



**Attorney General
& Justice**

Review of the delivery of legal assistance services to the NSW community

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EXECUTIVE SUMMARY

The Review of the delivery of legal assistance services to the NSW community has been undertaken to implement a Government election commitment.

The terms of reference for the Review, set by the NSW Attorney General, required the Review to:

- consider whether there is evidence of unmet legal need in the community, particularly in rural and regional areas and for vulnerable or disadvantaged groups
- consider whether current legal assistance services adequately meet community needs
- make recommendations to address any gaps identified in the delivery of legal assistance services
- make recommendations on any other measures aimed at improving the delivery of legal assistance services.

The Attorney General asked that the Review be undertaken, and recommendations be made, in the context of the current economic environment and the NSW Government's strong commitment to putting NSW into a sustainable budgetary position. It was expected that the Review would make recommendations on practical measures that could be taken to improve the delivery of legal assistance services to the NSW community, within current fiscal constraints.

The Attorney General also asked that the Review focus in particular on the services provided by the Court Services area of the Department of Attorney General and Justice, Legal Aid NSW and LawAccess NSW.

Stakeholder consultation was an important part of the Review. Consultations were undertaken through a Consultative Committee (comprising various government and non-government organisations), a consultation meeting with the Public Service Association, and the receipt of written submissions.

Chapter 1 of the Report includes information on the background to the Review, the terms of reference for the Review, the conduct of the Review, and other current reviews relating to legal needs or legal assistance services.

Chapter 2 of the Report considers the role of government in providing and/or funding legal assistance services. It also considers the role and funding of, and services provided by, Court Services, Legal Aid NSW, LawAccess and other key legal assistance service providers, including community legal centres, Aboriginal legal services, family violence prevention legal services, and pro bono legal services.

Chapter 3 of the Report considers the major research and evidence relating to the legal needs of the community, drawing largely on research undertaken by the Law and Justice Foundation of NSW. The research indicates that:

- there is a high level of legal need, particularly in civil law areas
- certain disadvantaged groups are more vulnerable to experiencing particular types of legal problems and face greater challenges in accessing assistance and resolving their problems
- a proportion of people faced with a legal problem either do nothing or handle it on their own. Of those who seek help, the majority approach non-legal advisors.

The research provides pointers to challenges and opportunities for legal assistance service providers.

Chapter 4 of the Report considers the submissions to the Review, together with relevant data and research, and makes recommendations on measures that can be taken to improve the delivery of legal assistance services. The Review makes the following recommendations:

Targeting and tailoring legal assistance services to meet legal needs in the community

1. Recognising that the community's legal needs are diverse and changing, key legal assistance bodies such as Legal Aid NSW, LawAccess and community legal centres, should meet regularly to monitor legal needs, identify high priority needs, and reallocate resources as appropriate.
2. Publicly funded legal assistance services should target and tailor their services to groups or areas in the community with the highest levels of legal need.

LawAccess

3. LawAccess should implement a targeted promotional campaign to raise awareness of its services, aimed at individuals and organisations dealing with disadvantaged and vulnerable people in the community.

Funding of legal assistance services

4. Noting that the National Partnership Agreement on Legal Assistance Services is currently being reviewed, the NSW Government should advocate for increased funding for NSW legal assistance services when a new funding agreement is negotiated with the Commonwealth Government.

Strengthening non-legal pathways to legal assistance services

5. Recognising that non-legal pathways are often the gateway to legal services, the NSW Legal Assistance Forum should examine ways to help non-legal professionals who deal with disadvantaged people to identify any legal issues faced by their clients and to refer those clients to appropriate legal services.

Coordination of legal assistance services

6. The NSW Legal Assistance Forum should continue to play a key coordinating role in the legal assistance sector, including working to promote the minimum standards, endorsed by the Standing Committee of Attorneys-General (as it was then), for seamless access to legal information and services.
7. Legal Aid NSW should investigate the feasibility of expanding the Cooperative Legal Service Delivery Program model state-wide, including to metropolitan areas.

Providing self-help strategies and resources

8. Publicly funded legal assistance services should, where appropriate, identify opportunities to develop and implement self-help strategies and resources to assist those members of the public with capacity to resolve their legal issues.

Using technology to deliver legal assistance services

9. Publicly funded legal assistance services should investigate ways in which technology may be used to deliver services more efficiently and effectively.

Clients with mental health and cognitive impairments

10. Publicly funded legal assistance services should ensure that, where possible and appropriate:
 - (a) relevant staff receive training on dealing with clients with mental health and cognitive impairments
 - (b) clients with mental health and cognitive impairments have continuity of legal representation.

Reducing red tape for government funded legal services

11. The Department of Attorney General and justice should work with Commonwealth and NSW Government agencies that provide funding to non-government legal assistance services to identify ways to reduce red tape for these bodies.

Legal Aid NSW means test

12. Legal Aid NSW should review its means test to ensure that limited legal aid resources are distributed to disadvantaged people most in need and that the policy is transparent, based on objective and measurable criteria, and accessible to legal aid applicants.

Court Services' procedures and documents

13. Court Services should review its procedures and documents with a view to simplifying its procedures and documents. Priority should be given to the most commonly used documents, and any documents which clients may be experiencing difficulties with.

Extending pro bono schemes

14. The legal professional bodies should work with NCOSS to explore the possibility of extending pro bono schemes to:
 - (a) cover provision of legal advice to small to medium community organisations
 - (b) facilitate lawyers sitting on management committees and boards of community organisations on a pro bono basis.

Supporting lawyers working in regional, rural and remote areas

15. The NSW Legal Assistance Forum conduct a stock-take of the progress of its strategies to support lawyers working in rural, regional and remote areas.

Solicitors' conflict of interest rules

16. The Law Society of NSW should consult with publicly funded legal assistance services and consider options for amending the Solicitors' Rules to manage conflicts of interest in situations where a discrete legal service is provided.

Data collection and evidence based policy and service delivery

17. Publicly funded legal assistance services should ensure that legal assistance policy and service delivery are based on sound evidence.
18. To support evidenced based decision making, collaborative working and evaluation of service delivery, public legal assistance services should aim for reliable and consistent data definitions and collection. In particular services should ensure they are collecting the necessary information to monitor success in reaching those in the community with the highest levels of legal need.

GLOSSARY

ALS	Aboriginal Legal Service NSW/ACT
ABS	Australian Bureau of Statistics
ADVO	Apprehended Domestic Violence Order
ATSILS	Aboriginal and Torres Strait Islander Legal Services
CALD	Culturally and linguistically diverse
CaTS	Court and Tribunal Services
CBD	Central business district
CLC	Community Legal Centre
CLCNSW	Community Legal Centres New South Wales
CLE	Continuing legal education
CLSD	Cooperative Local Service Delivery
DAGJ	Department of Attorney General and Justice
FTE	Full-time equivalent
FVPLS	Family violence prevention legal services
GAC	Government Access Centre
HPLS	Homeless Persons' Legal Service
IDRS	Intellectual Disability Rights Service
LIAC	Legal Information Access Centre
LGA	Local government area
NCOSS	Council of Social Service of NSW
NPA	National Partnership Agreement on Legal Assistance Service
PIAC	Public Interest Advocacy Centre
PILCH	Public Interest Law Clearing House
PPF	Public Purpose Fund
RRR	Regional, rural and remote
TTY	Text telephone
WDVCAP	Women's Domestic Violence Court Advocacy Program
WDVCAS	Women's Domestic Violence Court Advocacy Services

1. INTRODUCTION

1.1 Background and terms of reference

One of the NSW Government's election commitments was to ensure improved access to justice by reviewing the funding adequacy of court and legal aid services. To implement this commitment, the NSW Attorney General approved broad terms of reference for the Review (set out below), which recognise that funding is just one factor in improving access to justice and delivering effective legal assistance services to the NSW community.

The object of the Review is to make recommendations on practical measures that can be taken to improve the delivery of legal assistance services to the NSW community. The Attorney General has asked that the Review be undertaken, and recommendations be made, in the context of the current economic environment and the NSW Government's strong commitment to putting NSW into a sustainable budgetary position.

Terms of reference

The Review will:

1. consider whether there is evidence of unmet legal needs in the community, particularly in rural and regional areas and for vulnerable or disadvantaged groups
2. consider whether current legal assistance services adequately meet community needs
3. make recommendations to address any gaps identified in the delivery of legal assistance services
4. make recommendations on any other measures aimed at improving the delivery of legal assistance services.

The Review will have regard to:

1. the role of the government, non-government and private sectors in delivering legal assistance services to the community
2. in relation to the government sector, the particular role of the courts, Legal Aid NSW and LawAccess NSW in delivering legal assistance services to the community
3. co-operation, collaboration and partnerships within and across the government, non-government and private sectors in delivering legal assistance services
4. data and research on the demand on legal assistance services, the justice system, and legal needs
5. demographic data, including state and regional population projections
6. the level of funding provided to legal assistance services
7. the use of technology to deliver legal assistance services.

The Attorney General asked that the Review focus in particular on the services provided by the Court Services area of the Department of Attorney General and Justice (**DAGJ**), Legal Aid NSW, and LawAccess NSW.

1.2 Conduct of the review

The Review has been undertaken by a Review Team comprising senior officers from:

- the Legislation, Policy and Criminal Law Review Division of DAGJ
- Court Services
- Legal Aid NSW
- LawAccess.

The Law and Justice Foundation of NSW provided expert advice to the Review Team during the course of the Review on matters such as the evidence and research in relation to legal needs. The Review Team is grateful for the assistance provided by the Foundation to the Review.

Stakeholder consultation was an important part of the Review. A Consultative Committee, comprising representatives of the following stakeholder organisations, provided input to the review:

- Law Society of NSW
- NSW Bar Association
- Office of the Director of Public Prosecutions
- Public Defender's Office
- Law and Justice Foundation
- Aboriginal Legal Service NSW/ACT
- Community Legal Centres NSW
- Public Interest Advocacy Centre
- Council of Social Service of NSW.

The Public Service Association was also consulted during the review.

The Review received 21 written submissions. **Appendix A** to this Report contains a list of organisations that made a written submission to the Review.

1.3 Other reviews

This Review does not seek to duplicate other current reviews and work relating to legal needs or legal assistance services, but takes these into account as appropriate.

There is currently a review underway of the National Partnership Agreement on Legal Assistance Services (**NPA**). The NPA is an intergovernmental agreement under which the Commonwealth provides funding for certain legal aid services delivered by State and Territory legal aid commissions. The NPA is being reviewed pursuant to a review clause in the NPA to determine whether it is achieving agreed outcomes, objectives and outputs. The review is also considering other Commonwealth-funded legal assistance services, namely community legal services, Aboriginal legal services, and family violence prevention legal services.

The Law and Justice Foundation is currently finalising reports, jointly commissioned by State and Territory Legal Aid Commissions, on an Australia-wide legal needs survey. The Foundation interviewed more than 20,700 people across Australia in 2007/08, with 3,600 of these people living in NSW. It is anticipated that the Foundation's reports will be released in the latter part of 2012. As part of its research, the Foundation has undertaken a comprehensive quantitative assessment of legal needs in Australia. The large sample size will also enable the Foundation to examine the legal needs of specific demographic groups and specific types of legal problems.

It is also noted that there have been previous reviews and inquiries, particularly at the Commonwealth level, concerning access to justice.¹

¹ For example: (1) Attorney-General's Department, *A strategic framework for access to justice in the Federal civil justice system: Report by the Access to Justice Taskforce*, September 2009, and (2) Senate Legal and Constitutional Affairs References Committee, *Access to Justice*, December 2009.

2. LEGAL ASSISTANCE SERVICES

2.1 Introduction

Chapter 2 of this Report considers the role of government in providing and/or funding legal assistance services. It also considers the role and funding of, and services provided by, Court Services, Legal Aid NSW, LawAccess and other key legal assistance service providers, such as community legal centres (CLCs), Aboriginal Legal Service NSW/ACT, family violence prevention legal services, and pro bono legal services.

2.2 The role of government

There are two main reasons why government provides and/or funds legal assistance services, such as legal aid and community legal centres.

First, government is addressing a market failure. People experiencing economic and other disadvantage are often unable to obtain legal advice and representation through the private legal services market. Legal aid is a form of welfare provision by government to people who could otherwise not afford access to the legal system through the private marketplace.

Second, government is providing access to justice for people experiencing economic and other disadvantage. In doing so, government is aiming to ensure equality before the law by ensuring these people are given assistance to understand and protect their rights.

Access to justice and equality before the law promotes a fair, inclusive and cohesive society. They underpin the legitimacy of the legal system and the willingness of individuals to accept and comply with the laws of the land. In other words, they help to uphold the rule of law and prevent social fragmentation.²

2.3 Court Services

Court Services is a business centre within the Courts and Tribunal Services (CaTS) program area of DAGJ. It consists of the District Court of NSW, Local Court of NSW and a number of specialist courts.

District Court of NSW

The District Court of NSW is the largest trial court in Australia and has an appellate jurisdiction. It serves as the intermediate court in NSW and has jurisdiction to deal with:

- all indictable criminal offences (except treason, piracy and murder)
- civil matters with a monetary value of up to \$750,000, and unlimited jurisdiction in motor vehicle accident personal injury matters
- claims for equitable recovery of money or damages up to \$750,000
- applications under Chapter 3 (family provision) of the *Succession Act 2006* which involve property worth not more than \$250,000
- appeals from the Local Court and from administrative and disciplinary tribunals.

The District Court sits permanently at the Downing Centre and John Maddison Tower in the Sydney central business district (CBD), Parramatta, Penrith, and Campbelltown. The Court also has

² Rix, M, *Legal aid, the community legal sector and access to justice: What has been the record of the Australian Government?*, Proceedings of the international symposium on public governance and leadership: Managing governance changes drivers for reconstituting leadership, University of Plymouth UK, May 2007

continuous sittings at Newcastle, Gosford, Wollongong, and Lismore. The Court sits at regional courts as scheduled.

The District Court's permanent Judges include a number of Dust Diseases Tribunal Judges and Judges who are occupied full-time in other specialised jurisdictions (e.g. Administrative Decisions Tribunal, Drug Court, Children's Court). There is one Judicial Registrar.

Assistant Registrars located in Sydney provide court-based mediation in civil proceedings. Local Court Registrars perform the functions of the District Court Registrar for criminal and civil proceedings in all other locations

Local Court of NSW

The Local Court of NSW:

- deals with the majority of criminal and summary prosecutions and committal hearings
- deals with civil claims matters (up to \$100,000)
- hears and determines applications for apprehended violence orders and some family law matters
- hears juvenile prosecutions and deals with care matters involving young people in local courts sitting as Children's Courts and specialist Children's Courts
- investigates deaths and serious fires in its coronial jurisdiction to establish the likely cause of the death or fire.

The majority of people who attend a court in NSW attend the Local Court.

The Local Court sits at 155 locations, ranging from large multi-court complexes in metropolitan areas to part-time courts operating in rural and remote communities. **Appendix B** to this Report contains a complete list of Local Court locations.

For management purposes, Local Court locations are divided into seven regions. 18 per cent of courts are located in metropolitan Sydney, with the remaining 82 percent located in regional areas. Approximately 70 per cent of court houses are more than 100 years old and heritage listed.

Courts in rural areas may also provide services on behalf of other government agencies (e.g. Registry of Births, Deaths and Marriages, NSW Trustee & Guardian, Casino Liquor and Gaming Control Authority). Courts in small rural towns may also host a Government Access Centre (**GAC**). GACs provide information about a range of NSW Government services and process transactions on behalf of a number of NSW Government agencies (e.g. Fisheries NSW, Maritime, Office of State Revenue, Housing NSW, NSW Fair Trading, National Parks and Wildlife Service).

The Local Court currently has permanent Magistrates, as well as Acting Magistrates who sit from time to time.

A Registrar manages each court and is responsible for coordinating the administrative functions of the court registry. Many Registrars also perform a number of quasi-judicial and procedural functions, including conducting call-overs and fulfilling functions set out in legislation. However, Registrars are not required to be legally qualified.

Court registries:

- provide administrative and clerical support
- are responsible for checking and accepting documents filed at court, securing and maintaining court records, issuing court process and providing assistance to a variety of court users

- provide information on court-based and alternative dispute resolution options available to members of the public who have a legal problem
- assist clients with the preparation of simple process or will refer clients to a more appropriate specialist, support or advocacy service
- may accept applications for various courts and tribunals, including the Supreme Court, Administrative Decisions Tribunal, and Consumer Trader and Tenancy Tribunal.

Registry staff do not provide legal advice. It is essential that courts are independent, and are perceived to be independent. It is therefore not appropriate for court registries to have as part of their role the provision of legal advice. It is also noted that the vast majority of court registry staff are not legally qualified.

Court registries continue to offer a chamber service, which includes providing information about court and legal processes, advising people how to fill out applications to the court and other forms, and witnessing of documents. Senior registry staff currently undertake the full-time role of Chamber Registrar in five courts in the Sydney metropolitan area and major regional centres. In all other locations, the local Registrar provides the chamber service as part of their normal duties. There remains a common misconception in the community that Chamber Registrars are legally qualified and/or can provide legal advice. In fact, Registrar and Chamber Registrar positions require no formal qualifications and their roles do not include the provision of legal advice.

Over the last two financial years, business centres across the Attorney General's Division of DAGJ, including Court Services, reviewed their staffing establishments to better align staffing to workloads and budgets. This process involved an analysis of the trends in workloads and staffing across courts. The review resulted in a target staffing level of approximately 940 full-time equivalent (**FTE**) for the Local Courts as of 30 June 2010.

Workloads can change over time and the review process is part of ensuring that resources are allocated to the areas where they are most needed. Court Services reviews the staffing of each location as any vacancy arises. The need for the position, the grade of the position and hours of the position are reviewed prior to recruitment activity.

Future directions

The CaTS program area is currently working on a range of initiatives to improve its service delivery to the community. A key initiative is the Channel Management Program, which aims to make doing business with NSW courts and tribunals simpler, faster and easier. The Program will provide the capacity to meet current and future client service delivery demands by increasing online, telephony and face-to-face service delivery channels. It will also provide streamlined processes and technologies to underpin these channels.

The Channel Management Program includes:

- (a) *Legal eServices*: Legal eServices uses web-based technology to provide registry services to enable people to electronically interact with NSW courts. The NSW Online Registry website commenced in April 2011. It covers both the criminal and civil jurisdictions of the NSW Supreme, District and Local Courts. The Online Registry also provides a gateway to the electronic document filing service known as JusticeLink eServices and the Online Court facility, which are used by lawyers. The Online Court List also commenced in April 2011. It provides up-to-date court listing details, which can be searched by name, details of case, date or jurisdiction using a search tool.

- (b) *CaTS One Website*: CaTS has reviewed and redesigned court and tribunal websites to ensure they are user-friendly and contain comprehensive information for clients. The websites will use a common design and be easier to navigate.
- (c) *NSW Courts Service Centre*: The Service Centre commenced in January 2011. It responds to telephone enquiries and provides support for court clients over the telephone. The Service Centre currently answers over 25,000 calls each month for the Supreme Court, District Court, Jury Service, and the Local Court at 14 Sydney metropolitan locations. It also deals with the payment of court fines. It is envisaged that the Service Centre will, in the future, support the Sheriff's Office in following up and processing payments to enforce civil claims.
- (d) *Legal Information Access Library*: DAGJ and the Legal Information Access Centre (**LIAC**) are working together to identify ways to promote public libraries as places where the community can access court information and services online. Initiatives could include training for public librarians in relation to court information and services, access to online court services and forms through public libraries, and promotional and support material relating to courts being available in public libraries.

2.4 Legal Aid NSW

Legal Aid NSW is established under the *Legal Aid Commission Act 1979*. The principal function of Legal Aid NSW is to provide legal aid and other legal services to disadvantaged people in NSW.

Legal Aid NSW's head office is located in Haymarket, Sydney and it has 22 offices in the wider Sydney metropolitan area and regional NSW. **Appendix C** to this Report contains a complete list of Legal Aid NSW office locations. Legal Aid NSW employs 972 staff (880.28 FTE), 421 in regional offices. 481 staff are lawyers, and 68 have specialist accreditation.

Funding

Legal Aid NSW is funded by the NSW and Commonwealth Governments and the Public Purpose Fund (**PPF**). It also receives some income from interest and client contributions. For 2011/12, Legal Aid NSW's total income is \$241M.

Commonwealth funding to Legal Aid NSW is governed by the National Partnership Agreement on Legal Assistance Services (**NPA**), which commenced in July 2010 and will continue for four years. Funds provided through the NPA can fund representation services for Commonwealth law matters that meet guidelines set out in the NPA, and preventative and early intervention services in State and Commonwealth matters.

The NPA sets objectives and outcomes for agreed reforms including:

- earlier resolution of legal problems
- targeting of legal services to people who are, or are at risk of, social exclusion
- increased collaboration and cooperation to ensure clients receive 'joined up' service provision to address legal and other problems
- a strategic national response to critical challenges and pressures affecting the legal assistance sector.

The key performance indicators in the NPA require Legal Aid NSW to achieve, over the life of the NPA, a 25 per cent increase in total services, and a 30 per cent increase in advice and minor assistance services.

Services

Legal Aid NSW provides a range of legal services for criminal, family and civil law matters falling under both State and Commonwealth law, including information, advice, minor assistance, community legal education and family dispute resolution services. However, its core business is providing representation services through duty work and case grants. Legal Aid NSW policies and guidelines determine eligibility for legal aid, setting out a jurisdiction test which limits the types of matters for which legal aid is available, and the merit and means tests.

The Legal Aid NSW in-house practice provides the full range of services through three discrete practice areas - the Criminal, Family and Civil Law Divisions. Representation services are delivered in partnership with the private profession, through both the in-house practice and private legal practitioners. This is known as the mixed model of service delivery.

In 2010/11, Legal Aid NSW delivered 818,250 services in State and Commonwealth law matters: 594,673 or 72.7 per cent in State matters and 223,577 or 27.3 per cent in Commonwealth matters.

The largest program area in Legal Aid NSW is criminal law. In 2010/11, Legal Aid NSW provided 425,444 criminal law services: 408,964 or 96.1 per cent in State matters and 16,480 or 3.9 per cent in Commonwealth matters. In 2010/11, Legal Aid NSW provided 174,252 criminal law representation services. The 150,310 criminal law duty services provided constituted 89.5 per cent of all duty services provided, and grants of legal aid for criminal matters constituted 61.6 per cent of all grants.

The second largest program area is family law. In 2010/11, Legal Aid NSW provided 180,545 family law services: 153,583 or 84.9 per cent in Commonwealth matters and 27,245 or 15.1 per cent in State matters. In 2010/11, Legal Aid NSW provided 18,639 family law representation services, including 5,398 family duty services and 13,241 grants of legal aid for family law matters.

Under the civil law program, in 2010/11 Legal Aid NSW provided 211,978 civil law services: 158,464 or 74.8 per cent in State matters and 53,514 or 25.2 per cent in Commonwealth matters. In 2010/11, Legal Aid NSW provided 13,984 civil law representation services, including 12,299 duty services and 1,685 grants of legal aid for civil law matters.

In 2010/11, of the total 206,875 representation services provided, private practitioners provided 90,450 or 43.7 per cent of services, including 64,377 or 38.3 per cent of duty services and 26,073 or 67.1 per cent of case services. Private practitioners provided 68,420 or 39.3 per cent of criminal law representation services, 12,457 or 66.8 per cent of family law representation services, and 9,573 or 68.5 per cent of civil law representation services.

Legal Aid NSW also provides the following specialist legal services through its in-house legal practice:

- Children's Legal Service and Youth Hotline
- Prisoners Legal Service
- Adult Drug Court Service
- Youth Drug and Alcohol Court Service.
- Coronial Inquest Unit
- Family Law Early Intervention Unit
- Care and Protection Legal Service
- Child Support Service
- Mental Health Advocacy Service
- Homeless Legal Outreach Program
- Mortgage Hardship Legal Service
- Older Person's Legal and Education Program

- Sexual Assault Communications Privilege Service
- Veterans' Advocacy Service
- Work and Development Order Service
- Client Assessment and Referral Unit.

Unless there are exceptional circumstances, private practitioners undertaking direct access legal aid duty and casework must be on a private practitioner panel. There are 12 panels covering all areas of legal aid work:

- Children's Criminal Law
- Care and Protection – specialist Children's Courts
- Care and Protection – Local/Children's Courts throughout regional NSW
- Veterans'
- Independent Children's Lawyer (Family Court)
- General Criminal Law
- General Family Law
- General Civil Law
- Mental Health Advocacy
- Prisoners Legal Service
- Serious Criminal Law
- Specialist Domestic Violence Practitioners

As at 30 June 2011, there were 3,460 appointments of practitioners to Legal Aid NSW panels. 48 per cent of lawyers appointed to panels are in regional areas.

In accordance with recommendations of the Trial Efficiency Working Group, Legal Aid NSW implemented a Specialist Barrister Panel (Complex Criminal Law) in November 2011, and has opened applications for a Specialist Barrister Panel (Criminal Appellate Matters).

Service delivery in rural & regional areas

Legal Aid NSW has played a lead role in developing a number of regional coalitions and outreach programs to improve service delivery for people disadvantaged by distance.

(a) Cooperative Legal Service Delivery (CLSD) Program

The CLSD Program builds cooperative networks of public legal sector, pro bono and community service providers. There are CLSD partnerships in 11 regions across NSW. The CLSC Program is discussed in further detail in Chapter 4 of this Report.

(b) Outreach programs

Legal Aid NSW's outreach programs aim to provide legal services to people and communities identified as experiencing high levels of social exclusion and unmet legal needs and which face barriers accessing mainstream legal assistance. These include people living in rural and remote areas, homeless people and Aboriginal communities.

Legal Aid NSW provides outreach services at 146 locations across NSW.³ The map at **Appendix D** shows outreach locations across NSW as at May 2012, as well as Legal Aid NSW office locations. Locations for outreach are selected on the basis of socio-economic disadvantage and lack of access

³ Legal Aid NSW, Annual Report 2010/11

to public legal services. Outreach services generally consist of advice and minor assistance, and sometimes also include community legal education.

Legal Aid NSW outreach programs include:

- Family Law Early Intervention Service
- Child Support Service
- Homeless Outreach Legal Service
- Civil Law Outreach
- Regional Outreach Clinic Program.

The Legal Aid NSW Regional Outreach Clinic Program funds private law firms and CLCs to provide monthly advice clinics in 13 rural and remote locations in NSW. Locations have been selected on the basis of high socio-economic disadvantage and relative lack of access to free legal services. Providers were selected through a competitive expression of interest process.

Clinics have been established in:

- Bowraville
- Brewarrina
- Dareton
- Lithgow
- Moree
- Macksville
- Wentworth
- Bega
- Boggabilla
- Lightning Ridge
- Nambucca Heads
- Orange
- Tenterfield.

Administered funding programs

Legal Aid NSW administers the following funding programs:

(a) Community Legal Centre Program

The NSW and Commonwealth Governments and the PPF provide funding for 36 CLCs across NSW. Legal Aid NSW administers the \$18.3 million CLC Program on behalf of the State and Commonwealth Governments.

(b) Women's Domestic Violence Court Advocacy Program (WDVCAP)

The NSW Government provides funding to Legal Aid NSW for the 28 Women's Domestic Violence Court Advocacy Services (**WDVCAS**), which operate at 108 Local Court locations. For 2011/12, WDVCAP funding is \$7.213M. WDVCAS provide advocacy, support and information services for women and children seeking apprehended domestic violence orders (**ADVOs**) on ADVO list days. In 32 Local Court locations, the WDVCAS is complemented by the Domestic Violence Practitioner Scheme, which involves practitioners appointed to the Legal Aid NSW Specialist Domestic Violence Practitioners panel. In 2010-2011 the WDVCAP provided 72,086 services to 20,827 women.

Clients

Of the Legal Aid NSW clients provided with legal representation services in 2010/11:

- 25.8 per cent were female
- 19.7 per cent had dependents
- 13.5 per cent were from a non-English speaking background
- 3.3 per cent required an interpreter
- 50.1 per cent received a Commonwealth benefit
- 9.4 per cent were Aboriginal
- 15.9 per cent were aged under 18
- 81.9 per cent were aged between 18 to 60
- 2.2 per cent were aged over 60
- 37.0 per cent were from rural and regional areas (includes Newcastle and Wollongong).

The Legal Aid NSW 2011 Client Satisfaction Survey gauged satisfaction with legal advice and minor assistance services for criminal, family and civil law matters. Between May and June 2011, 502 Legal Aid NSW clients were contacted and interviewed. The survey found that satisfaction with services was high: satisfaction with services provided by lawyers was at 86 per cent; and satisfaction with services provided by clerical staff was at 93 per cent.

Significant partnerships

Legal Aid NSW has in place the following significant partnerships:

(a) Aboriginal Legal Service (ALS)

Legal Aid NSW and the ALS signed a Memorandum of Understanding in 2006 and a Statement of Commitment in 2011, under which both organisations agree to work together to:

- Deliver high quality, culturally sensitive and innovative legal services to Aboriginal people
- Improve the justice system for Aboriginal people
- Share information and resources, and support the professional development of each other's staff.

As part of this collaborative approach, Legal Aid NSW has:

- funded two ALS Aboriginal Field Officers for civil and family law matters at Coffs Harbour and Walgett
- funded two ALS Field Officers at Bathurst and Nowra under the Work and Development Order Service
- provided salary support for 3.5 ALS care and protection Legal Officer positions
- provided civil law advice clinics at ALS offices in Griffith, Lismore, Nowra, Redfern, Walgett and Wollongong, and family law advice clinics at ALS offices in Parramatta and Redfern.

(b) NSW Legal Assistance Forum (NLAF)

Legal Aid NSW works closely with other government and non-government legal service providers in NSW as a member of NLAF. The CEO of Legal Aid NSW is the current chair of NLAF. NLAF is discussed in more detail in Chapter 4 of this Report.

2.5 LawAccess

LawAccess is a free Government telephone and Internet service that provides legal information, legal advice and managed referrals for people who have a legal problem. It provides a central point of access to legal assistance services for the people of NSW.

LawAccess was officially launched in July 2002 and is a partnership between DAGJ, Legal Aid NSW, the Law Society of NSW, and the NSW Bar Association. Since it commenced operations in September 2001, LawAccess has assisted more than 1,314,600 callers and provided 138,300 advice sessions.⁴ Services are provided via a centralised contact centre facility located at Parramatta and the websites LawAccess Online and LawAssist.

Funding

LawAccess receives funding as a business centre within DAGJ, and from Legal Aid NSW and the PPF. It also receives other grants and a management fee to manage the Registry of Births, Deaths and Marriages' call centre. For 2011/12, LawAccess' total funding is approximately \$5,739,851⁵ (excluding depreciation and Crown liabilities).

LawAccess has 60.4 FTE staff and also a pool of casual staff it draws on during high demand periods.

Services

LawAccess provides a toll free telephone service from 9am to 5pm Monday to Friday, and a text telephone (TTY) service. LawAccess also provides free interpreter calls through the Telephone Interpreter Service⁶.

Table 1 shows that the demand on LawAccess' telephone service has increased since 2002/03.

Table 1: Demand on LawAccess' telephone service 2002/03 to 2010/11⁷

	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11
Callers assisted	73,896	92,575	110,591	108,797	131,452	160,662	191,616	198,415	197,653
Legal advice sessions	10,344	9,139	15,883	12,533	15,031	14,748	18,107	18,141	20,480

LawAccess prioritises callers from regional and rural areas when providing legal advice. **Table 2** shows the number of legal advice matters by region and the rate of legal advice matters per 1,000 persons for 2009.

⁴ Data to 30 June 2011.

⁵ Includes funding for LawAssist and LawPrompt services.

⁶ 1,761 CALD callers contacted LawAccess using the Telephone Interpreter Service in 2010/11.

⁷ Data from PABX, Genesys telephony system and Siebel CRM.

Table 2: Number and rate of legal advice matters by region⁸

Region	Number of legal advice matters	Rate of matters per 1,000 persons per annum
Hunter	2,191	3.72
Gosford-Wyong	1,728	5.80
St George-Sutherland	1,238	2.92
Mid North Coast	1,210	4.25
Inner Sydney	990	3.16
Outer Western Sydney	978	3.19
Illawarra	977	2.48
Blacktown	966	3.56
Richmond-Tweed	895	4.08
Fairfield-Liverpool	833	2.42
Canterbury-Bankstown	789	2.63
Central Western Sydney	783	2.58
South Eastern	732	3.70
Outer South Western Sydney	731	3.14
Central Northern Sydney	608	2.11
Central West	711	4.16
Eastern Suburbs	675	2.93
Lower Northern Sydney	608	2.11
Northern Beaches	570	2.53
North Western	556	5.00
Northern	535	3.1
Murrumbidgee	466	3.16
Inner Western Sydney	380	2.26
Murray	308	2.79
Far West	88	3.99

The LawAccess website, LawAccess Online (www.lawaccess.nsw.gov.au), provides access to over 2,000 plain language legal resources from over 200 government and community organisations. The website includes legal resources in 33 community languages and short translated audio messages regarding LawAccess' services. In 2010/11, 197,653 visitors accessed LawAccess Online.

The LawAssist website (www.lawaccess.nsw.gov.au/lawassist) contains resources for self-represented litigants. It provides information about both law and procedure, and practical tools for people navigating the court process, e.g. interactive guides that take users through their options. Topics covered include small claims debts, motor vehicle accidents, apprehended personal and domestic violence orders, and fines. LawAccess is planning to include short videos to further assist self-represented litigants with the court process.

Table 3 shows that usage of LawAssist has steadily increased since it was launched. There were a total of 121,162 visitors to the LawAssist website in 2010/11.

⁸ Law and Justice Foundation of NSW, *Data Digest Online*.

Table 3: Visitors to LawAssist website⁹

	Jul 2010	Aug 2010	Sep 2010	Oct 2010	Nov 2010	Dec 2010	Jan 2011	Feb 2011	Mar 2011	Apr 2011	May 2011	Jun 2011
Visitors	4,398	6,1847	5,972	6,798	8,191	7,901	9,284	10,035	12,155	14,275	16,748	19,221

Customers

LawAccess is available to everyone, but targets members of the community who have difficulty accessing free legal services. This includes people living in regional and rural areas, Aboriginal people, people from culturally and linguistically diverse communities (**CALD**), people with a disability, and people at risk of harm.

In 2010/11, 35 per cent of legal information and legal advice sessions were provided to callers from regional, rural and remote NSW, and 4.81 per cent of customers identified as Aboriginal.

LawAccess conducts an annual customer satisfaction survey through an independent research company. The surveys also collect demographic data. The 2011 survey indicated that:

- 8.5 per cent of people surveyed spoke a language other than English at home
- 12.1 per cent had a disability
- 40 per cent were on a Centrelink benefit or pension
- 27.8 per cent had a weekly net income of less than \$400.

Service co-operation

LawAccess works closely with Legal Aid NSW, the Local Court, CLCs and other legal and non-legal assistance services. For example, LawAccess:

- is represented on the CLSD Steering Committee and attends CLSD meetings across the State in order to increase service co-operation and awareness of regional and rural issues
- is an active member of NLAF
- is a member of the Legal Information and Referral Forum convened by the Law and Justice Foundation of NSW
- is represented on the Board of LIAC.

2.6 Community legal centres

There is a network of 39 CLCs in NSW, which provide a range of services including:

- information and referrals
- advice, minor assistance, representation and casework
- outreach services
- community education
- training of community workers.

Of the 36 CLCs funded under the CLC program, 14 are located outside of metropolitan Sydney. **Appendix D** to this Report contains a list of CLCs funded through the CLC Program.

⁹ Source: Maxamine

CLCs provide services in the areas of civil law, family law and criminal law, although not all CLCs provide services in each of these areas. There are both generalist and specialist CLCs, with specialist CLCs providing services in relation to particular areas of the law or to particular client groups, e.g. Welfare Rights Centre, Intellectual Disability Rights Service.

CLCNSW, the peak body for CLCs in NSW, advises that in 2010/11, CLCs in NSW:

- assisted 48,291 clients (an increase of 5 per cent from the previous year)
- provided 46,920 instances of legal information (31,770 in relation to civil law, 11,851 in relation to family law, and 3,299 in relation to criminal law)
- provided 60,222 instances of legal advice (41,719 in relation to civil law, 15,325 in relation to family law, and 3,178 in relation to criminal law)
- opened 9,014 new cases and finalised 7,922 cases
- provided 1,047 community legal education programs
- undertook 466 instances of law reform or legal policy work.¹⁰

Table 4 shows the top 10 matter types which CLCs assisted clients with in 2010/11.

Table 4: Top 10 matters CLCs assisted clients within 2010/11¹¹

Problem type	Number
Family or domestic violence order	5,264
Child contacts or contact orders	5,123
Credit and debt (consumer credit)	4,963
Credit and debt owed by client	3,972
Government pensions/benefits/allowances	3,930
Family or domestic violence	3,766
Injuries compensation	2,940
Credit and debt recovery (court)	2,429
Child residency	2,279
Road traffic and motor vehicle regulatory offences	2,161

CLCs receive most of their funding from the Commonwealth and NSW Governments and the PPF. In 2011/12, the Commonwealth Government provided funding of \$7.65M, the NSW Government provided \$5.39M, and the PPF provided \$5.26M. CLCs also receive some funding from philanthropic organisations and through donations.

A 2006 review of CLCs found that CLCs are a “...well established, well-regarded and effective network of Centres providing strategic and cost-efficient legal services to socially and economically disadvantaged people in NSW.”¹²

Through their early intervention services, CLCs play an important role in reducing potential long-term costs to the community. Early intervention services aim to educate people about the law so that they can avoid legal disputes or, where they are already involved with the law, assist them to resolve disputes early without resorting to litigation.¹³

¹⁰ Submission from CLCNSW to the Review, p.5.

¹¹ Submission from CLCNSW to the Review, pp.5-6.

¹² Legal Aid NSW, *Review of the NSW Community Legal Centre Funding Program: Final report*, July 2006, p.166.

¹³ Submission from CLCNSW to the review, p.3.

2.7 Aboriginal Legal Service NSW/ACT

The Aboriginal Legal Service NSW/ACT (ALS) provides legal advice and court representation to Aboriginal and Torres Strait Islander people in NSW and the ACT. Legal assistance services are provided in the areas of criminal law and children's care and protection law. People with family and civil law matters are referred to other legal assistance services.

The ALS also undertakes community legal education, provides prisoner through-care, offers a custody notification service, and participates in law reform and advocacy activities.

The ALS has 23 offices and 185 Aboriginal and non-Aboriginal staff across NSW and the ACT. Of the 20 offices in NSW, all but two are located in regional, rural and remote areas. **Appendix F** lists ALS office locations.

In 2010/11, the ALS assisted 14,355 people through casework and representation, provided 3,969 duty services, and 4,652 advice and minor assistance services. These services were provided predominantly in relation to criminal law matters, although there were a small number of care and protection matters.¹⁴

The ALS is funded by the Commonwealth Government under its Indigenous Legal Aid and Policy Reform Program.

2.8 Family violence prevention legal services

The Commonwealth Government funds family violence prevention legal services (FVPLS). The FVPLS' primary function is to provide legal assistance, casework, counselling and court support to Indigenous adults and children who are victims/survivors of family violence, including sexual assault and abuse, or who are at immediate risk of such violence. FVPLS can also provide a law reform and advocacy function, community legal education, and early intervention and prevention activities.¹⁵

In NSW, FVPLS units are funded at:

- West Kempsey – the service area covers the Nambucca Valley (Bowraville, Macksville and Nambucca Heads), Bellbrook, South West Rocks/Crescent Head, Port Macquarie and Wauchope
- Moree – the service area covers Mungindi, Boggabilla and Toomelah
- Forbes – the service area covers Parkes, Lake Cargelligo, Murrin Bridge, Condobolin, Peak Hill, West Wyalong, Griffith, Cowra, Leeton and Forbes
- Bourke – the service area covers Bourke and Brewarrina LGA
- Broken Hill – the service area covers Broken Hill LGA, Wilcannia and Menindee
- Walgett – the service area covers Collarenebri, Goodooga, Grawin and Lightning Ridge.¹⁶

2.9 Pro bono legal services

Legal practitioners provide pro bono legal services on an informal basis and through formal, structured pro bono schemes.

The Law Society of NSW and the NSW Bar Association encourage their members to provide pro bono legal services as part of their wider professional responsibility as legal practitioners. The conduct of pro bono work has been, and continues to be, part of practice traditionally adopted by the legal

¹⁴ Aboriginal Legal Service NSW/ACT, Annual Report 2010/11.

¹⁵ Attorney-General's Department, *Family Violence Prevention Legal Services Program Guidelines 2010/11*

¹⁶ Attorney-General's Department, *Family Violence Prevention Legal Services Program Guidelines 2010/11*

profession.¹⁷ It embodies and reflects the view of the legal profession that a person's rights and access to justice should not be diminished because of indigence.¹⁸

Both the Law Society and the Bar Association run pro bono schemes. There are also a number of other pro bono schemes in NSW, including the scheme operated by the Public Interest Law Clearing House NSW (**PILCH**), duty lawyer schemes that operate out of some courts and tribunals, and court appointed pro bono schemes.

Law Society's Pro Bono Scheme

The Law Society's Pro Bono Scheme has operated since 1992 and refers eligible members of the community needing legal assistance to firms willing to provide legal services. Legal services are either provided free or at substantially reduced fees. The administrative support for the Scheme is funded by the PPF.

To be eligible for legal services through the scheme, a person must have been refused a grant of legal aid, undergo a means and merits test, and have a matter that falls within one of the following areas: administrative law, apprehended violence order applications, business law for non-profit organisations, child care and protection, criminal law, debt and credit matters, discrimination law, employment/industrial law, family law, immigration law, tenancy matters, and wills and estates.

Bar Association's Legal Assistance Referral Scheme

The Bar Association's Legal Assistance Referral Scheme is similar to the Law Society's Pro Bono Scheme in that it refers eligible members of the community needing legal assistance to barristers. Legal services are either provided free, at reduced rates, or on a speculative basis (i.e. the person only pays the barrister on a successful outcome and/or the establishment of a costs entitlement and/or the actual recovery of costs from the other party). The administrative support for the Scheme is funded by the PPF.

To be eligible for assistance through the Scheme, people must undergo a means and merits test. Certain matters are excluded from the Scheme, e.g. personal injury, medical negligence, neighbourhood disputes and apprehended violence orders.

The Bar Association receives 500-600 enquiries per year about legal assistance. In 2010/11, 282 formal applications for assistance were received (an 11.5 per cent increase on the previous year). 119 of these applications were eligible for referral to a barrister.¹⁹

Public Interest Law Clearing House

PILCH is a membership-based non-profit organisation that engages in advocacy, and facilitates and delivers legal services to individuals and non-profit organisations.

PILCH connects the expertise of private lawyers with individuals and non-profit organisations seeking legal assistance for civil matters. PILCH assesses requests for assistance according to a merit and means test and whether a matter meets certain public interest criteria. PILCH coordinates legal assistance for eligible individuals and organisations, and refers matters to PILCH members to provide pro bono assistance.

¹⁷ Law Society of NSW *Pro Bono Policy*, Adopted 26 June 2009

¹⁸ NSW Bar Association, *Annual Report 2006*, p.36

¹⁹ NSW Bar Association, *Annual Report 2010/11*, p.40

PILCH is primarily funded by annual membership fees, the PPF, and through the Community Legal Centre Partnership Program administered by Legal Aid NSW.

In 2010/11, PILCH received 574 requests for assistance, referred 146 matters to its members to handle, and handled 28 cases in house.²⁰

Duty lawyers & court appointed pro bono schemes

The Bar Association and the City of Sydney district of the Law Society operate a duty barrister and solicitor at the Downing Centre Local and District Courts in Sydney. Barristers and solicitors are rostered to attend each day at the courts. Over 80 barristers have volunteered for the duty barrister scheme. Two duty barristers see an average of four clients each per day, which equates to approximately 2,000 members of the public each year.²¹

Court appointed pro bono schemes operate in courts such as the Federal Court, Federal Magistrates Court, Supreme Court of NSW, Land and Environment Court of NSW, and the District Court of NSW.

²⁰ PILCH, *Annual Report 2010/11*, p.16

²¹ NSW Bar Association, *Annual Report 2010/11*, p.41

3. LEGAL NEEDS OF THE COMMUNITY

3.1 Introduction

Chapter 3 considers the major research and evidence relating to the legal needs of the community, including:

- the incidence and types of legal events being experienced
- how people respond when faced with legal events, including where they go for assistance and barriers to assistance
- how legal events are resolved
- conclusions that can be drawn from the available research and evidence.

To date, the most comprehensive study of legal needs has been undertaken by the Law and Justice Foundation of NSW. The study involved a legal needs survey of people living in six disadvantaged areas in NSW:

- three Sydney suburbs (Campbelltown, Fairfield and South Sydney)
- one major regional centre (Newcastle)
- two rural/remote areas (Nambucca and Walgett).

The areas were selected on the basis that they had a relatively high-risk score for cumulative socioeconomic disadvantage. In total, 2,431 people were surveyed during 2003. The Law and Justice Foundation published the results of this study in a 2006 report.²²

The Law and Justice Foundation is currently finalising a report on an Australia-wide legal needs survey undertaken in 2007/08. The survey was jointly commissioned by State and Territory legal aid commissions. The report on this survey will be released in the latter part of 2012. The Review has been advised that the findings of the 2012 report for NSW are generally consistent with the findings of the Foundation's 2006 report.

Access to justice issues have also been recently considered by the Senate Legal and Constitutional Affairs References Committee in its December 2009 report, *Access to justice*,²³ and by the Commonwealth Attorney-General's Department's Access to Justice Taskforce in its September 2009 report, *A strategic framework for access to justice in the Federal civil justice system*.²⁴ The latter report drew on the findings in the Law and Justice Foundation's 2006 report.

3.2 Incidence & types of legal events

The Law and Justice Foundation's 2006 report found that over two-thirds of people surveyed as part of the study reported experiencing one or more legal events in the previous 12 months, suggesting a high level of legal need across the six regions. The 10 most frequent types of legal events related to:

- general crime (experienced by 27 per cent of all people surveyed)
- housing (23 per cent)
- consumer (22 per cent)
- government (20 per cent)
- accident/injury (19 per cent)
- wills/estates (15 per cent)

²² Law and Justice Foundation of NSW, *Justice made to measure: NSW legal needs survey in disadvantaged areas*, March 2006

²³ Senate Legal and Constitutional Affairs References Committee, *Access to justice*, December 2009

²⁴ Access to Justice Taskforce, *A strategic framework for access to justice in the Federal civil justice system*, September 2009

- employment (12 per cent)
- credit/debt (12 per cent)
- family (nine per cent)
- education (seven per cent).²⁵

The Foundation's report also found that people from certain socioeconomic backgrounds showed greater vulnerability to experiencing particular types of legal events:

- people with a chronic illness or disability had a higher incidence of a wide range of civil, criminal and family legal events, reporting higher rates for nine of the 10 most frequent types of events
- people at different life stages tended to experience different types of legal events:
 - general crime and accident/injury events peaked between 15 to 24 years
 - credit/debt, government and housing events peaked between 25 to 34 years
 - family events peaked between 35 to 44 years
 - wills/estates and employment events peaked between 45 to 54 years
 - people aged 65 or over reported lower rates of most types of events
- higher income earners reported higher rates of particular types of legal events, including consumer (e.g. buying or selling property), housing, wills/estates, general crime (e.g. having property vandalised or stolen), accident/injury
- Indigenous people had a higher incidence of credit/debt, employment and family legal events.²⁶

3.3 Response to legal events

The Law and Justice Foundation's 2006 report found that when faced with legal events people responded by:

- seeking help in 51 per cent of cases
- doing nothing in 33 per cent of cases
- handling it on their own in 16 per cent of case.²⁷

People surveyed were more likely to seek help for accident/injury, employment and wills/estates events, and less likely to seek help for consumer and human rights events. Younger people, older people, Indigenous people, and people with low education levels were less likely to seek help.²⁸

Of those people who sought help for their legal events:

- approximately three-quarters sought help from non-legal advisors, such as friends or relatives, or non-legal professionals in the medical, health, counselling, welfare, government, trade union, accounting insurance, school or policing contexts
- approximately one-quarter sought help from traditional legal advisors, such as private lawyers, the Local Court, Legal Aid NSW, Law Access, ALS, CLCs.²⁹

People surveyed identified the following barriers to obtaining assistance when faced with legal events:

- difficulty getting through on the phone (identified by 18 per cent)
- delays in getting a response (17 per cent)
- difficulty getting an appointment (11 per cent)
- lack of local or easily accessible services (eight per cent)

²⁵ Law and Justice Foundation of NSW, *Justice made to measure: NSW legal needs survey in disadvantaged areas*, March 2006, p.xix

²⁶ *Ibid*, pp.xix-xx

²⁷ *Ibid*, p.xx

²⁸ *Ibid*, pp.xx-xxi

²⁹ *Ibid*, p.xxi

- problems with opening hours (eight per cent)
- difficulty affording the assistance (six per cent).³⁰

3.4 Resolution of legal events

The Law and Justice Foundation's 2006 report found that of the people surveyed who had experienced legal events:

- 44 per cent resolved the events on their own (either with or without legal advice)
- 39 per cent had events that were unresolved or in the process of being resolved
- five per cent resolved their events through court or tribunal proceedings
- 11 per cent resolve their events through some other way.³¹

These findings are consistent with NSW Local Court data, which indicate that only about five per cent of civil claims ultimately proceed to hearing, i.e. 95 per cent of claims are settled or otherwise disposed of.³²

Older people and people with a chronic illness or disability had lower rates of resolution. Some types of legal events were more difficult to resolve, including business, employment, government, health, and family law issues.³³

3.5 Conclusions from the research & evidence

A number of observations can be made, and conclusions drawn, from the Law and Justice Foundation's 2006 report. These include the following:

- Members of the community primarily experience civil law issues, and there is a need for services in the civil law area
- Of those people who seek help for their legal problems, the majority seek help from non-lawyers. There is opportunity for non-legal professionals to act as gateways to legal assistance services. There is also opportunity for a more coordinated response from legal and non-legal services for people with multiple legal and non-legal needs
- A proportion of people are able to resolve legal problems on their own. Self-help strategies and tools may be useful for people who have the capacity to deal with their own legal problems or have easily solvable problems
- There is a high level of legal problems that are unresolved
- Certain groups in the community experience greater challenges when faced with legal problems. There is a need to more effectively tailor legal assistance services to meet the needs of different groups in the community, particularly disadvantaged and vulnerable groups.

³⁰ *ibid*, pp.xxi-xxii

³¹ *ibid*, p.xxii

³² Attorney General's Department, *Alternative Dispute Resolution Blueprint Discussion Paper*, April 2009

³³ *ibid*, pp.xxii-xxiii

4. DISCUSSION & RECOMMENDATIONS

4.1 Introduction

Chapter 4 of the Report considers the submissions to the Review, together with relevant data and research, and makes recommendations on measures that can be taken to improve the delivery of legal assistance services.

While all submissions have been carefully considered as part of the Review, Chapter 4 does not address each and every issue raised in the submissions. Instead, the Review considers the key themes and ideas that have emerged from the submissions and consultations.

The Review aims to make practical recommendations on what can be done to improve the delivery of legal assistance services, taking into account fiscal constraints.

4.2 Targeting & tailoring legal assistance services to meet legal needs in the community

The Law and Justice Foundation's 2006 report found that there are:

- particular areas of law where people are experiencing higher rates of legal problems, including crime, housing, consumer, and government
- particular demographic groups which are more vulnerable to experiencing legal problems, including people with disabilities, young people, older people, and Indigenous people.³⁴

Submissions to the Review identified the same areas of law, as the Law and Justice Foundation, where people experience higher levels of legal need. Submissions also identified the following further areas of law where they believe legal need exists:

- domestic violence
- credit and debt
- employment
- accident and injury
- welfare
- discrimination
- immigration
- wills and estates
- family law.³⁵

Submissions to the Review also identified the same demographic groups, as the Law and Justice Foundation, which are more vulnerable to experiencing legal problems. Submissions also identified the following further groups which have higher levels of legal need:

- welfare recipients, including unemployed people
- people with a mental illness
- single parents
- newly arrived migrants
- ex-prisoners
- people living in remote areas.³⁶

³⁴ *ibid*, pp.xix-xx

³⁵ These areas of law were identified by a number of submissions, including those from CLCNSW, Central Coast CLC, Illawarra Legal Centre and Women's Legal Services.

The Law and Justice Foundation's findings and submissions to the Review on areas of law where people are experiencing problems, and particular demographic groups which are more vulnerable to experiencing legal problems, reflect broader demographics and trends. Some of the key demographics and trends are considered below.

Ageing population

Australia, like most developed countries, has an ageing population. In June 2007, people aged 65 years and over made up 13 per cent of Australia's population. This is projected to increase to around 25 per cent in 2056 and to around 28 per cent in 2101. In June 2007, people aged 85 years and over made up 1.6 per cent of the Australian population. This is projected to increase to around 7.3 per cent in 2056 and to around 9.3 per cent in 2101.³⁷

There is a higher proportion of older people living in rural and regional areas than in Sydney. The Mid-North Coast had the highest proportion of residents aged 65 years and over in 2010 (20.4 per cent), followed by the Far West (18.7 per cent), and Richmond-Tweed (18 per cent). Sydney was the only area with a lower proportion of people aged 65 years and over than the state as a whole (12.3 per cent), reflecting the fact that younger people move to Sydney to pursue education and work opportunities.³⁸

Indigenous population

The number of people identified as being of Aboriginal and/or Torres Strait Islander origin in the 2011 Census was 548,370, representing 2.5 per cent of the total Australian population.³⁹ This is an increase of 20 per cent since the 2006 Census. Of those people who identified as Aboriginal or Torres Strait Islander, 31 per cent reside in NSW (the highest percentage of all states and territories).⁴⁰

The Indigenous population has a much younger age structure than the non-Indigenous population. In 2011, the median age of the Indigenous population was 21 years, compared to 37 years for the non-Indigenous population. Children aged under 15 years comprised 36 per cent of the total Indigenous population. People aged 65 years and over represented only 4 per cent of the total Indigenous population.⁴¹

Across Australia, one third of the Indigenous population live in major cities. In NSW, nearly 32 per cent of the Indigenous population live in the Greater Sydney area.⁴²

People with disabilities

Just under one in five Australians (18.5 per cent or 4 million people) reported having a disability in 2009. A further 21 per cent had a long-term health condition that did not restrict their everyday activities. Of those with a disability, 87 per cent had a specific limitation or restriction, i.e. an

³⁶ These groups were identified by a number of submissions, including those from CLCNSW, the Immigration Advice and Rights Centre, Council of Social Service of NSW (**NCOSS**), and Western NSW CLC.

³⁷ Australian Bureau of Statistics (**ABS**), *Population projections, Australia, 2006 to 2101*, www.abs.gov.au; ABS, *Population by age and sex, Australian states and territories*, June 2010, www.abs.gov.au

³⁸ ABS, *Population by age and sex, Regions of Australia*, 2010, www.abs.gov.au

³⁹ ABS, 2011 Census counts – Aboriginal and Torres Strait Islander Peoples, www.abs.gov.au.

⁴⁰ Ibid

⁴¹ Ibid

⁴² Ibid

impairment restricting their ability to perform communication, mobility or self-care activities, or a restriction associated with schooling or employment.⁴³

As people grow older, there is an increased tendency to develop conditions that cause disability. This strong link between age and disability is evident in that younger people are less likely to report disability than older people. Of those aged four years and under, 3.4 per cent were affected by disability, compared with 40 per cent of those aged 65-69 years and 88 per cent of those aged 90 years and over.⁴⁴

Recent migrants

At November 2010, there were over 1.4 million people in Australia who were born overseas, aged 15 years or over on arrival, and who had arrived in Australia after the year 2000. The United Kingdom remains the top country of birth of recent migrants to Australia, followed by India and China. Asia is fast becoming a major source of recent migrants. Eleven per cent of recent migrants are born in the regions of Sub-Saharan Africa, and 7.4 per cent are born in North Africa and the Middle East.⁴⁵

At November 2010, the majority of recent migrants were living in NSW (35 per cent). Migrants arriving after 1996 were responsible for an 11 per cent growth in the population of Sydney.⁴⁶

The unemployment rate of recent migrants is 8.5 per cent, compared with 4.6 per cent for the Australian-born.⁴⁷

Low economic resource households

Australia experienced nearly two decades of economic growth from the end of the recession in the early 1990s to the start of the downturn associated with the Global Financial Crisis in the late 2000s. This led to increases in income and wealth, although the benefits were felt by some more than others.⁴⁸

In 2009/10, 23 per cent of Australians (4.9 million people) lived in low economic resource households, i.e. they had relatively low income and wealth.⁴⁹

Australian Bureau of Statistics data and research indicates that:

- between 2003/04 and 2009/10, incomes of people in low economic resource households increased in real terms by 21 per cent, compared with 27 per cent for other households
- between 2003/04 and 2009/10, the net worth of low economic resource households had not increased significantly, while the average net worth across all other households increased by 29 per cent
- in 2009/10, the net worth of people in low economic resource households was one tenth of the average across all other households (\$509,800)
- low economic resource households had, on average, more members (2.9 people) than other households (2.5 people)

⁴³ ABS, *Disability, Australia*, 2009, www.abs.gov.au

⁴⁴ Ibid

⁴⁵ ABS, *Perspectives on migrants*, 2011, www.abs.gov.au

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ ABS, *Australian social trends: Life on "Struggle Street" - Australians in low economic resource households*, March Quarter 2010, www.abs.gov.au

⁴⁹ Ibid

- children were twice as likely as adults to live in low economic resource households. 1.6 million children aged 0 to 14 years (38 per cent) lived in these households, compared with 3.3 million people aged 15 years and over (19 per cent)
- nearly 60 per cent of sole parent households were classified as having low economic resources
- 20 per cent of people aged 65 years and over who were living alone were classified as having low economic resources
- 89 per cent of all public housing tenants lived in low economic resource households
- 24 per cent of low economic resource households reported spending more money than they received most weeks, twice the rate of other households (12 per cent). This indicates the extent to which low economic resource households may be forced to draw on their limited assets or rely on credit from week to week to “make ends meet”
- 43 per cent of low economic resource households reported that they would not be able to raise \$2,000 in a week for something important, compared to seven per cent of other households
- 10 per cent of low economic resource households reported that they had gone without meals in the past 12 months due to cash flow problems, while eight per cent had resorted to pawning or selling possessions. By contrast, only one per cent of other households had been forced to either of these lengths
- 31 per cent of low economic resource households reported that they had been unable to pay a utility bill on time in the past 12 months, and 20 per cent had sought financial help from friends or family due to cash flow problems, compared with eight and five per cent respectively among other households
- 10 per cent of low economic resource households were forced to seek assistance from welfare or community organisations, compared with one per cent of other households).⁵⁰

Recommendations

The community’s legal needs are diverse, reflect broader demographics and trends, and can change over time. Given that finite resources are available to meet the community’s legal needs, the Review recommends that key legal assistance bodies work together to monitor legal needs, identify high priority needs, and reallocate resources as appropriate. The Review also recommends that publicly funded legal assistance services should target and tailor their services to groups or areas in the community with the highest levels of legal need. These recommendations are supported by the Consultative Committee for the Review.

Key legal assistance bodies such as Legal Aid NSW, LawAccess and community legal centres already provide a range of data to the Law and Justice Foundation. The data held by the Foundation (together with other available data and research) is a valuable resource that can be used by legal assistance bodies to inform policy and program development, service delivery and resource allocation.

Recommendation 1

Recognising that the community’s legal needs are diverse and changing, key legal assistance bodies such as Legal Aid NSW, LawAccess and community legal centres, should meet regularly to monitor legal needs, identify high priority needs, and reallocate resources as appropriate.

Recommendation 2

Publicly funded legal assistance services should target and tailor their services to groups or areas in the community with the highest levels of legal need.

⁵⁰ Ibid

4.3 LawAccess

The LawAccess model

As noted in Chapter 2 of this Report, LawAccess provides a central point of access to legal assistance services for the NSW community. The LawAccess model of a central point of access, which acts as a “triage” to legal information, legal advice and managed referrals is considered to be a best practice approach.

In its work on access to justice, the Commonwealth Attorney-General’s Department recognised that early access to legal information is vital to reducing barriers to justice and overcoming social exclusion.⁵¹ Similarly, the Senate Legal and Constitutional Affairs References Committee recognised that early intervention and “triage” serve an invaluable purpose in diverting people away from the justice system on more appropriate, efficient and cost effective pathways.⁵² Research by the Law and Justice Foundation also supports the model of a central point of contact to potentially increase the referral of disadvantaged people to free legal assistance⁵³.

In July 2011, the Standing Committee of Attorneys-General (as it was then) endorsed a set of principles and minimum standards for providing seamless access to legal information and services to the community. One of the minimum standards is that:

States/territories provide a central telephone service for legal information, referrals and advice, i.e. a 1300 or 1800 number supported by a website. Such a service should be able to provide information on a broad range of issues, and have the capacity to make appropriate referrals to face-to-face and specialist services.

The NSW Bar Association’s submission to the Review, which was endorsed by the Law Society of NSW, “strongly supports the role played by LawAccess in providing a first port of call for many people seeking legal assistance.”⁵⁴

LawAccess’ performance

LawAccess measures its performance against measures that include:⁵⁵

- 90 per cent of customers assisted within 5 minutes
- <= 6 per cent of customers hang-up
- 90 per cent of customers are satisfied with the overall service provided by LawAccess NSW.

Table 5 shows LawAccess’ performance against each of these measures between 2006/07 and 2010/11.

Table 5: LawAccess’ performance against key performance measures⁵⁶

⁵¹ Commonwealth Attorney-General’s Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System*, September 2009, p.77

⁵² Senate Legal and Constitutional Affairs References Committee, *Access to Justice*, December 2009, p.xvii

⁵³ See Clarke, S & Forell, S, Law and Justice Foundation of NSW, *Justice Issues Paper 1: Pathways to justice - The role of non-legal services*, 2007

⁵⁴ Submission from NSW Bar Association to the Review, p.3; Submission from Law Society of NSW to the Review, p.1

⁵⁵ Other performance measures include: number of callers assisted; number of visitors to LawAccess Online; average time customers spend in the queue before speaking with a customer service officer; percentage of matters completed by LawAccess; and percentage of legal advices provided to customers outside the Sydney metropolitan region.

Performance measure	2006/07	2007/08	2008/09	2009/10	2010/11
	%	%	%	%	%
% of customers assisted within 5 minutes	91.12	94.73	94.96	94.72	92.57
% of customers hang-up	9.73	5	5.03	4.35	5.04
% of customers are satisfied with overall service	92.5	95.6	93.8	94.5	93.7

Independent customer satisfaction surveys are conducted in relation to LawAccess' services. The 2011 survey revealed that⁵⁷:

- 93.7 per cent of participants expressed high satisfaction with the overall service provided by LawAccess NSW
- 97.2 per cent of participants indicated that they would recommend LawAccess to another person
- 71.9 per cent of participants stated that their confidence in dealing with their legal problem had improved
- 65.6 per cent of participants stated that their level of anxiety and stress had improved.

LawAccess has been recognised through a number of awards, including:

- 2010 Law Society of NSW Excellence Award for Government Legal Services
- 2010 Department of Attorney General and Justice Annual Achievement Award for Individual Excellence – Project Manager for regional outreach
- 2003 NSW Premier's Public Sector Silver Award for Service Delivery.

Community awareness of LawAccess

LawAccess has a communications strategy and has implemented various initiatives to raise community awareness of its services. These include promotional activities and material aimed at specific groups in the community, including:

- people living in rural and regional areas⁵⁸
- Indigenous people⁵⁹
- older people
- people with a disability
- people from cultural and linguistically diverse communities.⁶⁰

During 2010/11, LawAccess staff gave 105 presentations to community groups and assistance services, attended 62 community events, and visited 30 regional and rural locations.

⁵⁶ Source: Genesys

⁵⁷ Survey results were based on the experience of 702 callers to LawAccess.

⁵⁸ LawAccess has undertaken regional outreach activities at a range of locations, including Orange, Bathurst, Parkes, Forbes, Armidale, Guyra, Glen Innes, Inverell, Tingha, Bundarra, Bellingen, Dorrigo, Urunga, Nambucca Heads, Macksville, Bowraville, Sawtell, Coffs Harbour, Mulwala, Yarrowonga, Cobram, Cummeragunja, Mathoura, Moama, Echuca, Barham, Kerang, Swan Hill, Tooleybuc, Robinvale, Euston, Mildura, Dareton, Wentworth, Buronga, Tumut, Gundagai and Brungle.

⁵⁹ Initiatives include dedicated Aboriginal Customer Service Officers and Indigenous-specific promotional material and information.

⁶⁰ Culturally and linguistically diverse communities covered include the Arabic, Bosnian, Cambodian, Chinese, Croatian, Farsi, Filipino, Greek, Hindi, Indonesian, Italian, Khmer, Korean, Macedonian, Portuguese, Russian, Serbian, Spanish, Thai, Turkish and Vietnamese communities. LawAccess has developed promotional material and information for use in English language schools, settlement services and migrant resource centres. Translated audio messages have also been used on SBS and local community radio stations.

There is still, however, a low awareness of LawAccess and the availability of free legal assistance, particularly amongst disadvantaged communities. As research by the Law and Justice Foundation indicated, there is widespread use of family and friends as advisors and the tendency to ignore legal issues.⁶¹ The Review therefore recommends that LawAccess implement a targeted promotional campaign to raise awareness of its services, aimed at individuals and organisations dealing with disadvantaged and vulnerable people in the community. In doing so, LawAccess may need to draw on relevant expertise and resources within Government.

This recommendation is supported by the Consultative Committee for the Review. It is also noted that the NSW Bar Association's submission to the Review, which was endorsed by the Law Society of NSW, stated, "The Association would support any initiatives from Government to enable even further promotion of LawAccess in the community, to assist in ensuring that it is generally acknowledged as the first contact point for people seeking legal assistance."⁶²

Recommendation 3

LawAccess should implement a targeted promotional campaign to raise awareness of its services, aimed at individuals and organisations dealing with disadvantaged and vulnerable people in the community.

4.4 Funding of legal assistance services

A number of submissions to the Review called for increased funding for Legal Aid NSW and other legal assistance services, such as CLCs and Aboriginal and Torres Straight Islander Legal Services (**ATSILS**).⁶³

The NPA on Legal Assistance Services, under which the Commonwealth provides funding to state and territory legal aid commissions, expires on 30 June 2014. A review of the NPA has commenced, in accordance with a review clause in the NPA. The terms of reference for the review are broad and encompass other Commonwealth-funded legal assistance services, namely CLCs, Aboriginal and Torres Straight Islander legal services (**ATSILS**), and family violence prevention legal services.

The NPA review provides the opportunity to consider the legal assistance sector holistically, and to assess whether the sector is achieving the outcomes, objectives and outputs set out in the NPA. These outcomes, objectives and outcomes are reproduced in **Appendix G** of this Report.

Following the completion of the NPA review, a new funding agreement will need to be negotiated with the Commonwealth. The NSW Review of the delivery of legal assistance services to the community recommends that the NSW Government advocate for increased funding for NSW legal assistance services when the new funding agreement is negotiated. In the meantime, the Review considers that continuing efforts should be made to ensure that existing funding for legal assistance services is used efficiently and effectively.

The Review acknowledges that there will not be a general across-the-board funding increase for the legal assistance sector at this time, given the current economic climate and the NSW Government's strong commitment to putting NSW into a sustainable budgetary position. There may, however, be

⁶¹ Law and Justice Foundation of NSW, *Justice made to measure: NSW legal needs survey in disadvantaged areas*, 2006, p.xx

⁶² Submission from NSW Bar Association to the Review, p.3; Submission from Law Society of NSW to the Review, p.1

⁶³ For example, submissions from the NSW Bar Association, Law Society of NSW, CLCNSW and a number of individual CLCs, NCOSS, and PIAC.

instances where the NSW Government considers it worthwhile to fund specific initiatives that contribute to achieving the Government's goals, where it can be demonstrated that the initiatives will have significant benefits and/or result in savings. For example, the NSW Government has provided funding to Legal Aid NSW to support the Work and Development Order Scheme. The Review also notes that the Senate and Legal and Constitutional Affairs References Committee *Access to justice report* concluded that while weaknesses in the legal system could be partially rectified or rectified in the short-term with increased targeted levels of funding, that in the current economic climate it might not be feasible or necessarily prudent.⁶⁴

Recommendation 4

Noting that the National Partnership Agreement on Legal Assistance Services is currently being reviewed, the NSW Government should advocate for increased funding for NSW legal assistance services when a new funding agreement is negotiated with the Commonwealth Government.

4.5 Strengthening non-legal pathways to legal assistance services

The Law and Justice Foundation's 2006 report on its legal needs survey concluded that there is widespread use of non-legal advisors for legal issues. The Foundation therefore suggested a comprehensive view of legal services, extending beyond traditional legal services to individuals and organisations routinely used for advice in response to issues with legal implications. That is, existing informal networks of non-legal professionals used in response to legal issues could be harnessed and used as a more formal gateway into available legal services. For example, non-legal professionals could be used more systematically and effectively to provide appropriate referrals to legal service agencies, and to disseminate basic legal information resources.⁶⁵

The Foundation went on to make further specific suggestions:

The capacity of non-legal professionals to be used as an effective gateway into available legal services could be enhanced through appropriate training strategies, appropriate networking between legal and non-legal practitioners, and the development of a simple, efficient referral system. Non-legal professionals could be used to disseminate basic legal information resources and refer people to legal service agencies.⁶⁶

Similarly, in a paper prepared for the Law and Justice Foundation, Clarke and Forell, suggested:

Given the range of non-legal services that people turn to for help, ideally all service providers should be made aware of where to refer a client who has a legal issue.[I]nformation about where to refer clients with legal problems needs to be as simple but as widely known as possible. For instance, distributing the LawAccess phone number to services that different disadvantaged groups commonly access (e.g. community health staff, school counsellors, doctors, Centrelink offices) may improve the link between disadvantaged clients and appropriate legal assistance. LawAccess helps people to assess their legal issue, provides legal information and, in some cases, legal advice and has the capacity to refer clients to other appropriate legal services (e.g. specialist services, or services which are local to the caller). While telephone based advice may not suit all clients (e.g. people with very complex needs or people with no access to a telephone), such advice may be a particularly effective tool in assisting those people who have the ability to resolve

⁶⁴ Senate Legal and Constitutional Affairs References Committee, *Access to justice*, December 2009, p.xx

⁶⁵ Law and Justice Foundation of NSW, *Justice made to measure: NSW legal needs survey in disadvantaged areas*, March 2006, p.xxi

⁶⁶ *ibid*, p.xxvii

their own legal problems if provided with appropriate information and given some direction. Widely communicating a single contact number for legal assistance potentially increases the range of services that appropriately refer disadvantaged clients to legal support.⁶⁷

The paper also identified challenges for non-legal services in being the “first port of call” for legal information or assistance, including:

- limited resources available to provide this assistance
- varying capacity of workers and services to assist clients with legal problems
- confusion about the appropriate level of assistance to provide
- knowing where to refer people with legal problems.⁶⁸

In its submission to the Review, the Council of Social Service of NSW (**NCOSS**) recognised that social service workers in the non-profit sector can act as a gateway to an appropriate legal referral. NCOSS pointed out these workers and their organisations need support to learn how to recognise a legal problem and make the most effective legal referral.⁶⁹

The Review recommends that further work be done to examine ways to help non-legal professionals who deal with disadvantaged people to identify any legal issues faced by their clients and to refer those clients to appropriate legal services. This recommendation is supported by the Consultative Committee for the Review.

Recommendation 5

Recognising that non-legal pathways are often the gateway to legal services, the NSW Legal Assistance Forum should examine ways to help non-legal professionals who deal with disadvantaged people to identify any legal issues faced by their clients and to refer those clients to appropriate legal services.

4.6 Coordination of legal assistance services

The coordination of legal assistance services is important to maximise the use of scarce resources, minimise duplication, and to ensure more seamless delivery of services to the community.

There are a number of key coordination mechanisms for legal assistance services in NSW, including the NSW Legal Assistance Forum (**NLAF**) and the Cooperative Legal Service Delivery (**CLSD**) Program.

NSW Legal Assistance Forum

NLAF was established in 2005, and is an interagency forum that brings together key legal service providers across the government, non-government and private sectors. NLAF’s membership includes peak representative bodies with responsibility for delivering legal assistance and specialist organisations dealing with a wide range of legal issues.⁷⁰

NLAF aims to continuously improve service delivery to socially and economically disadvantaged people in NSW through improved alignment of planning, program design and service delivery by providers of legal assistance services. NLAF endeavours to achieve these aims through the following strategies:

⁶⁷ Clarke, S & Forell, S, Law & Justice Foundation of NSW, *Justice issues paper 1: Pathways to justice – The role of non-legal services*, 2007, p.9

⁶⁸ *ibid*, p.7

⁶⁹ Submission by NCOSS to the Review, p.3

⁷⁰ www.nlaf.org.au

- consultation, collaboration and networking
- promoting dialogue and debate
- identifying and incorporating the best available research into program design and service delivery
- recognising and responding to emerging issues, policy and law reform
- promoting cooperative arrangements for effective service delivery.⁷¹

NLAF's work has included improving access to legal services for prisoners, CALD communities, Aboriginal communities, and regional, rural and remote communities.

Cooperative Legal Service Delivery Program

The CLSD Program is a regionally based approach to the delivery of legal assistance services. The Program aims to improve outcomes for disadvantaged people by building cooperative and strategic networks of key government and non-government organisations at the regional level.

There are currently 11 CLSD coalitions or partnerships operating in the following NSW regions:

- Far West
- Central West
- Northern Rivers
- Hunter,
- Central Coast
- South Coast
- Central Tablelands
- Wagga Wagga
- Albury
- Taree/Forster
- Kempsey/Nambucca.

Participating agencies include:

- Legal Aid NSW regional offices
- CLCs
- ALS
- Aboriginal Programs, including Aboriginal Community Justice Groups and Circle Sentencing
- LawAccess
- Local Courts
- tenancy, domestic violence, disability and financial counselling services
- pro bono legal services
- government agencies
- regional libraries.

Regional coalitions meet regularly and work together to:

- exchange information
- identify emerging and unmet legal needs for the region
- identify service delivery priorities for the region
- plan and deliver services in a more coordinated, collaborative and effective way, including outreach clinics, community legal education, and training

⁷¹ See NLAF's Terms of Reference, www.nlaf.org.au

- improve referrals between service providers to get disadvantaged people off the “referral merry-go-round”
- improve access to pro bono legal services.⁷²

The Program is centrally managed and coordinated by the CLSD Program Unit within Legal Aid NSW. However, each CLSD region is largely autonomous and their outputs respond to locally identified issues. They are also supported by a locally based, part time regional coordinator.

Principles & minimum standards for the delivery of legal information and services

As noted in 4.3 above, the Standing Committee of Attorneys-General (now the Standing Council on Law and Justice) has endorsed a set of principles and minimum standards for providing seamless access to legal information and services to the community. These are set out in **Appendix H**.

One of the minimum standards is that all jurisdictions have a strategy for providing seamless access to legal information and services, and for promoting cooperation and collaboration between relevant legal and non-legal service providers.

While recognizing that one model might not suit all locations, particularly where there are pre-existing local networks, a CLSD – type model could provide a regular forum for local cooperation and collaboration between service providers.

Recommendations

During the consultation phase of the Review, feedback received indicated strong support for NLAFF and the CLSD Program. Stakeholders were of the view that both initiatives are effective coordination mechanisms. The Review team considers that there is scope to build on the success of these mechanisms, as well as an opportunity to ensure that NSW meets all of the SCAG-endorsed minimum standards for providing seamless access to legal information and services.

The Review recommends that NLAFF should continue to play a key coordinating role in the legal assistance sector, including working to promote the SCAG-endorsed minimum standards for seamless access to legal information and services.

The Review also recommends that consideration be given to the feasibility of expanding the CLSD model state-wide, including to metropolitan areas. As such an expansion is likely to require additional resources, it will need to be demonstrated that the CLSD is producing outcomes. These recommendations are supported by the Consultative Committee for the Review.

Recommendation 6

The NSW Legal Assistance Forum should continue to play a key coordinating role in the legal assistance sector, including working to promote the minimum standards, endorsed by the Standing Committee of Attorneys-General (as it was then), for seamless access to legal information and services.

Recommendation 7

Legal Aid NSW should investigate the feasibility of expanding the Cooperative Legal Service Delivery Program model state-wide, including to metropolitan areas.

⁷² www.legalaid.nsw.gov.au

4.7 Providing self-help strategies and resources

Some people in the community have the capacity to deal with their own legal problems and should be empowered to do so. The Law and Justice Foundation's 2006 report on its legal needs survey found that a proportion of people deal with their legal problems on their own. The Report commented that:

Some people have few legal needs and are easily able to handle their problems alone. Self-help strategies and unbundled legal services may be adequate for people with easily solvable problems given the high rate of satisfaction with the outcome of legal issues that participants handled alone.⁷³

However, the Foundation acknowledged that self-help strategies are not appropriate for people with complex and/or multiple legal and other problems.⁷⁴

A range of legal resources is now available to people with legal issues. These include:

- legal information kits (e.g. legal kits distributed by the Legal Information Access Centre at the State Library of NSW)
- do-it-yourself kits (e.g. do-it-yourself will kits and divorce kits)
- pamphlets
- internet resources (e.g. resources on LawAccess' website, including the LawAssist website)
- law courses for non-lawyers offered.

While expanding these resources may assist and empower some people in some situations, there are many disadvantaged people for whom this kind of information is inappropriate or inaccessible, for example, those who do not have appropriate language, educational, material or motivational resources to access or use these kinds of resources.⁷⁵

The Review considers that legal assistance services can play a role in empowering people to deal with their legal problems. The Review therefore recommends that publicly funded legal assistance services identify opportunities to develop and implement self-help strategies and resources, where appropriate, to assist members of the public in dealing with legal issues. This recommendation is supported by the Consultative Committee for the Review.

Recommendation 8

Publicly funded legal assistance services should, where appropriate, identify opportunities to develop and implement self-help strategies and resources to assist those members of the public with capacity to resolve their legal issues.

4.8 Using technology to deliver legal assistance services

Use of technology by the community

The number of Australian households and individuals using technology continues to increase. According to the ABS, in 2010/11:

⁷³ Law and Justice Foundation of NSW, *Justice made to measure: NSW legal needs survey in disadvantaged areas*, March 2006, pp.xxvi, 234

⁷⁴ Law and Justice Foundation of NSW, *Justice made to measure: NSW legal needs survey in disadvantaged areas*, March 2006, p.234

⁷⁵ Renouf G, Anderson J & Lovric J, *Pro bono opportunity in discrete task assistance*, Law Society Journal, July 2003, p.55

- 83 per cent of households had access to a computer at home (up from 73 per cent in 2006/06)
- 79 per cent of households had access to the internet at home (up from 64 per cent in 2006/07)
- nearly three-quarters of all households had broadband access
- 77 per cent of households with the internet used it every day
- of the 13.3 million people who reported accessing the internet at home, the top three activities were emailing (91 per cent); research, news and general browsing (87 per cent); and paying bills online or online banking (64 per cent)
- 68 per cent of internet users purchased goods or services online (up from 64 per cent in 2008/09)
- social networking and online gaming was performed by 88 per cent of Internet users in the 15-17 years age group and 86 per cent in the 18-24 years age group.⁷⁶

The ABS' 2009 survey of disability, ageing and carers found that:

- 53 per cent of people with a reported disability used the internet (up from 39 per cent in 2003)
- 41 per cent of people aged over 60 years used the internet (up from 21 per cent in 2003).⁷⁷

Use of technology to deliver legal assistance services

While technology-based legal assistance will not be appropriate for everyone, particularly those with less capacity to help themselves, there are a number of examples of how technology is being used to provide legal information and assistance. These include:

- **LawAssist:** The LawAssist website (www.lawaccess.nsw.gov.au/lawassist) is designed to take people through the steps to resolve their legal problems. The website promotes negotiation and mediation, and also provides step-by-step guides, case studies and assistance in filling out court forms to help people navigate the court process.

LawAssist covers a range of topics, including small claims debts, motor vehicle accidents, apprehended personal and domestic violence orders, fines and fences. LawAccess is planning to include short videos to further assist self-represented litigant with the court process. LawAssist receives approximately 20,000 visits per month.

- **LawPrompt:** LawPrompt is the legal information knowledge database used by LawAccess to answer approximately 200,000 enquiries per annum. With funding from the Public Purpose Fund, LawAccess will be making LawPrompt available to Legal Aid NSW and community legal centres.
- **Best for kids:** The *Best for kids* website (www.bestforkids.org.au) was developed by Legal Aid NSW. The website uses a combination of short videos and social media to assist families experiencing separation by providing information on legal rights as a child, parent or grandparent and where to get help.
- **Web-conferencing trials:** Legal Aid NSW, the Aboriginal Legal Service and the Far West Community Legal Centre are planning a series of virtual legal advice clinics in remote NSW. Using desktop video-conferencing, the service model will combine a locally-based support person (e.g. an ALS field officer) sitting with the client and a regionally based Legal Aid NSW lawyer providing advice over the Internet.

The Review considers that technology has the potential to improve access to legal assistance services for some members of the community, and to assist in delivering legal assistance services more efficiently in some circumstances. For example:

⁷⁶ ABS, *Household use of information technology 2010/11*, www.abs.gov.au

⁷⁷ ABS, *Household use of information technology 2010/11*, www.abs.gov.au

- people can use technology to access services remotely to overcome the barrier of distance
- people can use technology to access information outside business hours
- websites and portals can contain useful information, including interactive features
- audio-visual technology, telepresence, and web-based technology can facilitate face-to-face contact by people in different locations.

While the Review acknowledges that technology may not be accessible by everyone in the community, there are benefits to investigating how technology may be further used to delivery services more efficiently and effectively. The Consultative Committee for the Review supports this approach.

Recommendation 9

Publicly funded legal assistance services should investigate ways in which technology may be used to deliver services more efficiently and effectively.

4.9 Clients with mental health & cognitive impairments

People with mental health and cognitive impairments are over-represented in a number of disadvantaged and vulnerable groups, including prisoners and the homeless. People in other disadvantaged and vulnerable groups also experience mental health and cognitive impairments, e.g. Indigenous, CALD and migrant groups. People with such impairments have particular legal needs and face particular challenges when trying to access legal assistance.

The Review notes the NSW Government’s commitment to addressing mental health issues in the community. In particular, the Government has put in place legislation to establish a Mental Health Commission. The Commission will focus on systemic mental health issues and its functions will include:

- preparing a mental health strategic plan for NSW
- advising on mental health services and programs
- promoting and facilitating the sharing of knowledge about mental health issues
- advocating for and promoting prevention and early intervention strategies for mental health
- educating the community about mental health issues.⁷⁸

The Review also notes that the NSW Law Reform Commission has a current inquiry in relation to people with mental health and cognitive impairments in the criminal justice system. The inquiry’s terms of reference require the Commission to undertake a general review of the criminal law and procedure applying to people with mental health and cognitive impairments, with particular regard to:

- sections 32 and 33 of the *Mental Health (Criminal Procedure) Act 1990* (NSW)
- fitness to be tried
- the defence of “mental illness”
- the consequences of being dealt with via the above mechanisms on the operation of Part 10 of the *Crimes (Forensic Procedures) Act 2000* (NSW)
- sentencing.

The Law Reform Commission is expected to finalise reports on the inquiry during 2012.

In its 2006 report on the legal needs of people with a mental illness, the Law and Justice Foundation noted that people with a mental illness experience particular legal issues which often reflect their

⁷⁸ Section 12, Mental Health Commission Act 2012

financial and social disadvantage, as well as the incapacity caused by their illness. These issues include:

- legal issues relating to mental illness specifically, such as those falling under the *Mental Health Act 2007* (NSW) and adult guardianship issues
- discrimination in relation to employment, education and insurance
- housing issues, including problems relating to public housing, private rental and boarding house accommodation
- social security issues, including eligibility, breaching, social security debt and prosecution for fraud
- consumer issues, including credit card debt, banking issues, mobile phone and other contractual debt
- domestic violence and victim of crime issues
- family law and care and protection issues.⁷⁹

The Foundation found that people with a mental illness face the following barriers, depending on their individual circumstances and symptoms, to accessing legal assistance:

- a lack of awareness of their legal rights
- cognitive impairment, making it difficult to understand legal documents and processes
- being disorganised and/or overwhelmed
- being mistrustful or frightened of divulging personal information to legal service providers
- difficult behaviour, making it challenging for service providers to assist them
- communication problems
- lack of mental health care and treatment.⁸⁰

The Foundation also found that people with a mental illness face the following systemic barriers to accessing legal assistance:

- the limited availability of affordable legal services
- time constraints placed on legal service provision
- regional, rural and remote issues, including the organisation and cost required to travel large distances to access services
- difficulties in identifying mental illness by legal service providers, resulting in no allowance being made to cater to the individual's needs
- a perceived lack of credibility, i.e. some service providers being less inclined to believe what a person with a mental illness says
- the physical environment, including offices and courts and their procedures.⁸¹

In its submission to the Review, the Intellectual Disability Rights Service (**IDRS**) highlighted some of the difficulties experienced by people with mental health and cognitive impairments when faced with legal problems, and suggested ways in which these difficulties could be addressed by legal assistance services.

People with mental health and cognitive impairments may have difficulties understanding and communicating with lawyers, and lawyers may not have the skills to communicate appropriately with this client group. The IDRS has suggested that identified lawyers, who provide legal assistance services, should receive training, and develop expertise, in dealing with clients with mental health and cognitive impairments.⁸² The Review supports this suggestion and recommends that publicly

⁷⁹ Law & Justice Foundation, *On the edge of justice: The legal needs of people with a mental illness in NSW*, 2006, pp.xvii-xviii

⁸⁰ *Ibid*, pp.xviii-xx

⁸¹ *Ibid*, pp.xix-xxi

⁸² Submission from IDRS to the Review, p.2

funded legal assistance services ensure that, where possible and appropriate, relevant staff receive training on dealing with clients with mental health and cognitive impairments.

The IDRS's submission notes that clients with mental health and cognitive impairments necessarily require more time with their lawyers than those without disability.⁸³ Legal Aid NSW has advised that where these clients require more time with their lawyers, this is accommodated within current arrangements.

The IDRS's submission also notes that people with mental health and cognitive impairments are disadvantaged if their legal representation is frequently changed, and suggests that continuity of representation for this client group is important.⁸⁴ The Review supports this suggestion and recommends that publicly funded legal assistance services ensure that, where possible and appropriate, clients with mental health and cognitive impairments have continuity of legal representation.

Finally, the IDRS's submission notes that court procedures and documents can be complex and inaccessible for many people with mental health and cognitive impairments.⁸⁵ The Review notes that this can also be a problem for people without disability. This issue is considered in more detail in 4.12 below.

Recommendation 10

Publicly funded legal assistance services should ensure that, where possible and appropriate:

- (a) relevant staff receive training on dealing with clients with mental health and cognitive impairments
- (b) clients with mental health and cognitive impairments have continuity of legal representation.

4.10 Reducing red tape for government funded legal services

CLCs and other non-government organisations often receive funding from multiple sources, which may include one or more government agencies. When funding bodies impose significantly different reporting and data collection requirements, funded bodies may need to divert scarce resources away from service to delivery to compliance activities.

The Review notes the NSW Government's commitment to reducing red tape, and recommends that DAGJ work with Commonwealth and NSW Government agencies that provide funding to non-government legal assistance services to identify ways to reduce red tape for these services. The Consultative Committee for the Review supports this recommendation.

Recommendation 11

DAGJ should work with Commonwealth and NSW Government agencies that provide funding to non-government legal assistance services to identify ways to reduce red tape for these bodies.

4.11 Legal Aid NSW means test

As noted in Chapter 2 of this Report, Legal Aid NSW policies and guidelines determine eligibility for legal aid, setting out a jurisdiction test which limits the types of matters for which legal aid is available, and the merit and means tests. All Legal Aid NSW policies are published on its website.

⁸³ Submission from IDRS to the Review, p.2

⁸⁴ Submission from IDRS to the Review, pp.3-4

⁸⁵ Submission from IDRS to the Review, pp.4-5

Given:

- that there are limited legal aid resources, and
- Recommendation 2 of this Report that publicly funded legal assistances services be targeted to those in the community with the highest level of need,

the Review recommends that Legal Aid NSW review its means test to ensure it is appropriately targeted, transparent, based on objective and measurable criteria, and accessible to legal aid applicants. The Consultative Committee for the Review supports this recommendation.

Recommendation 12

Legal Aid NSW should review its means test to ensure that limited legal aid resources are distributed to disadvantaged people most in need and that the policy is transparent, based on objective and measurable criteria, and accessible to legal aid applicants.

4.12 Court Services' procedures and documents

In its submission to the Review, the IDRS highlighted the difficulties experienced by people with intellectual and other cognitive impairments when faced with complex procedures and documents.⁸⁶ However, this is a problem that may be experienced by court clients generally, as noted by the Law and Justice Foundation in a paper on access to justice and legal needs.⁸⁷

The Review considers there is a need to ensure that, as far as possible, court procedures and documents are simple, accessible and able to be understood by clients, whether or not they are legally represented. Court procedures and documents should not be so complex that they create barriers to accessing justice.

The Review recommends that Court Services review its procedures and documents with a view to simplifying its procedures and documents. Priority should be given to the most commonly used documents, and any documents which clients may be experiencing difficulties with. Court registry staff, particularly staff providing chamber services, are likely to be able to provide feedback on the documents which clients find difficult or problematic. The Consultative Committee for the Review supports this recommendation.

To complement efforts to improve court procedures and documents, Court Services will be arranging for court staff to undertake flexible service delivery training.

Recommendation 13

Court Services should review its procedures and documents with a view to simplifying its procedures and documents. Priority should be given to the most commonly used documents, and any documents which clients may be experiencing difficulties with.

4.13 Extending pro bono schemes

In its submission to the Review, the Council of Social Service of NSW (**NCOSS**) highlighted the important role played by not-for-profit community/social service organisations in providing a broad

⁸⁶ Submission from IDRS to the Review, pp.4-5

⁸⁷ Schetzer L, Mullins J, & Buonamano R, Law and Justice Foundation of NSW, Access to justice & legal needs: A project to identify legal needs, pathways and barriers for disadvantaged people in NSW – Background paper, 2003

range of front line, advocacy, coordination and policy services, ranging from treatment services to systemic advocacy.⁸⁸ 60 per cent of these organisations have a turnover of less than \$150,000, and many are governed by volunteer management committees or boards.⁸⁹

Clients of community organisations often have multiple issues and needs, including legal needs. NCOSS contends that there needs to be functional community organisations in place to make referrals to legal assistance services. It noted that lawyers have skill sets that can be brought to community organisations, in terms of providing legal assistance and advice and contributing to the management and governance of such organisations.

While PILCH provides assistance to not-for profit organisations with structural, administrative and legal issues, NCOSS noted that demand for these services exceeds supply. The Review recommends that the legal professional bodies work with NCOSS to explore the possibility of extending pro bono schemes to cover legal advice to community organisations, and to facilitate lawyers participating on the management committees and boards of these organisations.

Recommendation 14

The legal professional bodies should work with NCOSS to explore the possibility of extending pro bono schemes to:

- (a) cover the provision of legal advice to small to medium community organisations
- (b) facilitate lawyers sitting on management committees and boards of community organisations on a pro bono basis.

4.14 Supporting lawyers working in regional, rural & remote areas

During the consultation phase of the Review, the Consultative Committee discussed:

- the shortage of lawyers in some regional, rural and remote (**RRR**) areas (both lawyers employed in publicly funded legal services, and those in private practice available to undertake legal aid work)
- difficulties in attracting and retaining lawyers in some RRR areas
- challenges faced by lawyers working in RRR areas.

In 2010, the Law and Justice Foundation completed a study that aimed at better informing strategies to improve access to lawyers for disadvantaged people in RRR areas by:

- identifying which areas of NSW are most affected by difficulties in recruiting and retaining lawyers practising in the public sector
- exploring differences between areas of high and low lawyer retention in terms of potentially relevant characteristics of these areas
- identifying likely reasons for success or otherwise in the recruitment and retention of lawyers in those areas.⁹⁰

The study found:

- At 30 June 2009, only seven per cent of all public legal assistance positions in NSW were vacant.
- In some RRR areas, the level of public legal assistance lawyer positions occupied by a non-incumbent (such as a person acting up in the position or a locum) was high. In many of the same areas, lawyer positions had been filled for only relative short periods of time. The greatest

⁸⁸ Submission from NCOSS to the Review, p.2

⁸⁹ Productivity Commission, *Contribution of the not-for-profit sector*, 2010

⁹⁰ Law and Justice Foundation, *Recruitment and retention of lawyers in regional rural and remote New South Wales*, 2010

concentration of recruitment and retention difficulties was noted for the Far West, Murrumbidgee and South Eastern regions.

- The ratio of residents to all locally based lawyers (public and private) increased with remoteness. Inner regional areas had a ratio of one lawyer for every 1,000 residents. This increased to one lawyer for every 2,000 in outer regional areas. In remote and very remote areas of NSW, there was only one lawyer for every 3,000 residents.
- 19 local government areas (LGAs) in NSW did not have a single lawyer – public or private – based in the area. All 19 LGAs were characterised by resident (and relatively disadvantaged) populations of less than 7,000 people, and the populations of the majority were in actual or relative decline. This suggests there may not be enough legal work to sustain a full time resident lawyers.
- Lawyers in the most remote areas of NSW were generally younger and less experienced than elsewhere in the state.
- Most lawyers working in RRR NSW were originally from major cities.⁹¹

The study concluded that:

- Different RRR areas have their own unique characteristics, and difficulties experienced in recruitment and retention of lawyers vary from region to region.
- Some RRR areas tend only to attract relatively inexperienced lawyers or lawyers prepared to stay for a fixed and relatively short period of time. However, having a more senior lawyer in more remote areas may be preferable given the nature of the work and the work conditions.
- Some RRR areas are experiencing economic, social and population decline and resident services, including legal services and private lawyer numbers, are likely to decline accordingly.
- There are significant disparities in the salaries of equivalent lawyer positions across the public legal assistance services. This contributes to the movement of lawyers between these services and from more remote areas to inner regional areas and urban areas.
- Individual solutions to recruitment and retention difficulties need to be area specific, problem specific and, in some cases, position specific.
- While “blanket” solutions are not appropriate, a coordinated approach across the sector to address the available, recruitment and retention of lawyers in RRR areas is important.⁹²

Following the publication of the Foundation’s report, NLAJ established a working group to examine strategies relating to recruitment and retention of lawyers in RRR areas of NSW. The working group identified a number of possible strategies relating to:

- professional learning and development initiatives
- human resource initiatives
- further research and monitoring.⁹³

The complete list of possible strategies is set out in **Appendix I** to this Report and formed the initial terms of reference for the working group. The working group has undertaken work towards implementing a number of the strategies. Current initiatives underway include:

- an annual snapshot of vacancies in public sector legal positions, which has been funded for one year by the Commonwealth Attorney-General’s Department. The Law and Justice Foundation is undertaking this work.

⁹¹ Law and Justice Foundation, *Recruitment and retention of lawyers in regional rural and remote New South Wales*, 2010, p.viii

⁹² Law and Justice Foundation, *Recruitment and retention of lawyers in regional rural and remote New South Wales*, 2010, p.ix

⁹³ www.nlaf.org.au

- a proposal which has been submitted to the Commonwealth’s National Broadband network Regional Legal Assistance Program to provide public legal assistance lawyers in the Far West and North West of NSW with professional development (including mentoring) via the Internet.
- the RRR Recruitment and Retention Project Western NSW, which is auspiced by the National Association of Community Legal Centres and funds a Dubbo-based regional coordinator to support initiatives for the recruitment and retention of lawyers in Western NSW.

The Review considers that it is important that there are effective strategies for recruiting, retaining and supporting lawyers working in RRR areas. The Review suggests that there be a stock-take of the progress of implementing the strategies identified by the NLA working group, and that consideration be given to whether any further strategies are needed to support lawyers working in RRR areas.

Recommendation 15

The NSW Legal Assistance Forum conduct a stock-take of the progress of its strategies to support lawyers working in rural, regional and remote areas.

4.15 Solicitors’ conflict of interest rules

Publicly funded legal assistance services, including Legal Aid NSW, LawAccess, CLCs and the ALS, provide discrete legal services, including brief advice services to inform people of their legal rights and how to resolve their legal problems. A significant number of advice services are provided each year, e.g. Legal Aid NSW provided 85,239 advice services in 2010/11.⁹⁴ In some circumstances, advice may lead to continuing legal representation, but this does not occur in most cases.

The importance of legal advice services in providing practical information about the law, and thereby promoting access to justice, is well recognised. In opening the National Access to Justice and Pro Bono Conference in 2006, the Honourable Justice Murray Gleeson highlighted the need and entitlement of disadvantaged people to legal advice services, and the “immeasurable benefit” of the role of legal aid commissions and CLCs in providing these services. His Honour noted the importance of practical, competent and impartial legal advice in averting litigation. Where litigation occurs, advice services can facilitate the administration of justice by assisting self-represented litigants to identify legal issues and understand court processes and procedures.

The importance of legal advice services as an early intervention and prevention strategy is also well recognised, most recently in the *Strategic framework for access to justice in the Federal civil justice system*.⁹⁵

Given the large number of legal advice services provided, there is a high likelihood that more than one party to any legal dispute may seek advice from a public legal assistance service. In many cases, particularly for people living in regional, rural and remote areas, there may only be one public legal assistance service available for people who are unable to afford a private lawyer.

The current solicitors’ conflict of interest rules mean that if a public legal assistance service has given any form of legal assistance to a person in the same or a related matter, then another party to the dispute cannot be provided with legal assistance. Public legal assistance services do not uniformly collect (if at all) data on the number of people who are not provided with a service due to a conflict of interest or, if they are referred, the number of people who are referred in or out because of a

⁹⁴ Legal Aid NSW, *Annual Report 2010/11*.

⁹⁵ Commonwealth Attorney-General’s Department, September 2009. The Framework’s principles were endorsed by the Standing Committee of Attorneys-General.

conflict of interest. However, anecdotal evidence from public legal assistance services indicates that, as a consequence of the current conflict of interest rules, they are regularly unable to provide advice services, particularly in smaller regional, rural and remote locations.

A recent research project undertaken by Deakin University School of Law⁹⁶ explored whether regional communities are disadvantaged in their administration of law, compared with their metropolitan counterparts. One of the key findings of the research (using the results of 62 interviews and 117 survey responses) was that 69 per cent of regional lawyers surveyed regarded the potential for “conflict of interest” as an issue which adversely impacted on their ability to provide services to regional clients.

It is therefore important that the Solicitors’ Rules allow legal assistance services to put in place mechanisms to minimise the number of clients who are excluded from receiving discrete legal services on the basis of conflict of interest.

Recommendation 16

The Law Society of NSW consult with publicly funded legal assistance services and consider options for amending the Solicitors' Rules to manage conflicts of interest in situations where a discrete legal service is provided.

4.16 Data collection & evidence based policy & service delivery

To make the most effective use of the finite resources available, the Review considers that legal assistance policy and service delivery should be informed by sound evidence, including reliable data, research and evaluations.

Ideally, evidence of “what works” should be considered during policy and program development and delivery. This will include drawing on existing evidence to formulate new policies and programs, conducting robust evaluations following implementation, and ongoing monitoring and assessment.

Although the Law and Justice Foundation and other bodies have undertaken important work to provide data and research to support evidenced-based policies and programs, the Review considers that public legal assistance services could do more to actively promote a culture of evidenced-based policy development and program delivery within their organisations.

Reliable and consistent data definitions and collection are a pre-requisite for effective and efficient monitoring of service delivery. The availability of accurate data enables service providers to make sound decisions regarding organisational management and service delivery, and should enable them to identify the extent to which services are reaching the groups or areas in the community with the highest levels of legal need. Consistent data collection also supports collaborative working and the sharing of evidence on legal needs across the public legal assistance sector.

⁹⁶ Coverdale, R., *Postcode justice: Rural and regional disadvantage in the administration of the law in victoria*, Deakin University Centre for Rural and Regional Law and Justice, July 2011.

Recommendation 17

Publicly funded legal assistance services should ensure that legal assistance policy and service delivery are based on sound evidence.

Recommendation 18

To support evidence-based decision-making, collaborative working and evaluation of service delivery, public legal assistance services should aim for reliable and consistent data definitions and collection. In particular, services should ensure they are collecting the necessary information to monitor success in reaching those in the community with the highest levels of legal need.

Appendix A

List of organisations that made a submission to the review

1. Central Coast Community Legal Centre
2. Community Legal Centres NSW
3. Consumer Credit Legal Centre NSW
4. Council of Social Service of NSW
5. Environmental Defender's Office
6. Financial Counselors' Association of NSW
7. Foster Care Association of NSW
8. Illawarra Legal Centre
9. Immigration Advice and Rights Centre
10. Intellectual Disability Rights Service
11. Law Society of NSW
12. Macarthur Legal Centre
13. Macquarie Legal Centre
14. NSW Bar Association
15. Public Interest Advocacy Centre
16. Salvos Legal
17. Shopfront Youth Legal Centre
18. Wesley Mission
19. Western NSW Community Legal Centre
20. Women's Legal Services NSW
21. Youth Justice Coalition

Appendix B

NSW Local Court locations

Albion Park	Fairfield
Albury	Finley
Armidale	Forbes
Ballina	Forster
Balmain	Gilgandra
Balranald	Glen Innes
Bankstown	Gloucester
Batemans Bay	Gosford
Bathurst	Goulburn
Bega	Grafton
Bellingen	Grenfell
Belmont	Griffith
Bidura Children's Court	Gulgong
Blayney	Gundagai
Blacktown	Gunnedah
Boggabilla	Hay
Bombala	Hillston
Bourke	Holbrook
Brewarrina	Hornsby
Broadmeadow/Hunter Children's Court	Illawarra/Port Kembla Children's Court
Broken Hill	Sutherland
Burwood	Inverell
Byron Bay	Junee
Camden	Katoomba
Campbelltown	Kempsey
Campbelltown Children's Court	Kiama
Casino	Kogarah
Central	Kurri Kurri
Cessnock	Kyogle
Cobar	Lake Cargelligo
Coffs Harbour	Leeton
Downing Centre	Lightning Ridge
Condobolin	Lismore
Cooma	Lithgow
Coonabarabran	Liverpool
Coonamble	Lockhart
Cootamundra	Macksville
Corowa	Maclean
Cowra	Maitland
Crookwell	Manly
Deniliquin	Milton
Downing Centre	Moama
Dubbo	Moree
Dunedoo	Moruya
Dungog	Moss Vale
Eden	Mt Drutt

Moulamein
Mudgee
Mullumbimby
Mungindi
Murrurundi
Murwillumbah
Muswellbrook
Narooma
Narrabri
Narrandera
Narromine
Newcastle
Newtown
North Sydney
Nowra
Nyngan
Oberon
Orange
Parkes
Parramatta
Parramatta Children's Court
Peak Hill
Penrith
Picton
Port Kembla
Port Macquarie
Queanbeyan
Quirindi
Raymond Terrace
Ryde
Rylstone
Scone
Singleton
Sutherland
Tamworth
Taree
Temora
Tenterfield
Toronto
Tumbarumba
Tumut
Tweed Heads
Wagga Wagga
Walcha
Walgett
Warialda

Waverley
Warren
Wauchope
Wee Waa
Wellington
Wentworth
West Wyalong
Wilcannia
Windsor
Wollongong
Woy Woy
Woy Woy Children's Court
Wyong
Wyong Children's Court
Yass
Young

Appendix C

Legal Aid NSW office locations

Head office

Haymarket, Sydney

Metropolitan offices

Bankstown

Blacktown

Burwood

Campbelltown

Fairfield

Liverpool

Manly

Parramatta

Penrith

Sutherland

Regional offices

Coffs Harbour

Dubbo

Gosford

Lismore

Newcastle

Nowra

Orange

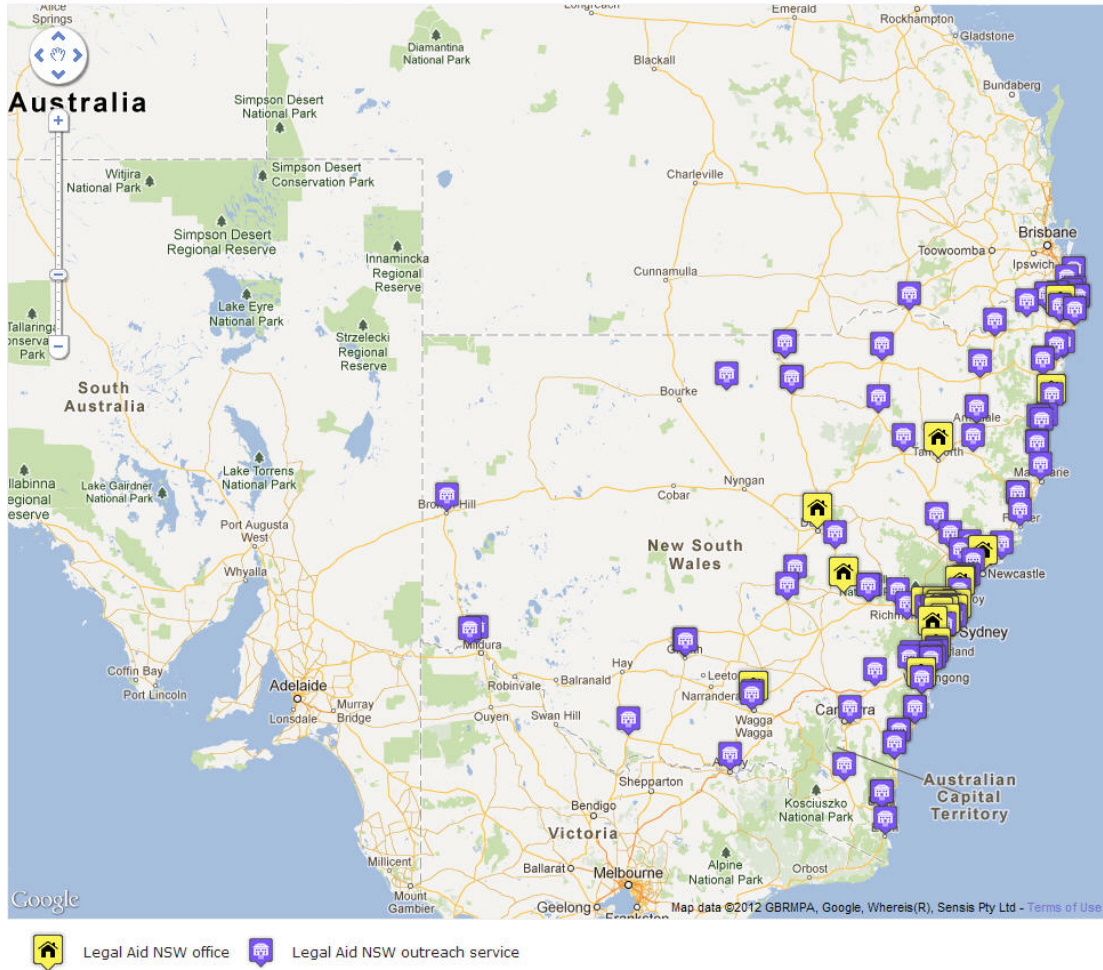
Tamworth

Wagga Wagga

Wollongong

Appendix D

Legal Aid NSW outreach locations



Appendix E

Community legal centres in NSW⁹⁷

Australian Centre for Disability Law (Surry Hills)
Central Coast Legal Centre (Wyang)
Community Legal Centres NSW
Consumer Credit Legal Centre (Surry Hills)
Court Support Scheme
Domestic Violence Advocacy Service
Elizabeth Evatt CLC (Katoomba)
Environmental Defender's Office NSW (Sydney and Lismore)
Far West CLC (Broken Hill)
Hawkesbury Nepean CLC (Windsor)
HIV/AIDS Legal Centre (Surry Hills)
Hume Riverina Community Legal Service (Wodonga)
Hunter CLC (Newcastle)
Illawarra Legal Centre (Warrawong)
Immigration Advice and Rights Centre (Sydney)
Inner City Legal Centre (Kings Cross)
Intellectual Disability Rights Service (Redfern)
Kingsford Legal Centre (University of NSW)
Macarthur Legal Centre (Campbelltown)
Macquarie Legal Centre (Parramatta)
Marrickville Legal Centre (Marrickville)
Mid North Coast CLC (Port Macquarie)
Mt Druitt and Area CLC (Rooty Hill)
North and North West Community Legal Service (Armidale)
Northern Rivers CLC (Lismore)
Public Interest Advocacy Centre (Sydney)
Redfern Legal Centre (Redfern)
Refugee Advice and Casework Service (Sydney)
Shoalhaven CLC (Nowra)
South West Sydney Legal Centre (Liverpool)
Tenants Union of NSW
The Aged-Cared Rights Service (Surry Hills)

⁹⁷ Funded through the CLC Program administered by Legal Aid NSW

Welfare Rights Centre (Surry Hills)

Western NSW CLC (Dubbo)

Wirringa Baiya Aboriginal Women's Legal Centre (Marrickville)

Women's Legal Services (Lidcombe)

Appendix F

Aboriginal Legal Service office locations

NSW Central South East

Moruya

Nowra

Parramatta

Redfern

Wollongong

NSW West

Bathurst

Bourke

Broken Hill

Dubbo

Griffith

Wagga Wagga

Walgett

NSW north

Armidale

Coffs Harbour

Grafton

Kempsey

Lismore

Moree

Tamworth

Newcastle

Appendix G

Objectives, outcomes & outputs of the NPA on legal assistance services

Objective

A national system of legal assistance that is integrated, efficient and cost-effective, and focused on providing services for disadvantaged Australians in accordance with access to justice principles of accessibility, appropriateness, equity, efficiency and effectiveness.

Outcomes

The Agreement will contribute to the following reforms across the legal assistance sector and to successful outcomes to be achieved by legal aid commissions providing efficient and cost-effective legal aid services for disadvantaged Australians in accordance with Commonwealth legal aid service priorities:

- (a) earlier resolution of legal problems for disadvantaged Australians that, when appropriate, avoids the need for litigation
- (b) more appropriate targeting of legal assistance services to people who experience, or are at risk of experiencing, social exclusion
- (c) increased collaboration and cooperation between legal assistance providers themselves and with other service providers to ensure clients received “joined up” service provision to address legal and other problems
- (d) strategic national response to critical challenges and pressures affecting the legal assistance sector.

Outputs

The objectives and outcomes of this Agreement will be achieved through:

- (a) legal assistance providers increasing the delivery of preventative, early intervention and dispute resolution services
- (b) comprehensive legal information services and seamless referral for preventative and early intervention legal assistance services within each state and territory
- (c) delivery by state and territory legal aid commissions of efficient and cost effective legal aid services provided in accordance with Schedules A and B, consistent with the access to justice principles of accessibility, appropriateness, equity, efficiency and effectiveness, including:
 - (i) preventative legal services such as community legal education, legal information and referral
 - (ii) early intervention legal services such as advice, minor assistance and advocacy other than advocacy provided under a grant of legal aid
 - (iii) dispute resolution services, duty lawyer services, litigation services and post resolution support services.

APPENDIX H

Principles and minimum standards for providing seamless access to legal information and services

Principles

1. Legal information and services should be accessible early and easily to help people resolve issues and disputes before they escalate and lead to entrenched legal, social and economic problems.
2. There should be a “no wrong door” approach – if a service provider is unable to provide a person with the information/service they need, the service provider should refer the person to a service that is able to assist, and ensure that its staff have the capacity to make effective referrals.
3. Information should be accessible and relevant – it should be appropriately targeted at public needs, be available in appropriate language and formats, and include both legal and relevant non-legal services.

Minimum standards

1. States/territories provide a central telephone service for legal information, referrals and advice, i.e. a 1300 or 1800 number supported by a website. Such a service should be able to provide information on a broad range of issues, and have the capacity to make appropriate referrals to face-to-face and specialist services.
2. Jurisdictions have a strategy for providing seamless access to legal information and services, and for promoting co-operation and collaboration between relevant legal and non-legal service providers.
3. Jurisdictions have a publicly available policy and procedure manual demonstrating effective provision of legal information, referrals and advice.
4. Telephone information and/or advice services should report on services provided, including the percentage of customers assisted, call abandonment rate, wait time before speaking to an operator, number of callers assisted and customer satisfaction.
5. Jurisdictions have a communications strategy which focuses on, among other things, tailoring communications to the intended audience.
6. Organisations providing legal information and services have publicly available client service standards, and mechanisms for assessing whether those standards are being met.
7. Organisations providing legal information and services train staff who deal with members of the public on effective referral practices for both incoming and outgoing referrals.
8. Organisations providing legal information and services have appropriate arrangements with other organisations where there is a high frequency of referrals.
9. Organisations providing legal information and services have mechanisms for assessing the effectiveness of referrals.
10. Organisations providing legal information and services include on their websites information on issues commonly faced by their clients, and links to other relevant service providers/useful websites.
11. Government and community social support services should have tailored referral arrangements with relevant organisations, including central state/territory telephone services.

APPENDIX I

NSW Legal Assistance Forum Working Group: Possible strategies to address recruitment & retention of lawyers in regional, rural & remote areas of NSW

1. Professional learning and development initiatives

Develop initiatives that provide professional support for public sector lawyers, such as:

- an induction and training program that is delivered in regional areas and includes information about the realities of work in RRR areas and an introduction to local networks, services and community organisations
- a mentoring scheme
- supervision and debriefing opportunities, e.g a roster of telephone / AVL support with senior practitioners at ALS, Legal AID NSW barristers
- coordinate the delivery of professional support initiatives across public sector agencies (ALS, CLCs and Legal Aid NSW).

2. Human resource initiatives

Consider a range of remuneration initiatives, including:

- higher salaries paid to lawyers working in the most remote or problematic RRR areas through the use of (a) RRR loading in addition to base salary, and/or regional loyalty bonus / retention bonus paid upon completion of a certain number of years of service in a designated RRR area
- additional leave
- free flights back to Sydney (or other relevant towns)
- increased opportunities to attend training.

Consider different models of service:

- Hub and spoke model: ALS are trialling this model. Lawyers are recruited to work in a regional area (e.g. Dubbo) with the understanding that they will undertake a rotation in a remote area (e.g. Bourke) for a few months and then return to work in the regional area
- Fly in fly out model: local service and administrative support but solicitor flies in and out.

Work together with regional universities to establish clinical legal education programs

Consider the use of locum solicitors in CLCs when resident solicitors are on leave, attending training or otherwise out of the office.

3. Further research and monitoring

Need for further research in relation to:

- Ongoing monitoring of vacancies in public sector legal positions – annual snapshot
- Use of AVL to provide professional support (mentoring and supervision to lawyers in RRR areas)
- Appropriate models of service delivery in problematic RRR areas.