

Identifying and Targeting People in Need

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Legal Need

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Panel 1 – Identifying and Targeting People in Need

(I) Legal Need – as long as a piece of string

Legal need is a complex notion.

As service providers, when we discuss legal need and the possibility of better targeting resources, the extent of need seems endless; we speak about ‘the justice’ gap, the poverty level, the barriers to service etc. I can recall a Secretary of the Attorney-General’s department answering a question about what his opinion was about the extent of legal need in Australia; his answer was simple: “ it is as long as a piece of string”. This was many years ago and I recall how taken back I was about that answer.... Surely we can do better than that I thought!

Well over the past 30 years or so I have seen as many reports produced about legal need – most recently: the Australian Productivity Commission Report in 2014, which I referred to in my Country Report, found an urgent need to infuse \$200m into the legal aid system.

OK, well, that sounds as long as a piece of string to me.

In many ways I see the task of legal aid providers as meeting ‘need’ by optimising the assistance that can be provided to the most vulnerable of the disadvantaged within our community.

In my presentation today I want only to make a few simple points, which I propose to do by using some cases studies about how we have identified and targeted need to specific disadvantaged groups. I will talking first a little about the utility of community legal education (CLE) as a tool for identifying need, referring to the increasing use of IT but noting that in many ways we need to retain our 'old fashioned' approach to make sure we are just keep talking and listening to the clients! In a fundamental sense my argument is bases on the principles, and value, of **co-design**. I am also suggesting that we have a lot of information and data about need – what is necessary is acting more effectively on what we already now.

Targeting People – do you know you have a problem?

All Legal Aid providers in Australia use information and educational materials, community legal education (CLE), as a tool to identify need and target members of the community (with a focus on the vulnerable and disadvantaged), often through outreach or collaboration with existing community services. CLE gathers people together and provides tailored information in a dialectic relationship of mutual respect in which we listen to and learn from the communities that we are seeking to assist. Given that the purpose of CLE is to assist vulnerable people in the community to be able to identify legal problems and solutions, and seek out appropriate assistance, as a co-design strategy we are able to both assess legal needs and better meet that

need. The **response of a community** to our services is another measure of need, and gives flesh to the bones of statistical data coming from traditional forms of research and surveys.

Better informed people make better decisions! A civil society is one in which all people know their rights and responsibilities and are able to make informed decisions about their lives....it is about empowerment of the individual and communities within a legal system that is often opaque and confusing.

Crucially, the most effective CLE is developed in consultation with community groups, in order to identify the most relevant issues. How do we know what need is, well, our clients tell us! A key element of effective CLE is the development and distribution of resources that identify common legal issues and present achievable solutions, that is, meeting need. Modes of delivery use specifically developed materials for the purpose of education, including booklets, pamphlets, self-help kits, websites, online modules, online workshops and 'ready to go' presentations. Many of these information sources are distributed to community service providers, community groups, organisations and schools, who then distribute the resources directly to vulnerable individuals. If someone finds out they have a legal issue then that generates context in which need can be met!

For instance, recent consultation with the sector in Canberra resulted in a focus for CLE on: mental health issues, youth justice, inclusion, discrimination, elder issues, migrant issues, welfare recipients, student tenancy and employment issues.¹

The National Association of Community Legal Centres (NACLC) is the primary body for community socio-legal clinics in Australia. The NACLC communicates with the broader non-government legal sector, as well as the media, politicians and other influential groups. Through these connections, the NACLC contributes substantially to the development of CLE resources, including through social media, e-bulletins and websites. The organisations' Twitter follower count reached 4,300 over the last year, an increase of 34% on the previous year. Followers on the NACLC Facebook page increased by 190% and the News Bulletin (accessible online) received a subscriber increase of 28%. The continuing growth across these mediums demonstrates that the use of social media platforms for CLE is a viable and cost effective method of legal outreach.²

Talk and technology should go hand in hand.

¹ Ibid 113.

² 'Annual Report 2016-2017' *National Association of Community Legal Centres* (2017) 18.

The NACLC provided a Service Delivery Guide in 2017 to provide examples of their relationship with NGO's and community outreach organisations³ for disadvantaged communities, primarily Aboriginal and Torres Strait Islander groups. The purpose of the guide was to identify ways of engaging with communities that may not have legal knowledge or may be unaware of how to seek legal assistance. Relationships with outreach organisations are critical to the dissemination of CLE, and was found to be enhanced through 'simple meet-ups' or organising a 'coffee and yarn (chat)' with the people of these communities.⁴ Further, the report noted that the circulation of CLE is only one part of effective community legal education. Additional steps such as referrals and follow-ups are key to establishing effective, long-term relationships with the community.⁵

Through successful CLE programs legal providers can better identify and target the needs of disadvantaged and vulnerable community groups, and provide cost-effective legal assistance to a greater number of people.

(II) **Legal Needs of Disadvantaged People**

³ Aboriginal and Torres Strait Islander Legal Services (ATSILS), Family Violence Prevention Legal Services (FVPLS) and Aboriginal Medical Service (AMS) amongst other working groups and community working parties.

⁴ 'NACLC Service Delivery Guide' *National Association of Community Legal Centres* (January 2017) 8.

⁵ *Ibid* 9.

In a country as geographically large and demographically diverse as Australia, legal assistance organisations are sorely challenged in learning to be responsive to the multiplicity of community need. This means that legal aid should develop strategies that better identify particular populations that frequently experience legal problems and who are unlikely to seek help. **Who are the people who need help but are unable to access it?**

Over recent years there has been particular areas of policy focus: these include: the culturally and linguistically diverse community; young people; older people; and Aboriginal and Torres Strait Islander people.

Using Data Strategically

The use of data analysis is important to gain perspective on the macro changes in the socio-legal space. Consistent and detailed data makes the identification of need much easier to recognise. Data of this grade in Australia is extremely difficult to achieve as the definitions, measures and results change between jurisdictions based on the interpretation. Because of this it is important for the socio-legal bodies to proactively plot social and economic changes in society. The lack of disaggregate references in much of the available data means that legal providers must remain vigilant to deficiencies in access to justice at the individual level, and work to identify

and assist these people in need.⁶ We need to partner with traditional research institutions and the academy.

The move toward effective, efficient and comprehensive data gathering is needed by all bodies in the access to justice process, from the justice policy development, through the courts and tribunals and the community level clinics. The *LAW Survey*⁷, held in 2008, accrued the responses from 20,000 individuals and greatly assisted identification of specific legal needs (the survey included 129 legal problems and covered all aspects of the law). However, it was not sufficient in identifying the needs of the most disadvantaged at the individual level as it failed to include much of the vital disaggregate data necessary for individual case needs.⁸

Hence the importance of co-design, collaboration and jurisdictional planning.

Many of the groups that are identified as a high risk for socioeconomic disadvantage and social exclusion are sole parents, the unemployed, low-income earners, people with a disability, Aboriginal and Torres Strait Islander Australians, public renters and the homeless.⁹ Recommendations have been made to conduct regular, smaller surveys on the population, and conduct further consensus from personnel inside the legal system to gain a better perspective. The use of larger sample surveys appears

⁶ *Productivity Commission Inquiry Report, Volume 2, 'Access to Justice Arrangements' Productivity Commission* (September 2014) 879.

⁷ Christine Coumarelos et al, 'Legal Australia-wide Survey: Legal Need in Australia' *Law and Justice Foundation of New South Wales* (August 2012).

⁸ Above n 11, 892.

⁹ Above n 12, 6.

not to directly correlate with better outcomes or results, rather the focus was found to be the inclusion of policy-relevant data, case management outcomes and cost-benefit analysis at lower level surveys, alongside data retention in each practice for each particular matter.¹⁰

Statistics are people!

Some of the greatest issues with big data analysis comes from the freedom of the population to choose not to participate when asked, the larger sample size may assist in minimising a skewed result, much the same as awareness of surveyed areas, the location of the survey and the mode of data collection can also be mitigated if they are accounted for. However, the inability to account for response bias, and inability to have every single person who is selected respond to the survey all attribute to the generality¹¹ of the survey.¹² Surveys, submissions and data retention are all equally important in the production of good policy, the analysis and understanding of bias however must be sufficiently accounted for in order to provide succinct and representative results.¹³

Two Case Studies

¹⁰ Above n 11, 897 – 901.

¹¹ The ability to apply the results of a survey as a true representative of the total population.

¹² Above n 12, 12.

¹³ Furthermore, multivariate analysis is necessary for the majority of the data to gain a true representation of the individual issues.

Legal aid providers have many programs designed to target people in the 'high risk' areas of law. I have chosen these two cases studies at Legal Aid ACT because they highlight the difficulties of relying only on data to identify need and show that targeting needs within particular groups require a complex and multifaceted approach to service delivery.

Case Study: Elder Abuse

Legal Aid ACT has commissioned a report exploring how our services can be improved to meet the needs of older people, particularly those at risk of elder abuse. This report was prepared by a highly experience lawyer with significant background in providing services to older people. The report was designed to provide recommendations about how these legal services could better meet needs of older people, particularly in the context of elder abuse.

Currently, older Australians are a priority group under the National Partnership Agreement, the key funding instrument of legal aid commissions in Australia.

Performance indicators relating to legal assistance are also reflected in our Legal Assistance Guidelines. Additionally, there is significant anecdotal evidence that elder abuse is a growing concern in the community, which should result in the allocation of further resources to address the issue.

In preparing the report, the writer conducted interviews with representatives from various community organisations and collected relevant research and data from previous studies and surveys. In addition to this, information was collected internally about current services for the elderly, notably the matter types and grants of assistance made. This was done to understand both the legal issues and barriers to justice faced by elderly people.

Through her interviews and research, it was found that the major legal issue facing older people was elder abuse. This abuse could be physical, but was more likely to be financial abuse, where an older person's assets are not dealt with in their best interests. Unfortunately, the report could not find a concrete figure of how many people over 65 in the ACT suffered elder abuse, only providing a conservative estimate of 6% from a 2011 survey. It was however noted that many times the abuser is a family member which can place the elderly person in the difficult situation of taking a family member to a court or tribunal, something the report found to be a barrier to justice.

The report also noted many elderly individuals had difficulty accessing legal aid services. This was due to a variety of factors, including elderly individuals finding the Commissions' forms and procedures hard to understand, and issues in attaining a grant of assistance due to asset levels. The difficulty elderly individuals had in

accessing our services was the primary barrier to justice noted in the report Legal Aid can address.

Based on the data the report collected, it concluded the Commission is unlikely to grant assistance in matters involving financial abuse. Such matters are often given an advice only.

Additionally, many elderly applicants were rejected for legal assistance on 'means test' grounds. The report indicated this represents a misunderstanding of the financial position those applicants may be in, whether that was due to limited funds being available after cost of living expenses or an inability to control their assets due to financial abuse. Either way, the report indicated that while the means test suggests many elderly people could afford a private lawyer, this was not often the case in practice.

The report discussed the legal issues affecting by people over 65 years of age elders, questioning why it seemed that the oldest age bracket had low a prevalence of overall legal problems. However it was posited that even if older people have a lower level of legal problems from their lifestyles and circumstances, the alternative argument is that this was only because there was a failure to identify legal needs, and their reluctance to seek help.¹⁴

¹⁴ 'Response to Elder Abuse: Issues Paper 47' *National Legal Aid* (14 September 2016) 3.

As the data available for the report was limited, the Report had to rely primarily on analysis of the available statistics and many personal accounts, arguing that 'elder abuse' shows up from unauthorised family members acting in a place as attorney for the older person, to financial and physical abuse, harm and distress.¹⁵ The response, it was submitted, was to refocus on the importance of using clear, concise and well-spread CLE in order to raise awareness of both the availability of help, and what to look out for when identifying 'elder abuse'.¹⁶

Ultimately the report concluded that elderly individuals at the risk of abuse are still being overlooked due to either an unwillingness or inability to seek advice. Making changes to how legal aid provides services to these people as the best way to assist those most at risk was the primary suggestion of the report.

Based on the above information, the report made the following recommendations:

- Establish a dedicated service for elderly people with a lawyer specialising in the legal issues they face
- Make changes to the means test in regards to elderly people, notably excluding family members as 'financially related persons' in cases of elder abuse

¹⁵ Ibid 4.

¹⁶ Ibid 10 – 11.

- Provide a more accessible service for elderly people (eg training staff in matters affecting elderly people, more outreach etc)
- Continue undertaking community education programs relating to elder abuse
- Continue to advocate for reform in issues relating to elder abuse
- Develop relationships with organisations that service vulnerable elderly people in the ACT

Has this research led to better targeted services?

In July 2018 the Legal Aid Act established **the Older Persons Legal Service** and took over the management of the **Elder Abuse Line for the ACT**.

Case Study: Culturally and Linguistically Diverse Communities

Cultural Liaison Unit

In 2016 the Legal Aid ACT established a Cultural Liaison Unit.

The Unit was established in response to anecdotal evidence about legal need in the Muslim Arabic speaking community, and because our data showed that only the small number of people from that community were accessing our service. Our data in 2015-16 showed only

89 Arabic speakers accessed our services; there were only 174 middle-Eastern people (including Arabic speakers) and only 414 clients from non-English speaking

backgrounds (encompassing people from all over the world). Bear in mind that 28% of people living in Canberra primarily speak a language other than English in their home and 26.4% were born overseas (that is, 104,912 of the total population of Canberra of 406,057)! Of that figure 6% have very limited English skills.

There are two cultural liaison officers (CLOs). The CLOs perform a number of duties to assist people from a culturally and linguistically diverse (CALD) background.

These duties include:

- Supporting clients to access legal assistance and ensure they are aware of their rights and responsibilities in each stage of the legal process
- Analysing client problems to develop and coordinate holistic solutions and arrange referrals to appropriate agencies
- Supporting clients at court and tribunal hearings
- Establishing and maintaining good relationships with the sector to ensure community groups and their clients are aware of legal issues and how to obtain legal assistance
- Organise and deliver community education and cultural awareness training.

Summary of Outcomes – June 2016-June 2017

- Number of clients: **501**
- Number of contacts: **700**

- Client countries: **72**
- Stakeholder engagement: **94 meetings**
- Outreach: **104 sessions**
- Community education: **25 sessions**

Area of Law

The CLOs assist CALD clients across the Legal Aid ACT, in the family law, criminal law and civil law practice. They also operate the migration clinic, which involves ensuring clients with a migration problem get free advice from a migration agent.

Cultural Awareness Training / Community Education

The year the CLOs organised a number of training sessions or delivered presentations at services. These training and education activities included:

- Community Conversations – refugees and asylum seekers
- Partner visas and family violence – an introduction to the law
- Visa training, working, skilled, studying and family and spousal visas
- Visa training, protection, onshore, ministerial intervention, and what's new in refugee and humanitarian visa's
- Forced Labour (Human Trafficking)

- Forced Marriage (being held on 16 November)
- Refugee Week film night – Constance on the edge
- Worked with Attorney General's Department on their communications strategy that looked at countering religious and racial discrimination and violent extremism
- Worked with the Migration Council of Australia
- Worked with the Law Council on their Justice Project.

Destitution and Need in Migrant Communities

The CLOs jointly organised a forum with the Red Cross which looked at the issues faced by refugees and migrants in accessing assistance. This forum had 100 attendees from across ACT services and departments discussing practical, affordable ways, services could assist refugees and migrants who fall through the gaps.

Stay Here, Stay Safe

The CLOs helped produce **a new resource** titled Stay Here, Stay Safe which sets out information about the family violence provisions in Australia Migration law.

Stakeholder Engagement

The CLOs have built a close working relationship with a number of organisations to ensure warm referrals for clients can happen quickly and our clients are provided with the assistance needed. Key stakeholders are:

- Australian National University Students Association (ANUSA)
- ACT Civil and Administrative Tribunal
- Canberra Islamic Centre
- Care Financial Counselling Service
- Companion House
- Domestic Violence Crisis Service
- Onelink
- Red Cross
- Refugee Advice and Casework Service
- Salvation Army
- St Johns Church Reid
- Migration Council of Australia
- Settlement Council of Australia

Outreach

Each week the CLOs undertake outreach at a number of places in the community.

This work is to provide information to those services about the work we undertake

and to speak with possible clients. It occurs at Musala centres, University campuses, embassies, mosques and playgroups.

The success of this Unit is measured in the improvement in service data but also in the qualitative feedback provided by clients and non-legal service providers. It shows that need, and the targeting of that need, is best done in concert with clients and other client service organisations.

(III) Future Directions - Legal Aid Technological Advancements

There are numerous challenges to identifying those in most need of assistance and targeting effectively targeting services. It should go without saying that the future direction of this work will increasingly mean engagement through social media and technological services provided through the internet. Much of the technology used by Legal Aid organisations in Australia already involves the dissemination of information and advice to clients and communities of disadvantaged people.

But this view needs to be balanced with the co-design lessons about identifying and meeting legal need that can draw from the cases studies. Client need, not technology must drive how we target services.

Partnering People and Technology

The utilisation of information and communications technologies (ICT) to identify and target people in need and provide ease of access to information are paramount in successful socio-legal clinics. The importance of focussing on ICT to provide resources to clients, and to communicate with clients is constantly growing, as the technology surrounding these formats become faster, more secure and more efficient. Through the successful use of ICT services, the gap for information between clients in rural or regional areas and major cities could soon cease to be an issue, as the shift to a 'cloud based' system and access to resources grow.¹⁷

Empowering people in the justice system

Legal Aid NSW and Victorian Legal Aid utilise apps as a part of automated legal advice tools (ALATs) in order to provide simple legal advice for people in need, including factsheets, videos about the law, workshops, how to apply for legal aid and what to do if they are not eligible for a grant.¹⁸ ALATs will eventually be common place in community legal centres around Australia as these tools will have the ability to provide legal advice to clients either on their own, through supervision of a lawyer, by assisting a lawyer in giving advice or by providing limited or partial advice for smaller discrete tasks.¹⁹ These tools are still in their early stages²⁰ and must evolve

¹⁷ 'The Future of the Legal Profession' *The Law Society of Western Australia* (12 December 2017) 6.

¹⁸ Judith Bennett et al, 'Current State of Automated Legal Advice Tools' *The University of Melbourne* (April 2018) 41, 43.

¹⁹ *Ibid* 9.

before they can be considered for widespread use, however through the use of scrutinised regulations ALATs could very well contribute efficiently to access to justice for many people in need who haven't qualified for legal aid, and do not have the funds for private advice.

Making technology work for our clients – people come first

With the use of both CLE and ALATs, the wider community both in regional and rural areas could enjoy greater access to justice to the level that those in capital cities do.

The importance of identifying and targeting people in need continues to be the goal of the NLA, with openness to technological advancements the NLA strives to improve access to justice, whilst growing in efficiency and effectiveness.

The bottom line is that unless people know their rights and responsibilities they cannot effectively participate in the justice system! This goes to the heart of the role of legal aid providers.

Thank you.

²⁰ Ibid 38, 39. Note: Currently the only ALATs are in the form of 'online chat-bots' which advise on simple issues through a series of pre-determined questions and answers.