred during the height of the COVID-19 pandemic and associated restrictions. The Foundation observes that some of these practices have been sustained, while others have reverted to face-to-face and analogue practices. Research to develop a clearer understanding of post-COVID virtual delivery practices would be beneficial to inform the work of the NLAP. The impact of virtual service delivery in RRR communities, and a general evaluation of virtual delivery, including the suitability of varying delivery models to different circumstances and issues, could contribute useful insights into how virtual delivery can be best leveraged for people in RRR areas, as well as the wider community. The Foundation's (2011) [Legal Assistance by Video Conferencing: What is Known](#) offers some baseline evidence into the use of video conferencing in delivery of legal assistance, which could be built upon (Forell et al., 2011).

The Foundation's (2014) [Reshaping Legal Assistance Services: Building on the Evidence Base](#) discussion paper outlines the following models and strategies in improving access to justice for RRR communities. The Foundation suggests that it would be worthwhile reviewing the relevance of these strategies under any future NLAP. They include:

- Hub and spoke satellite location models, for example, where lawyers from the hub office may visit and conduct advice clinics at the satellite sites on a regular or as-needed basis, depending on cost and distance. In some cases, the satellite sites may be non-permanent in that they operate in borrowed space within other agencies. In other cases, multiagency legal outreach clinics may be considered.
- Mobile office arrangements.
- Services offered via technological solutions including telephone services, Audio Visual Link (AVL) services, and virtual law offices.
- Legal 'in-reach' services, involving the transport of clients to lawyers - akin to community transport.

(Pleasence et al. 2014, pp. 38-40)

The Foundation encourages that multiple methods for engaging individuals are offered in RRR areas, including face-to-face, telephone, digital online and outreach delivery. For certain issues and certain groups, in-person services will be the most appropriate or effective form

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of delivery. This includes people with the lowest capability in accessing legal assistance and digital services.

The Foundation notes that place-based service delivery and local expertise can contribute to the effectiveness of service delivery in RRR areas, and this should be factored into resourcing and delivery decisions. Providers feeding into the Australian Pro Bono Centre's (2023) Natural Disaster Report identified the significant value of in-person, place-based and local first responses in the context of response to people affected by disasters. Similarly, the Foundation's past research highlights the importance of drawing upon local knowledge and expertise to improve access to justice in RRR areas. Cain et al. (2014) stressed the importance of ensuring such strategies recognise the diversity of conditions inherent to different regions, in terms of geography, demography, and the availability of services and gaps in services, identifying that taking a one size fits all approach to RRR areas does not work (Cain et al. 2014, p. xii).

### **Incentivising practice**

The lack of opportunities for professional development, training and continuing education (including the cost and travel times involved) have been reported as additional factors adversely affecting lawyer retention in RRR areas (Miles et al. c. 2004; Mundy 2008; Forell et al. 2010 cited in Cain et al. 2014). These factors would be important to consider and address in improving legal assistance in RRR areas.

In 2009, the Law Council of Australia proposed the following strategies to improve lawyer recruitment and retention in RRR areas. There could be benefit in reviewing the suitability of these strategies, namely:

- Repaying, completely or partially, HECS-HELP (or FEE-HELP) liabilities for law graduates and/or practitioners who work in RRR areas.
- The introduction of Government scholarships for students from country areas.
- Monetary allowances, bonuses and/or subsidised or free housing for lawyers or graduates who relocate to RRR areas.
- Increasing opportunities for legal clinical placements in RRR areas for law students.

(Law Council of Australia 2009, cited in Cain et al. 2014)

The Foundation suggests that these and similar incentives would also benefit from being considered to attract more lawyers to the legal assistance sector at large.

### **Enhancing RRR community capability**

The Foundation notes the need for investment in community education, including raising awareness of how to resolve legal issues, as a key strategy to improving access to justice in RRR areas. The Foundation's LAW Survey (2012) identified a relationship between low

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awareness of legal services, residence in very remote areas, and low uptake of legal assistance (Coumarelos et al. 2012 cited in Iriana et al. 2013).

### **Resources and initiatives to build upon**

Urbis' (2023) [2022 National Profile of Solicitors](#), prepared for the Law Society of NSW, enables the ability to track the availability of lawyers across RRR areas. The Foundation suggests that this dataset could be used to support monitoring and planning activity when considering legal assistance resourcing for RRR communities.

The Foundation also notes the Law Council of Australia's [RRR Digital Treechange](#) initiative, which could be expanded upon through the NLAP, and that [The Justice Project Final Report on Rural, Regional and Remote Australians](#) (Law Council of Australia 2018) presents further recommendations for improving outcomes to those in RRR areas.

### **Q6. Funding models: To what extent does the funding model support appropriate distribution and quantum of Commonwealth resources to meet current and future needs?**

The Foundation recommends that any future NLAP maintains a quantum of funding that enables legal assistance services to keep up with rising costs, by ensuring annual indexation factoring CPI, changes to the wage price index, and adjustments for foreseeable rising costs such as compulsory super increases are applied.

The Foundation also strongly recommends that consideration be given to ensuring the resulting funding model is not excessively restrictive in application, allowing for services to allocate resources and respond to need flexibly in response to evidenced need.

Additionally, as expanded below, The Foundation encourages separation of funding decisions from outcomes measurement, and ensuring the funding model is not attached to cumbersome reporting requirements.

### **Q7. Demand over time: How can flexibility be embedded to accommodate changing needs?**

The Foundation suggests that future agreements could be improved by building in scope for greater flexibility and re-negotiation. This would allow for emerging issues, negative unintended consequences, or clauses that lose or lack utility to be addressed contemporaneously, rather than require compliance for the full duration of the agreement. The Foundation also recommends that clear frameworks associated with the expectations of the agreement are established prior to deeds being signed.

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The Foundation also encourages a more structured and forward planned approach to funding top ups under the NLAP funding model. Establishing agreed principles and frameworks that guide processes and decisions attached to top up and ad hoc funding prior to specific opportunities arising can reduce reactive decision-making with respect to resource allocation, and support efficiency and responsiveness to addressing emerging needs.

## **Q8. Wrap around services: How can holistic service provision include outcomes and reduce the demand for legal assistance services?**

### **The case for holistic service provision**

Under the Foundation's (2012) LAW Survey, a minority of respondents accounted for a disproportionate number of legal problems experienced. Respondents who experienced three or more problems represented less than one-quarter of the Australian sample (21.8%) yet accounted for 85.4% of the legal problems experienced, and only nine per cent of respondents accounted for 65% of legal problems (Coumarelos et al. 2012, p. 84). It is a reasonable to hypothesise that many of these people are in contact with other human services, emphasising the relevance and benefit of joined up and wrap around service provision with other human service providers when delivering legal assistance.

The LAW Survey (2012) also highlighted the critical need for integrated service delivery across legal and broader human services given legal needs are often interconnected with non-legal needs, given non-legal professionals are routinely consulted by people with legal needs, and because legal problems can cause a broad range of non-legal problems (Coumarelos et al. 2012). Its findings called for tailored, intensive assistance across both legal and human services for people experiencing disadvantage.

The Victoria Law Foundation's recent Public Understanding of Law Survey (PULS) findings reinforce the need to address client needs at large, not just legal need, echoing the impact of justiciable problems that lead and link to wider social problems identified in the LAW Survey, such as damaged family relationships, ill-health or injury, and loss of employment (Balmer et al. 2023, Coumarelos et al. 2012).

Given the important role of non-legal advisers (especially human service providers) as legal problem noticers, the Foundation suggests that consideration of funding under the NLAP for the training of human services to effectively identify legal issues and refer onwards could improve justice outcomes for the community.

### **Models of Delivery**

The Foundation's (2014) 'Reshaping Legal Assistance Services' discussion paper reflects the benefits of extending a case management approach especially to legal assistance clients

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who are overwhelmed by problems or are experiencing chaotic or marginalised lives. Substance use and mental health problems were highlighted as issues which can undermine the ability of services to deliver meaningful or lasting solutions to clients' legal problems (Pleasence et al. 2014, p. 86). A case management approach could help address these issues and yield better wellbeing and legal outcomes.

The discussion paper also explores different holistic and wrap around models of assistance for people experiencing legal problems, and highlights the benefits of co-location, including hub models where services co-locate, and where individual workers co-locate with other agencies. Pleasence et al. (2014) articulate the continuum and distinction between side-by-side partnerships and integrated delivery, which should be actively considered when considering models for holistic delivery (Pleasence et al. 2014, pp. 69-70).

### **Approaches and key considerations**

Whilst acknowledging its capacity to catalyse changes to practice approach, caution is raised against requiring providers to undertake work in partnership as a condition of funding, noting this tends to result in collaborative groups being unlikely to achieve the collaborative purpose with ownership or commitment (Huxham & Vangen 2005 cited in Pleasence et al. 2014). The Foundation has observed however that the funding of roles dedicated to coordination of partnerships contributes to the success of some existing partnership arrangements in the sector, and encourages consideration of resourcing such activity under the NLAP.

The Foundation observes that there are knowledge gaps in the evaluation and evidence for different partnership models which would benefit from investment in to guide the legal assistance sector. Investment in partnership evaluation would also be beneficial in any future NLAP if outcomes of partnerships are to be effectively measured. When directed towards addressing weighty social problems, attribution to specific partnerships is unlikely to be demonstrable without investment in complex evaluation (Pleasence et al. 2014, p. 81).

We note that Health Justice Australia plays a key role in developing an evidence base for cross-sector partnership between legal assistance providers and human service providers. Health Justice Australia's (2021) *[Working Together for Client Wellbeing: an Outcome of Health Justice Partnership](#)* offers guidance on utilising and measuring wellbeing as the outcome focus for wrap around services associated with legal assistance (Forell 2021).

### **Q9. Early intervention: How should legal assistance funding support activities that at an early stage reduce or prevent legal need, including activities not purely of a legal character?**

The Foundation's (2015) issues paper *[Is Early Intervention Timely?](#)* examines early intervention as a policy framework for legal assistance services. The issues paper reflects

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the appeal of early intervention in offering hope that matters will be resolved before escalating through the legal system, and expectations that less intensive but more widely available early intervention strategies will provide cost effective justice options for a greater range of clients and issues (Forell 2015, p. 3). However, Forell (2015) suggests that given the genesis of legal issues for the most disadvantaged is complex and arise from wicked social problems, the capacity of legal assistance to directly prevent problems from occurring at the individual level may be limited.

This said, an important way the legal assistance sector can prevent escalating legal need for people experiencing disadvantage is through strategic litigation, and facilitating law and policy reforms that prevent or alleviate legal problems (Warner 2014 cited in Forell 2015; Nheu & McDonald 2010 cited in Forell 2015). We expand upon this finding in the section immediately below.

Forell (2015) also explores whether early intervention is a cost-effective justice option. Forell's (2015) findings suggest that if early intervention strategies do not address the needs of the most disadvantaged (i.e., the nine per cent of people who account for 65 per cent of legal problems as identified in the LAW survey), early intervention delivery may present as an additional item and cost to more intensive assistance, rather than offer a replacement to the need for crisis response services. Uptake of legal assistance may also increase if early intervention strategies are successful at promoting awareness of legal rights and remedies, stretching already limited services.

Forell (2015) therefore suggests that in the context of limited resources, focusing on early intervention strategies (which may best serve the broader population) may be at the cost of more intensive service provision that better meets the needs of the most disadvantaged. Forell (2015) proposes that a potentially more helpful focus may be in ensuring a timely and accessible response to resolving legal issues for people experiencing disadvantage, and ensuring this assistance is tailored to client need and capability. For these reasons, the Foundation suggests prioritising tailored and targeted timely support to the most disadvantaged over early intervention strategies in the context of legal assistance delivery, while ensuring some investment in early intervention strategies to support improved access to justice for the community at large.

#### **Q10. Advocacy: Should legal assistance funding be provided to legal assistance providers for advocacy and law reform activities?**

The Foundation's [\*By the People, for the People? Community Participation in Law Reform\*](#) paper explores the capability of community to participate in law reform processes (Nheu & McDonald 2010). Nheu and McDonald (2010) highlight that effective participation in law reform requires sophisticated skills based on multiple dimensions of knowledge that are highly aligned with legal assistance providers, namely, those relating to the law reform

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system, specific law reform processes, specific laws, and the legal, policy and political context attached to legislation (Nheu & McDonald 2010, p. xix). Their findings suggest that the level of knowledge and skills usually involved in law reform participation, also including functional and law reform literacy, legal analysis, policy and/or research, and advocacy skills, are beyond the ordinary capability of an overwhelming majority of the population. Subsequently, a dependency upon the ability of community service organisations such as legal assistance services to facilitate constituent participation and representation in law reform issues exists, particularly with respect to people experiencing disadvantage (Nheu & McDonald 2010, p. xix). For this reason, the Foundation views that legal assistance funding should continue to be provided to legal assistance providers for advocacy and law reform activities. Legal assistance services see the unintended impact of the law on their own clients and can advocate for change which can either prevent or address problems experienced by a wider group of people. The Foundation anticipates that the loss of funding for such activity would likely result in the loss of practice wisdom and evidence being translated into policy and reform.

As mentioned above, the Foundation's (2015) issues paper *Is Early Intervention Timely?* also identifies systemic advocacy and strategic litigation as one of the most effective early intervention strategies and activities legal assistance providers can undertake to prevent or alleviate problems that particularly impact on people experiencing disadvantage. As Buckley (2011) identifies, 'systemic advocacy to reform laws, regulations and institutions is often the only effective way to eliminate recurring problems because they address the root causes that give rise to repeated and often routine legal issues' (Buckley 2011 in Canadian Bar Association 2013, p.8). From this perspective, the Foundation is of the view that investment in such activity also presents an avenue for cost savings and efficiencies, in addition to the inherent benefits.

#### **Q11. Efficiency: To what extent are administrative processes of funders placing unnecessary regulatory burdens on legal assistance providers?**

The Foundation has identified the following opportunities and recommendations to reduce unnecessary regulatory burdens on legal assistance providers, and to enhance the quality of design and administration of data collection and analysis:

1. Utilising unit record data as the primary mechanism for output reporting, and ensuring comprehensive analysis is undertaken and shared back with the sector.
  - a. Automation of client unit record de-identification through the database system utilised by the organisation in receipt of unit record data, to remove burden on legal assistance providers, and reduce manual handling which may compromise data quality in accuracy and consistency. A clear agreement between legal assistance service providers and the data recipient agency about de-identification processes and access to data would be central to the success of such an arrangement.

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- b. The Foundation encourages an alternative to ABS be considered in housing unit record data, as there are significant limitations to data sharing, analysis and use of data associated with the strict requirements and high threshold the ABS has for release of data in publication and sharing of data. This substantially limits the ability to fulfill the intended purpose of data collection, of informing provider practice.

Should alternative entities be considered in housing unit record data, the Foundation suggests that such bod(y/ies) tasked with this should ideally:

- Be adequately resourced, with appropriate database and analytical expertise, and IT infrastructure
- Have an in depth understanding of the organisation(s) from which the data is collected, supported by an operational understanding of data collection at the front line
- Have the network to work across jurisdictions and providers
- Have the incentive of improving the effectiveness and efficiency of the organisation(s) through the use of data
- Have the trust of the data providers
- Have the trust of the relevant clients (considering data sovereignty)
- Have the trust of jurisdictional and federal government

Alternatively, the Foundation suggests a contractual agreement with the ABS including agreement to specific approaches and strategies that mitigate the above limitations could benefit the legal assistance sector. An explicit agreement to share the data with approved providers, such as relevant researchers and analysts, could also be beneficial under this approach.

2. Discontinuing manual spreadsheet / National Performance Indicator reporting, as this duplicates unit record data, and removal of reporting by funding stream as a requirement. Reporting by funding stream currently creates a false picture of actual delivery, given the operational reality that implementation and delivery is often not neatly aligned with distinct funding streams. Often individual staff members are funded through multiple streams and assist with multiple matter types in a manner that cannot easily be disaggregated in reporting.
3. The establishment of a national research program which can offer a coordinated and planned approach to research and evaluation activity for the sector. A national research program could encompass discrete bespoke research projects separate from continuous data collection (and separated from compliance, reporting and funding decisions and requirements) undertaken to:
  - a. conduct robust and meaningful outcomes measurement and evaluation of legal assistance programs and delivery, focused on identifying what works
  - b. develop an evidence base regarding legal need in Australia



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- c. provide insight on Estimated Time Spent (we suggest this be conducted approximately once every 5 years, and elaborate on this point under Q14.)
  - d. explore and share innovative models
  - e. gather and develop evidence on how Artificial Intelligence / machine learning products and outputs could or will be experienced or utilised by people with different levels of capability, and how related protections can be built in, with respect to legal advice and assistance
  - f. redevelop client surveys to be more rigorous in design and implementation, and to produce actionable findings

Such a research program would need to be adequately funded to be effective. The Foundation views that such a program would benefit from coordination, administration and lead governance being conducted by an appointed organisation. Governance could be supported by input from multiple stakeholders.

- 4. Discontinuation of case study submission, as they are treated as a compliance requirement, are not widely shared or read, and do not fulfil the original intent of stimulating learning and innovation across the sector
- 5. Moving to a model whereby the conduct of client surveys are voluntary and flexible in administration. As noted by Strathern (1997), “when a measure becomes a target, it ceases to be a good measure”, as unintended consequences stemming from shifting incentives and motivations arise (Strathern 1997 cited in Butler 2022). In the context of client surveys being linked to performance or compliance, this may include sampling in a manner that reflects bias towards satisfied clients, or lacking utility and resulting in time wasted as data is simply collected to fulfil requirements rather than inform delivery.

#### **Q14. Data: To what extent are the current reporting processes sufficient to support monitoring, continuous improvement and achievement of objectives?**

##### **Purpose and use of data**

To date, there has been low demonstration of the value of data collection, and no reliable articulation of the intended purpose of an outcomes framework under the NLAP. How will the data be used? Is the data collected capable of achieving objectives? These are questions that the Foundation believes should underpin and be made transparent across all NLAP data frameworks. The Foundation suggests that such an articulation is central to effective monitoring and evaluation, and the absence of this reduces the utility and meaningfulness of data collection and erodes trust.

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The Foundation strongly recommends a commitment be made under the NLAP to not using client surveys nor outcomes measurement as tools for performance or funding related decisions. As abovementioned, the linkage of outcomes measurement to performance and funding has the propensity to lead to unintended consequences, including inadvertently influencing decisions that favour the delivery of certain services over equally appropriate services (Butler 2022). For example, prioritising low intensity and low complexity cases may occur if the achievement of outcomes is linked to performance and funding. The Foundation thus suggests it is essential that data intended for service and quality improvement purposes is kept separate from data for accountability purposes, so that these activities meaningfully improve service delivery.

### **Scope and quality of data**

The Foundation strongly recommends a transition to annual reporting by financial year so that an annual count of services can be measured. This is not currently possible under the existing NLAP reporting framework. As abovementioned, the Foundation also recommends integrating and / or harmonising reporting between core state and federal funding for legal assistance to provide a stronger national picture of legal assistance in Australia. While these measures would offer an improved understanding of legal assistance delivery nationally, the Foundation cautions against this service data being used as an indicator of legal need, as it does not adequately capture legal need amongst people with low capability in acting upon a legal issue and is also highly determined by the existing offering of providers.

The Foundation suggests that data frameworks and data collection quality and consistency could be improved across the sector, and establishing or reactivating an expert data advisory group to progress what is needed in this area would be beneficial.

The Foundation has also identified the following evidence gaps, and suggest they would benefit from incorporation into future data collection and frameworks:

1. Data linkage to establish an understanding of the journey and use of services amongst clients requiring multiple, return or repeat services within and across providers
2. A framework for, and data on, intensity of legal assistance service delivery
3. Data regarding mode of delivery (e.g., face-to-face, telephone, online / virtual)

The Foundation has identified the following improvement opportunities with respect to standardisation of data collection, and governance of data collection using the Data Standards Manual (DSM):

1. Improving the mechanism for updates to the DSM. The Foundation is of the view that a balance needs to be reached in periodically refining guidance under the DSM, while minimising the frequency of changes made to active data collection. The Foundation recommends that the DSM be reviewed annually to refine definitions and develop

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clarity e.g., via case examples, while changes requiring alteration of collection only occurs once every 3-5 years. The Foundation also suggests that there could be value in limiting the DSM to being a reference document for standard definitions and counting rules, and keeping data collection requirements separate from this, to avoid any forced updates based on compliance requirements, as has occurred in the past.

2. Improving consistency of definitions and application of data through the DSM. The Foundation has observed that some agencies make internal updates to definitions under the DSM based on improvement opportunities identified, without these being applied across services externally. The Foundation strongly recommends a centralised mechanism be established so that any suggested changes are vetted and then applied universally across legal assistance providers if agreed to, for the purpose of supporting data quality and consistency, and efficiency within the sector.

The Foundation encourages the allocation of adequate funding for data improvement and data systems, including the cost of system upgrades. The Foundation suggests such an allocation needs to be in addition to existing baseline funding under agreements.

### **Estimated time spent (ETS)**

The Foundation notes that previous attempts to collect information on ETS were resource intensive for the legal assistance sector and did not fulfil desired objectives for stakeholders. The Foundation discourages a repeat of the previously established ETS data collection framework. However, there could be value in taking a less resource intensive and lighter touch approach in future. Specifically, the Foundation encourages consideration of bespoke research undertaken on a small scale in multiple jurisdictions to measure time-spent for a representative set of services. This could offer useful insight if conducted once every 5 years, supporting resource allocation decisions and informing cost-effective program delivery. Under this model, data quality assurance would be driven by researchers, and the administrative burden for providers would be time and scope limited, ensuring only essential data collection occurs. The use of apps in data collection could also reduce administrative burden for providers.

### **Outcomes Measurement**

The Foundation notes Departmental and sector appetite for implementing an outcomes measurement under the NLAP. As mentioned above, The Foundation suggests that clearly articulating the purpose of outcomes measurement is central to the design and use of any framework and cautions against the use of outcomes measurement frameworks for the purpose of performance measurement or as a funding decision tool. The Foundation also discourages its use as a benchmarking tool given the diverse nature of delivery and the variability of contributing factors renders comparison between providers fraught. In addition to the increased likelihood of unintended consequences as raised earlier, there are also limits of attribution that exist (a sector wide outcomes framework in the legal assistance context will

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likely reflect contribution to, rather than cause of, outcomes achieved). It also ought to be recognised that client circumstance, case complexity, systemic factors and the involvement of other services and supports all contribute to resulting outcomes. Not all outcomes nor many important and critical aspects of a program can be meaningfully quantified or reliably measured (Butler 2022).

The Foundation's [Legal Assistance Services Outcomes Frameworks Rapid Scoping Review](#) outlines guidance and key considerations when developing an outcomes measurement framework for legal assistance services, summarises the benefits and limitations of outcomes frameworks, and provides an overview of some existing local and international models for legal assistance services (Butler 2022).

The Foundation urges for sufficient time and resourcing to be invested into the development and introduction of an outcomes measurement framework, and suggests a resulting framework would benefit from being kept simple by:

- developing a bank of outcomes and measures, or
- establishing a small set of outcomes to track (e.g., 3 outcomes to focus on per activity type), and / or
- allowing for organic uptake and development of outcomes measurement across the sector.

The Foundation also strongly encourages output measures continue to be captured, and not be replaced by outcomes measurement.

**Q15. Opportunities: What other changes to the NLAP would further improve service delivery outcomes and maximise use of resources?**

1. The introduction of standardised orientation and videos for staff onboarding, including but not limited to data related frameworks, could generate efficiencies for the sector, and improve consistency of data collection and practice. Training on what evidence tells us about legal need, and what works in meeting that need could also be of value to the sector.
2. Benefits could be yielded through more cross-jurisdictional relationship building and collaboration. Structured opportunities could enable jurisdictions to learn more from each other, bolster continuous improvements, and potentially generate efficiencies if resources and outputs were shared.
3. The Foundation suggests that considering the role, nexus and tapestry of delivery of allied legal services and pro bono providers in addressing legal need alongside legal assistance providers would be helpful when considering the scope and framework of any future NLAP. Activities that improve coordination and build evidence on which of these supports and actors work best for different sections of the community could yield benefits and improve resource allocation decision-making.

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