

Sector Perspectives

Legal Need in Australia



MACQUARIE
University

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The Legal Needs Project

The Legal Needs Project aims to extend the understanding of legal needs faced by clients of the Australian legal assistance sector. Funded for three years by Macquarie University, the research examines the nature of legal need and the mechanisms that generate legal problems in the context of disadvantage.

The study is motivated by three central questions:

1. What is the nature of legal need, and how do we define it?
2. How do we understand legal need in its interaction with disadvantage and other non-legal social problems?
3. In what circumstances is it more likely to arise, and for whom?

The project aims to deliver a new approach to understanding legal need across its social, political, legal and health dimensions; and a causal explanation of why some people develop legal needs and others do not.

www.legalneedsproject.org

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The philosophy of critical realism informs her research. Her work aims to extend how social science research and complexity-informed evaluation methodologies may operationalise critical realist ideas to deliver more transformative findings.

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1 Summary of findings

Governments fund the Australian Legal Assistance Sector to meet the legal need of marginalised and disadvantaged Australians. Without understanding the nature and production of legal need, it is difficult to frame service delivery to meet legal needs, identify, measure and target unmet legal need, or advocate for law reform. The *Legal Needs Project* research examines the nature of legal need and the mechanisms that generate legal problems in the context of disadvantage.

This first stage of the study asks: *How does the legal assistance sector (LAS) understand the 'legal need' the Government funds it to meet?* The question is motivated by a conviction that the people working in the LAS have a deep and diverse knowledge and understanding of the legal issues their clients face, the contexts in which they develop, and the barriers that stop their legal and non-legal needs from being met. This report summarises the results of 24 interviews and three workshops involving 138 national legal assistance sector workers. It reflects a synthesised and conceptualised version of the sector's expertise.

Conceptualising legal need

The research identifies three dimensions of legal need:

1. Legal *knowledge* needs
2. Legal *capability* needs
3. Legal *accessibility* needs

Those with a legal *knowledge* need can self-assist if provided with appropriate rights education and legal information. Here, a client's legal need can be met by the cost-free provision of information about their rights or legal remedies to a problem to understand what is happening to them and the legal frameworks available for resolving the problem. They then have the knowledge to choose what to do next and, importantly, the capability to do it.

People with a legal *capability* need require more intensive and ongoing assistance or representation. In this case, there are barriers to a person's competence to resolve the legal issue themselves. For example, individual characteristics—such as a person's financial and other resources, health status, the presence of domestic and family violence, digital and other literacies or English language competence—may amplify their vulnerability or generate barriers to their capacity to self-assist.

Negative emotional/psychological states or prior experiences; the complexity of their issues or of navigating administrative and legal systems; and the level of individualised and holistic support that is required to develop a person's understanding and ability to make informed choices within a self-determination-informed framework are other possible obstacles to a client's capability to self-assist.

Finally, there are legal *accessibility* needs. For people who do not attend a service despite having a legal need, it reflects many types of inaccessibility. Most importantly, an individual needs to understand they have a legal issue or are experiencing something that can be dealt with by the justice system. Not having this basic legal knowledge renders services 'inaccessible' as people with legal problems do not know they need the services or to look for them. In addition, there can be barriers due to the availability of services, discrimination or access to technology. The second type of accessibility issue, which generates unmet legal need, relates to people who attend a service but cannot be (adequately) assisted due to service constraints. Resourcing, thinner service options in rural areas, service capacity and eligibility criteria combine to generate barriers for people who contact a service. These barriers prevent them from having their basic or complete legal needs met.

The relationship of legal and non-legal problems

Legal and non-legal needs form a web of multiple and often complex issues for clients of the legal assistance sector. These include housing insecurity and homelessness, financial stress, discrimination, relationship breakdown, domestic and family violence, social isolation, mental and physical health issues, trauma, living in a rural or remote area, anxiety and depression and many other diverse non-legal problems. Bringing about good client outcomes requires early intervention to stop problems from getting worse, holistic and comprehensive services in response to complexity, and strong engagement and partnerships with other services and organisations in the community.

The context of legal need – towards causal explanation

Legal needs develop within numerous contexts and because of multiple types of triggers. Legal need is generated in a landscape or social world setting containing three conceptually different types of things. In this research stage, the objective was to identify as many of these 'things' as possible and start mapping them. A later phase of the study will be more concerned with understanding how they work individually and through their interactions to cause different forms of legal need.

1) ***Social and cultural structures*** such as the systems, ideologies, and social arrangements or relationships existing in society. These are both emergent from and constraining and enabling individuals' actions. The most important structural-level features helpful for explaining the legal need of clients of the legal assistance sector include: the housing market and social housing provision; the welfare system including Centrelink; administrative systems including the National Disability Insurance Scheme, Immigration and child protection agencies; the law; structural inequalities around race, gender, language, health or for other groups; health and disability services; services and transport in rural and remote areas; and the availability, suitability, adequacy and funding of legal assistance services.

2) ***Individual experience, behaviour, and characteristics*** are the events that happen to us, the things we do as individuals, and our personal characteristics that frame choices and opportunities. The most important individual-level features helpful for explaining the legal need of clients of the legal assistance sector include: limited financial resources; unpaid fines and access to transport; prior experience of the law and legal support services; housing insecurity and homelessness; missing documents, relationship breakdown and family conflict; domestic and family violence; visa status; access and use of technology; physical health; ability to speak English; level of education, social capital and networks; being a victim of crime; and interaction with police.

3) ***Psychology, mental health, and agency*** are factors that influence our individual and internal reflexivity and decision-making. The most important psychological-level features helpful for explaining the legal need of clients of the legal assistance sector include: feeling powerless; mental

health challenges; drug and alcohol misuse; impacts of negative experiences of the law and support services; negative psychological states; and psychological resources

2 Introduction

2.1 Legal Assistance Sector

The Australian legal assistance sector (LAS) comprises organisations funded by the government to provide free and low-cost legal assistance to people unable to self-assist or afford private legal services. The sector consists of 174 Community Legal Centres (CLCs), state and territory Legal Aid Commissions (LAC), Aboriginal and Torres Strait Islander Legal Services (ATSILS), and 14 Family Violence and Prevention Legal Services (FVPLS) nationally. Addressing legal need is integral to the mission and daily decision-making of the sector as it seeks to improve the lives of the most disadvantaged and marginalised Australians. Without understanding the nature and production of legal need, it is difficult to frame service delivery to meet legal needs, identify, measure and target unmet legal need, or advocate for law reform.

2.2 The concept of legal need

The law is part of our everyday life, embedded in and regulating commercial interactions, personal relationships, health, employment, housing, and our relationship with the government¹. Access to justice is a matter of equality, fairness, and respect for human rights. In practical terms, access to legal services protects and enhances other well-being factors². While legal problems affect most people at some point in life³, the Australian justice system is increasingly unaffordable to non-wealthy people⁴. Furthermore, those living at a socioeconomic disadvantage in Australia are more likely to experience

1 Trevor C. W. Farrow et al., *Everyday Legal Problems and the Cost of Justice in Canada: Overview Report* (Toronto: Canadian Forum on Civil Justice, 2016), <https://doi.org/10.2139/ssrn.2795672>.

2 Liz Curran and Mary Anne Noone, "Access to Justice: A New Approach Using Human Rights Standards," *International Journal of the Legal Profession* 15, no. 3 (2008): 195–229, <https://doi.org/10.1080/09695950902785879>.

3 OECD, *Equal Access to Justice for Inclusive Growth: Putting People at the Centre* (Paris: OECD Publishing, 2019), <https://doi.org/10.1787/597f5b7f-en>.

4 Asher Flynn and Jacqueline Hodgson, *Access to Justice and Legal Aid: Comparative Perspectives on Unmet Legal Need* (Oxford: Hart Publishing, 2017).

legal problems and more likely to experience multiple legal problems⁵. They also have greater difficulty accessing legal assistance due to financial and other barriers, including personal capacity and accessibility of services⁶.

Consequently, to understand legal needs, particularly for the lower-income and typically resource-poor clients of the LAS, it is crucial to identify legal issues within the complexity of people's broader problems and their access to assistance from other non-legal providers⁷.

2.3 Research on legal need

A major international report by the OECD⁸ highlights the significance of unmet legal need for well-being and 'inclusive' economic growth and its implications for the design of justice services. It presents evidence that legal needs cluster with people's other legal and non-legal problems, affecting some groups more than others, including women, children/youth, older people, the disabled, single parents, and Indigenous communities. It illustrates how the failure to resolve a legal problem can worsen a person's social and economic circumstances. The report also stresses the worldwide interest in better understanding legal need. It argues that the relationships between legal need, its drivers, effects, and the complexity of their interactions are currently not well understood in international research. It argues that the methodologies for predicting the distribution and magnitude of unmet legal need in the community are insufficiently robust—a problem compounded by the current superficial understanding and definition of legal need. Although providing a substantial summary of the research to date, the report has an economic focus, concentrating on growth and sustainable development, costs of unmet legal need, and the economic benefits of meeting these needs. Notably, while drawing on Australian research, the report has few specific findings for Australia.

The Law and Justice Foundation of NSW⁹ conducted the ***Legal Australia-Wide (LAW) Survey*** building on earlier legal needs surveys developed in the United Kingdom. It was part of the Foundation's long-running research program *Access to Justice and Legal Need*¹⁰. The work reflects a growing emphasis worldwide on empirical research into the prevalence of legal issues¹¹. The LAW survey asked about the types of legal problems people experience and collected demographic characteristics for respondents. It used multivariate statistical approaches to identify patterns in legal needs associated with forms of disadvantage and particular demographic groups.

The research found indicators of disadvantage are associated with an increased prevalence of legal problems, generally of increased complexity and involving more of the legal problem types/groups measured. In more detail, the survey finds that people living with a *disability* have a higher prevalence of legal problems overall, more substantial legal problems, multiple legal problems and problems from all 12 problem groups measured. *Single parents*, the *unemployed*, and those living in *disadvantaged housing* likewise have a higher prevalence of legal problems, substantial legal problems, multiple legal problems and problems from seven or eight problem groups. People whose primary source of income was *government payments* have a higher prevalence of substantial problems and more family, government, health and rights-related problems. *Indigenous* people have a high prevalence of multiple problems and more government, health and rights-related problems. Those in *regional areas* (compared to cities) have a higher prevalence of multiple legal problems. The evidence from this research is in accordance with international legal needs survey research, which

5 Christine Coumarelos et al., *Legal Australia-Wide Survey* (Sydney: Law and Justice Foundation of NSW, 2012).

6 Pascoe Pleasence et al., *Reshaping Legal Assistance Services: Building on the Evidence Base* (Sydney: Law and Justice Foundation of NSW, 2014).

7 OECD, *Equal Access to Justice for Inclusive Growth: Putting People at the Centre* (Paris: OECD Publishing, 2019), <https://doi.org/10.1787/597f5b7f-en>.

8 OECD.

9 Coumarelos et al., *Legal Australia-Wide Survey*.

10 Louis Schetzer and Judith Henderson, *Access to Justice and Legal Needs. A Project to Identify Legal Needs, Pathways and Barriers for Disadvantaged People in NSW* (Sydney: Law and Justice Foundation of NSW, 2003), <http://www.lawfoundation.net.au>.

11 OECD, *Equal Access to Justice for Inclusive Growth: Putting People at the Centre*, 2019.

shows that disadvantaged people are particularly susceptible to legal problems. However, the study did not analyse why legal problems occur.

Other Australian research has investigated the legal need of Indigenous peoples¹², older people¹³, youth¹⁴, people experiencing homelessness¹⁵, prisoners¹⁶, those with cognitive impairment¹⁷ or mental illness¹⁸. The connection between unmet legal needs and health problems has been studied extensively¹⁹. There is related, insightful research on reshaping legal assistance services²⁰, collaborative service planning²¹, how people's perception of the law impacts their access to justice,²² and technology and access to justice²³. Also, researchers have considered different methodologies for measuring unmet legal need²⁴.

Further research on legal capability and how people experience and interact with the law is the focus of a major survey project by the Victoria Law Foundation, *The Public Understanding of the Law Survey (PULS)*. Based on a sample of 6,000 Victorians, the results show the high prevalence of 'justiciable problems' in the general population (42%) and that disadvantage increases the prevalence of problems and the likelihood that they will have more than one²⁵. The findings suggest that older people, people with lower incomes, those with lower education, those experiencing moderate or severe mental distress, or those in financial distress face the highest barriers to accessing and using legal services and processes. That is, reduced legal capability is associated with disadvantage²⁶.

The *National Legal Assistance Partnership 2020-2025*²⁷ governs the funding and reporting frameworks for the legal assistance sector agreed upon between Commonwealth and State and Territory Governments. The objective of the current funding agreement is, in part, focused on "improving outcomes and keeping the justice system within reach for vulnerable people facing

12 Chris Cunneen, Fiona Allison, and Melanie Schwartz, "Access to Justice for Aboriginal People in the Northern Territory.," *Australian Journal of Social Issues* 49, no. 2 (2014): 219–40, <https://doi.org/10.1002/j.1839-4655.2014.tb00309.x>; Fiona Allison and Chris Cunneen, *Access to Justice in the Barkly* (Sydney: UTS: Jumbunna Institute for Indigenous Education and Research, 2020), <https://doi.org/10.1093/acprof:oso/9780195383614.003.0009>.

13 Sarah Ellison et al., *The Legal Needs of Older People in NSW* (Sydney: Law and Justice Foundation of NSW, 2004).

14 Ian O'Connor and Mary Callahan, "Youth, the Law and Legal Services: Patterns of Legal Need," *Australian & New Zealand Journal of Criminology* 21, no. 1 (1988): 5–19, <https://doi.org/10.1177/000486588802100102>.

15 Suzie Forell, Emily McCarron, and Louis Schetzer, *No Home, No Justice? The Legal Needs of Homeless People in NSW* (Sydney: Law and Justice Foundation of NSW, 2005); Ann-margaret Walsh, "Homelessness and Legal Need in Western Australia," *Parity* 25, no. 9 (2012): 16–17.

16 Anne Grunseit, Suzie Forell, and Emily McCarron, *Taking Justice into Custody: The Legal Needs of Prisoners* (Sydney: Law and Justice Foundation of NSW, 2008).

17 Abigail Gray, Suzie Forell, and Sophie Clarke, "Cognitive Impairment, Legal Need and Access to Justice" (Sydney: Law and Justice Foundation of NSW, 2009).

18 Maria Karras et al., *On the Edge of Justice: The Legal Needs of People with a Mental Illness in NSW* (Sydney: Law and Justice Foundation of NSW, 2006).

19 Tessa Boyd-Caine, "Health and Justice through Partnership Innovating to Meet Legal Need," *Precedent* 154 (2019); Hazel Genn, "When Law Is Good for Your Health: Mitigating the Social Determinants of Health through Access to Justice," *Current Legal Problems* 72, no. 1 (2019): 159–202, <https://doi.org/10.1093/clp/cuz003>.

20 Pleasence et al., *Reshaping Legal Assistance Services: Building on the Evidence Base*.

21 Christine Coumarelos et al., *Collaborative Planning Resource: Service Planning* (Sydney: Law and Justice Foundation of NSW, 2015).

22 Nigel Balmer et al., "Law...what Is It Good for? How People See the Law, Lawyers and Courts in Australia" (Melbourne: Victoria Law Foundation, 2019), <https://victorialawfoundation.org.au/research/research-reports/law-what-is-it-good-for-how-people-see-the-law-lawyers-and-courts-in-australia/>.

23 Catriona Mirrlees-Black, Maria Karras, and Sarah Randell, *Law Informed: The Value of Telephone Legal Information Services to Clients* (Sydney: Law and Justice Foundation of NSW, 2020); Roger Smith and Rebecca Sandefur, "Technology and Access to Justice," in *International Legal Aid Group Conference* (Australia, Online, 2021).

24 Productivity Commission, *Access to Justice Arrangements* (Canberra: Australian Government, 2014); Richard Owen, "Lawzone: Mapping Unmet Legal Need," *International Journal of Clinical Legal Education* 24, no. 2 (2017): 3–42,

<https://doi.org/10.19164/ijcle.v24i2.596>; OECD, *Equal Access to Justice for Inclusive Growth: Putting People at the Centre*, 2019; Hugh M. McDonald et al., "Apples, Oranges and Lemons: The Use and Utility of Administrative Data in the Victorian Legal Assistance Sector" (Melbourne: Victoria Law Foundation, 2020).

25 Nigel J Balmer et al., "Everyday Problems and Legal Need," *Public Understanding of the Law* (Melbourne: Victoria Law Foundation, 2023).

26 Nigel J Balmer et al., "Understanding and Capability," *Public Understanding of the Law* (Melbourne: Victoria Law Foundation, 2024).

27 Attorney-General's Department, *National Legal Assistance Partnership* (Canberra: Australian Government, 2020), <https://www.ag.gov.au/legal-system/legal-assistance-services/national-legal-assistance-partnership-2020-25>.

disadvantage” (p.3). Therefore, the legal assistance sector needs to understand legal need, specifically in the context of disadvantage.

Disadvantage is a concept with no one agreed on definition or approach to measurement²⁸. It refers to poverty, both in absolute and relative terms, as well as the persistence of poverty. However, it can also encompass a broad range of other financial and non-financial factors that reflect an ‘impoverished life’²⁹. Disadvantage incorporates both individual and environmental factors, which interact over time. Three overlapping and complementary approaches—the deprivation, capability and social inclusion/exclusion frameworks—offer more multidimensional definitions. Measuring disadvantage as *deprivation* is based on a person having no access to essential items because they cannot afford them. It establishes a framework of a culturally subjective and temporally specific minimum for a standard of living³⁰. The *capability* approach is based on the work of Amartya Sen. It considers disadvantage in light of the opportunities and rights a person has to achieve positive outcomes in their life³¹. The *social inclusion and exclusion* approach recognises the multidimensional nature of disadvantage, considering participation, social connectedness, financial and human capital³². As argued by Kuskoff³³, social exclusion is also a conceptual framework that can bring to light the process leading to disadvantage to identify its underlying causes.

Dr Warren Mundy recently reviewed the National Legal Assistance Partnership for the Attorney-General’s Department³⁴. The independent review’s findings included that there needs to be better data collection about the services provided by LAS partners, with a particular focus on outcomes. Its author also mused that a legal assistance framework design should “consider regulatory and other policy actions to reduce or address need” (p.ii). That is, it should focus on actions that reduce legal need by addressing its causes, in addition to funding services to meet legal need. The review found evidence that: “Broader socio-economic conditions and policy changes are contributing to the increase in legal need, including:

- growing impacts of entrenched economic disadvantage, discrimination, and intergenerational trauma, experienced by Aboriginal and Torres Strait Islander peoples
- increasing costs of living leading to higher incidence of issues in consumer protection, housing and homelessness, and social security, among others
- growing awareness and levels of mental ill-health
- increasing prevalence and severity of environmental disasters
- changes in Commonwealth Government policies in areas such as migration, refugees, veterans and serving personnel entitlements, social security entitlements, and NDIS eligibility and plans
- state and territory criminal law reform, particularly in relation to bail, sentencing and family violence.” (p.ii)

Dr Mundy recommends significantly increased funding to the LAS and funding stability to meet rising levels of need and enable access to services for all people experiencing genuine economic hardship.

28 AIHW, *Australia’s Welfare 2017* (Canberra: Australian Institute of Health and Welfare, 2017).

29 Rosalie McLachlan, Geoff Gilfillan, and Jenny Gordon, *Deep and Persistent Disadvantage in Australia* (Canberra: Productivity Commission Staff Working Paper, 2013).

30 Peter Saunders, “Using a Budget Standards Approach to Assess the Adequacy of Newstart Allowance,” *Australian Journal of Social Issues* 53, no. 1 (2018): 4–17, <https://doi.org/10.1002/ajs4.30>; Peter Saunders, “Closing the Gap: The Growing Divide between Poverty Research and Policy in Australia,” *Australian Journal of Social Issues* 50, no. 1 (2015): 13–35.

31 McLachlan, Gilfillan, and Gordon, *Deep and Persistent Disadvantage in Australia*.

32 AIHW, *Australia’s Welfare 2017*; Brotherhood of St Laurence, “Social Exclusion Monitor,” 2019, <https://www.bsl.org.au/research/social-exclusion-monitor/>.

33 Ella Kuskoff, “The Importance of Discourse in Homelessness Policy for Young People: An Australian Perspective,” *Journal of Youth Studies* 21, no. 3 (2018): 376–90, <https://doi.org/10.1080/13676261.2017.1380789>.

34 Warren Mundy, “Independent Review of the National Legal Assistance Partnership 2020-25 – Final Report” (Canberra: Australian Government, 2024).

2.4 Report overview

The Legal Needs Project augments and interacts with existing research on legal need. This first stage of the study asks: *How does the legal assistance sector (LAS) understand the 'legal need' the Government funds it to meet?* This question is motivated by a conviction that the people working in the LAS have a deep and diverse knowledge and understanding of the legal issues faced by their clients, the contexts in which they develop, and the barriers stopping their legal and non-legal needs being met.

This report summarises the results of 24 interviews and three workshops with a total of 138 workers from the legal assistance sector nationally. It presents *Sector Perspectives* on the nature of legal need and how it is generated for clients of the sector in the context of disadvantage—with an understanding of disadvantage through the lenses of deprivation, capability and social exclusion.

The report presents the research findings in four sections. The first section provides an introduction establishing high-level definitions and ideas about legal need that interview and workshop participants commonly expressed. The second section describes a conceptual framework for understanding the attributes or properties of legal need across three dimensions, encapsulating the core features of how sector workers describe it. The third section looks at the relationship of legal to non-legal needs. The final section outlines how participants understand the generation of legal needs. Their perspectives come from professional experience and knowledge of their clients, the contexts in which they see their clients' legal and non-legal problems develop, and knowledge developed through exposure to professional development opportunities and research. Therefore, this final section describes the landscape in which legal needs develop for clients of the sector, from the perspective of lawyers and non-lawyers working in it.

3

Defining legal need – an overview

The interviews and workshops started with a high-level question to participants: *What is legal need?*

The following discussion of their responses provides an overview of many of the themes that will reappear in detail in later sections of this report.

When asked to define legal need, many interviewees responded that this is a ‘challenging question’. Several find the lack of a united framing or common language about legal need a problem for service delivery management, funding, data collection, advocacy, and identifying and predicting the legal needs of their community. At a fundamental level, however, most understand that legal needs are generated when people or communities are experiencing problems that can be resolved with a legal response.

Participants describe legal needs as diverse. They identify that legal need is associated with events and circumstances impacting an individual. However, at the same time, they recognise legal needs are experienced by some groups of people with common characteristics or conditions upon them, such as refugees, domestic violence victims, or tenants.

Sector workers recognise that the distinction between legal and non-legal social, economic, health or housing issues can be unclear, with some problems potentially solvable through a legal or non-legal solution. Further, the nature of the issue can change over time, become more challenging to solve or become part of a complex web of legal and non-legal problems that a person grapples with over a long period. Participants working in community legal centres, particularly those in more regional areas, also speak of legal need as dependent on the local environment in which someone lives and shaped by what legal and other community services they can access.

The philosophical commitments driving the rationale for a service shape some sector perspectives on defining and explaining legal need. For example, the manager of a women’s legal service said that her organisation’s mission shapes their understanding of legal need:

We get up every morning because fundamentally, the organisation believes the system

has been designed in a way that systematically disadvantages women and advantages men, that the outcomes women have are terrible, and that we are part of ameliorating that system.

Similarly, respondents working within services for First Nations peoples articulate their objectives as meeting legal needs associated with historical and contemporary colonialism, disadvantage and inequality. They are working to bring about structural change.

Generally, participants distinguish between 'met', 'expressed' and 'unmet' legal need, but acknowledge that these categories are not always easy to delineate clearly:

I don't think we have got a very good grasp on legal need. I think that the heart of this issue is that there's expressed legal need. And even the expression of legal need is not necessarily well understood because it is expressed in a way that the service system can respond to it, and that [response] may be inadequate in the eyes of the [user] of those services. And then there is the unexpressed legal need, where people don't even understand that their problems might have a legal dimension to them. I think it's a fairly difficult thing for us to get clear about.

The increasing imperative to measure or predict unmet legal need concerns many in the sector, particularly in the context of how Governments allocate funding. The tools available, including currently available indicator frameworks for legal needs assessments, are described by several participants as hard to understand, blunt instruments in the face of complexity, full of unjustified assumptions about what drives legal need, and without an established robust evidence base. Yet, the sector understands that quality data is vital for service delivery planning. Many interview participants desire better data, the training to use it, and funded time to engage with it. Interviewees, particularly those working at community legal centres, argue that their knowledge of unmet legal need in their area is profound yet undervalued. Evidence of the extent of unmet legal need is evident through their interactions with the local community and consultation with other local services. These ideas were also prevalent throughout the workshops.

A recurring theme in the data is that the law features in 'everyday life' and legal problems can develop for anyone:

Issues arise because the law is deeply integrated into every part of our society. And basically, anything that is regulated by society... has a sort of legal framework sitting there within it... the underpinning of the law that affects every single aspect of our lives.

However, interviewees working in the legal assistance sector recognise that simply having a legal problem does not equate to having the type of legal need they are funded to meet. Eligibility for services is a complex mix of capacity to pay—assisting those living in financial disadvantage is a condition of sector funding—and the capability of clients to 'self-assist'. The sector's understanding of legal need also acknowledges that some populations are more at risk and require prioritisation of services. For these reasons, the sector sees a difference between the legal need that may be met by private legal practice and that which they are funded to meet.

Thinking about the legal need of their clients, words such as risk, vulnerability, marginalisation and disadvantage are understood by many to have strong normative or value-laden elements. Some respondents expressed concern that these terms can influence how different stakeholders understand legal need and its production and may be used to negatively characterise those with legal need.

4

Conceptualising legal need

Participants expressed a range of opinions about the multi-faceted nature of legal need and the complexity of its definition.

The conceptual framework for understanding legal need, presented in this report, seeks to deliver a synthesis of ideas from the breadth of the sector and suggest an outline of how the dimensions of legal need are understood. The framework was initially developed from the interview data and then tested and extended through the workshops. It identifies three dimensions of legal need as participants understand the sector's clients experience it:

4. Legal *knowledge* needs
5. Legal *capability* needs
6. Legal *accessibility* needs

Those with a legal *knowledge* need can self-assist if provided with appropriate rights education and legal information. Here, a client's legal need can be met by the cost-free provision of information about their rights or legal remedies to a problem, with only minimal additional assistance. Clients with a legal *capability* need require more intensive and ongoing assistance or representation. In this case, there are barriers to a person's competence to resolve the legal issue themselves. Finally, there are legal *accessibility* needs, where people do not seek a service's assistance or cannot be adequately supported due to sector resource constraints. These forms of accessibility-orientated legal needs constitute 'unmet' legal need.

4.1 Legal knowledge needs

The first dimension of legal need is a deficiency in an individual's or community's understanding of rights, the legal dimensions of their problem, and possible legal and non-legal remedies available to them.

Legal needs in this context are met by providing knowledge about the problem or problems in a legal context, rights education, straightforward assistance, and information about where to look for further support. Services seek to meet these legal knowledge needs by providing information about the legal

process relevant to the area of concern, at a stage that empowers clients to navigate their options at each step towards achieving an outcome. A relative lack of complexity and potential for quick resolution characterise legal needs that are purely legal knowledge needs. Participants describe the role of community legal education in face-to-face, digital or written forms or by providing short, personalised assistance in meeting this form of legal need.

In other words, to meet a legal knowledge need, people need to receive legal advice or information that helps them to understand what is happening to them and the legal frameworks available for resolving the problem. They then have the knowledge to choose what to do next and, importantly, the capability to do it.

4.2 Legal capability needs

When describing legal need, many interviewees refer to how their service navigates the requirement to distinguish between 'who gets advice' and 'who gets taken on' for more intensive and ongoing assistance or representation. Services weigh up factors such as the impact on the individual if they don't get help, the service's capacity and whether the client's legal needs match the service's areas of expertise. Services assess a person's ability to advocate for themselves, exercise their rights, and who is most vulnerable to inform these decisions.

Compared to the legal knowledge needs described above, this second category of legal need is different, the nature of which speaks to a client's capability to self-assist, to take information and then be able to do on their own what is required to overcome the issue.

But does it impact your ability to self-assist? And that's really about capacity. Again, are you someone for whom we can just provide the right information at the right time, and then you're going to be able to go off and help yourself. Or are you someone who's going to need really applied constant case management all the way through the process, because you're just not going to have the capacity to do that work yourself.

Interviewees suggested that several interconnected factors influence their clients' capability to self-assist with appropriate knowledge.

Individual factors

These factors impact an individual's capability because of personal circumstances, characteristics, experiences, and life events. They include, for example, their financial and other resources, health status, the presence of domestic and family violence, digital and other literacies, competence in the English language, and factors relating to culture. In reflecting on how individual characteristics or factors impede a person's ability to self-assist, many participants also talked about how power imbalances and structural inequalities limit a person's capacity to act.

A client's emotional or psychological state

A person's level of confidence, prior experience of legal systems, trauma, or being overwhelmed by challenges they face also impact a person's capacity and engagement with the legal system, and there is an associated increased need for more intensive intervention. An individual's personal and shared family or social history and emotional state are intrinsically part of their encounter with legal need and its process of resolution:

People's lives [...] are not a bundle of legal problems. A person is a person with a very complex set of other relationships in their lives and experiences and things they've learned and been burned by, and their trust and the emotional capacity that someone has is just as important in the resolution of their problem as the skill or ability of their lawyer.

Being in crisis and experiencing trauma impacts a client's ability to process new information, evaluate it and make decisions. Their psychological state can reduce their capacity to engage, increasing the

load on sector workers and the resource intensity required to meet the legal need. What else is going on in a client's life—whether they have health issues, a challenging home situation or other social and relational difficulties—can seem peripheral to the problem for which they seek assistance. Yet these concerns in a person's life reduce their ability to engage cognitively and emotionally.

Cultural safety

In the case of Aboriginal and Torres Strait Islander Australians, given the contemporary impacts of continuing policies of colonisation, feeling culturally unsafe when navigating systems also increases the vulnerability of clients and the complexity of their legal needs in ways that are:

Quite specific to Aboriginal and Torres Strait Islander community and their rights [...] like actual engagement in the justice system, attitudes towards the justice system, whether people feel that the justice system is there to help them, whether they feel represented in it, whether they feel that they're going to get a fair outcome and, you know, should I even bother going through that process? [...] the trust that isn't there and needs to be built.

A lack of cultural safety is an accessibility issue. However, as shown in the quote from a sector worker above, a lack of cultural safety also impacts the motivation, trust and sense of personal agency that helps determine a person's capability to act—to self-assist and to have the confidence to engage with the legal system.

The challenge of complexity

Interviewees report the increasing difficulty of navigating complex administrative, legal and other systems for clients. They argue that a critical component of capability is how complexity amplifies the demands on clients and reduces their capacity to self-assist:

I think there is a dimension of, that navigating of the system, which in itself can be part of the need that needs to be met. Let alone, perhaps the substantive piece of law that needs to be dealt with.

In this context, understanding complicated administrative processes, having the necessary digital literacies, and having access to the internet are all additional issues that influence capability in the context of complexity.

Significantly, participants also recognise that a more complex legal problem, or how that problem is entangled in a web of other legal and non-legal issues, adds additional complexity that reduces the capability of clients to navigate their problems without extra assistance.

Adequate individualised, holistic and timely support

Many sector workers share a commitment to client self-determination. Genuine self-determination is particularly challenging when considering the factors contributing to reduced capability and how services meet more complex legal needs. Participants argue that to resolve legal issues appropriately, clients need enough support and holistic assistance to choose what *they* want. Therefore, meeting a client's legal capability need requires the sector to have a more comprehensive understanding of "what we can do for them when they're engaging with the justice system". That is, a response consisting of early intervention and prevention work, 'holistic' wraparound support, and the referrals needed to support clients in their specific context through the whole experience of a legal issue. The role of advocates within the system is paramount to ensuring access to justice for people whose diminished capability changes the nature of their legal need and engagement with the legal system.

The workshops provided an opportunity to look in more detail at capability—what ideally should be in place for a client to 'self-assist' and meet their legal needs, or what sorts of clients, situations and contexts require more intensive and ongoing assistance or representation. Participants were asked to use virtual post-it notes to add barriers and enablers to self-help onto a continuum from 'needing less

In summary

The degree to which a person can identify, assess and navigate a resolution to their problem distinguishes the essential difference between the first two dimensions of legal need. For those experiencing the first more straightforward type of legal knowledge need, assistance in identifying a legal remedy to their situation and advice enabling them to act is sufficient. For those experiencing the second type of legal capability need, individual characteristics may amplify their vulnerability or generate barriers to their capacity to self-assist. Negative emotional/psychological states or negative prior experiences; the complexity of their issues or of navigating administrative and legal systems; and the level of individualised and holistic support that is required to develop a person's understanding and ability to make informed choices within a self-determination-informed framework are other possible obstacles to a client's capability to self-assist.

An inherent understanding of these two types of legal need is apparent when participants describe their choices when prioritising clients for assistance and determining what mix of services to offer. Interviewees describe the decisions made in the sector as almost always characterised by compromise, born of pragmatic necessity within a resource-scarce environment. A recurring theme in the interviews is that a better understanding of legal need would enable more informed and robust frameworks for service demand management to target the most vulnerable.

4.3 Legal accessibility needs – driving unmet legal need

Interviewees commonly defined legal need in terms of *unmet* legal need—the “difference between supply and demand, of what's provided and what's required”. Based on knowledge of their communities and their service's experience of service demand, participants forcefully argue that there is a significant quantity of unmet legal need in the population.

Both interview and workshop participants understand unmet legal need as the product of legal accessibility needs in two ways. First, some people with legal needs are not seeking assistance from legal assistance services even though they would be eligible for help. Second, some people attend a service but cannot be (adequately) assisted due to service resource constraints.

4.3.1 Eligible but not seeking assistance

The first type of accessibility issue is the result of people who have legal needs and would be eligible for services, but do not seek assistance:

When we think or when we talk about legal need, we're also in the same breath, talking about unmet legal need, to try and find those people who aren't reaching our centres.

Participants describe people not attending a service, despite having a legal need, as a reflection of many kinds of inaccessibility. The most important and often mentioned is that an individual needs to understand they have a legal issue or are experiencing something that can be dealt with by the justice system. Not having this basic legal knowledge renders services ‘inaccessible’ as people with legal problems do not know they need the services or to look for them.

In addition, there can be barriers due to the availability of services, discrimination or access to technology.

Material or physical barriers

Respondents distinguish many material barriers to accessibility, but in essence, it is about whether clients can find and use services when they need them. Appropriate geographical distribution of services would enhance accessibility, especially in regional areas where the need to travel to the city is a barrier. Accessibility also means accessing a service spontaneously and receiving help, with pathways to connect to legal services through other community and health services.

Discrimination

Participants identify the impacts of discrimination, in all its forms, as creating barriers to accessing

justice or having legal needs met. Discrimination was a particular concern of those working directly with Indigenous clients. The legacy of the justice system and its continuing inequalities deter Aboriginal and Torres Strait Islander peoples' engagement with the sector, creating cultural and psychological barriers to trust in services. The absence of culturally safe service delivery is a critical barrier to Aboriginal and Torres Strait Islander clients trusting services. It also is a barrier to services being able to understand, articulate and appropriately respond to the specific legal need of their Indigenous clients.

Technological barriers

Many (but not all) respondents are sceptical that more 'efficient' modes of delivery of services, such as telephone or internet-based, are an appropriate mode of delivery for the majority of their clients. One long-time sector employee spoke of the knowledge about the law and easy engagement with sources of information that the "people like me who are running the system" have. She talked of her service's clients as being:

Cohorts of people who don't even begin to know. You can put out a million websites and all the rest of it, they're just not in that world. So yeah, how do you go into their world? And, you know, the most obvious ways are through how they already intersect with the system.

Community and service connections

Many, particularly those working within community legal centres, highlight the importance of relationships and partnerships with 'grassroots' community, social assistance and health organisations to generate robust and effective referral systems and appropriate services. Participants talked about the difficulty of reaching culturally and linguistically diverse populations and engaging them, partly because the sector does not understand their needs well enough for effective outreach or education to recognise their legal need. Being connected is important:

I think it's whether or not, or how you embed a service. How do you make sure that people feel like it's theirs? And that they can use it?

Relationships of trust and good communication mean legal services "get alerted to issues before they sort of explode". Interviewees speak of the importance of being local, reliable—including having ongoing staffing consistency—and being able to offer their clients in-person and face-to-face services in an environment in which they are comfortable:

It's important for us not just to sit here in our office and expect people to come to us. We actually have to make the effort of going to them in areas where they're comfortable. Because some of [...] the most disadvantaged, would find [our office] intimidating coming to it. Whereas if we go to them in their halfway houses and shelters and things like that, that's their space.

Shared relationships with other community and health services enable community legal centres to target specific outreach activities to connect with clients with different types of legal needs. By working with community members and through other services they can find out what the needs are and where and how they should offer assistance.

Some describe potent opportunities for connecting with unmet legal need through co-location and embeddedness in the way that health-justice partnerships achieve this:

I think we know to an extent, that there will be some correlations between particular groups of people and the sorts of legal needs they might have. And we also know there's probably some correlations between types of legal issues [...] So, part of me thinks do we need to just get better at working with second-tier providers? Because I think that's the answer to me, the health justice partnership model. It's where do these people go? And

what tools can you provide, to the people where they go, to help them? How can you get in at the ground floor? Because the thing about legal problems is, the longer you leave them, the worse they get.

One interviewee shared that legal assistance services need to be surrounded by a web of “allied legal” services, in the same way that health services are, to provide accessible and timely assistance.

Although respondents recognise the importance of reaching out, they acknowledge how time-consuming it is. Capacity and resource pressures faced by services tend to increase the pressure to focus on those who make it to the door rather than generating new sources of clients, even when they know the unmet need is there.

4.3.2 Unable to be assisted

The second type of accessibility issue, which generates unmet legal need, relates to people who attend a service but cannot be (adequately) assisted due to service constraints.

Resourcing, service capacity and eligibility criteria combine to generate barriers for people who contact a service. These barriers prevent them from having their basic or complete legal needs met:

When we look at legal need in our sector, we have the word ‘unmet’ at the front of it, and unmet is the word that tells you about the barriers. [...] Why is that need unmet? Because you’re not going to really get unmet legal need when [services] have the capacity and the resources to meet their need.

For people in remoter areas where service options are thinner, if they are out of catchment, or if their legal issue is not one that service is equipped or funded to meet, they will experience increased difficulty finding assistance. They may fail to meet the income thresholds to be eligible for help, yet not have the financial resources to seek support in the private legal sector.

A related element of the capacity issue is there are not enough resources to provide all who seek assistance with the optimal level of support to meet their needs adequately:

It is about prioritising who gets the advice. And then whose case gets taken on. [...] Every advice night that has eight to 12 advice appointments, I’m sure they’d all love to be taken on. But realistically, probably, you know, maybe one would be taken.

There are also issues related to competitive funding—what is counted and what is funded. Even though States and Territories currently directly fund local services through their different systems, in general, tensions between the quantity or nature of the help required and what the funding models dictate a service can and cannot do delimit the capacity of a service to respond and meet the legal needs of those who seek assistance.

Many interviewees spoke of the conflict between funding focused on maximum client numbers and the complexity of the unmet legal need they see. Working with clients who require more intensive assistance makes their numbers ‘look bad’. In an environment of resource scarcity, the focus on easily measurable outputs rather than outcomes limits the capacity of services to respond to the needs of their clients more holistically or drive the systemic change that would reduce future legal needs:

I just think the risk that the sector runs is measuring its success in how many clients it provides legal services to, and not what the impact of legal assistance can be on broader social policy goals.

This problem with how the meeting of legal need is defined, categorised, measured and funded is understood by some to be strongly influenced by definitions that conflate legal need with legal services delivered:

An understanding of legal need that goes beyond services for one, so not defining met need as service delivered. So, a more nuanced view of what a met need actually looks like. And a definition of what a met need is. I think this has to be more about outcomes than it does about service delivered.

In addition to having inadequate resources to meet the legal needs of those with complex problems, the drive towards meeting funding targets compromises the strategic planning that would allow services to respond better to legal need. Meeting service delivery targets puts pressure on the time needed to think, talk, consult and make change.

Unmet legal need is something that people in the sector think a great deal about. They are asking important questions and considering the alternatives for their communities and the implications for their services. For example, they ask why individuals are not seeking assistance, and if they do, what are the barriers to them resolving their issues? They are also thinking about the role of systemic problems or structural inequalities in generating legal needs and why these become unmet legal needs:

I think of [legal need] through the framework of unmet legal need, so when I was more in a specialist context, it was about what are the legal needs that crop up commonly for a group of people like so, for example, family violence victims or women experiencing relationship breakdown, like what are the most frequently encountered legal needs? And then the second part of it is, to what extent are they met? And that's totally dependent on your local environment. So, at [regional town], it's about what is the environment that we're operating in? What are the services that are available? How accessible are they to the people that need them the most? Who isn't able to access them and why?

At the same time, some respondents commented that the amount of time that their service and the sector spend trying to quantify unmet legal to justify existing funding levels, could be better spent increasing financial support to meet the need they already know is there.

In summary

As the interviews and workshop findings suggest, LAS lawyers and non-legal workers understand legal need across three dimensions. The first is a need for legal *knowledge* that services can meet by providing information at the right time to clients, who are then empowered to go and help themselves. The second relates to *capability*, the degree to which a legal need, due to its nature or the client's capacity, requires a higher intensity of assistance to enable a resolution. The final dimension of legal need is the need that is unmet because of issues related to *accessibility*. These can be barriers that clients experience that block their attendance to a service or the inability of a service to offer appropriate and timely assistance due to funding and service constraints.

The interview and workshop data generated two additional themes when asking participants how they understand legal need. These are:

- 1) Complexity and the fact that legal needs and non-legal needs are interconnected and compound each other.
- 2) Systems and structures generate legal needs for individuals and population groups.

The following two sections of this report discuss each of these subjects in turn.

5

The relationship of legal need and non-legal problems

Across the interviews and in the workshops, participants talked about how the legal problems of many of the sector's clients are made more complicated by their entanglement with the client's non-legal needs. For this reason, a lawyer—with experience in commercial legal practice and now working for a community legal centre—says, “I think in some ways, some of the hardest cases end up in this sector”. Another lawyer talks of the interaction of legal need with the rest of someone's life and the implications for managing the resulting complexity:

It's not a whole lot of simple things, these people, they lead messy and complex lives. And to work with them, requires long-term extended resources.

Workshop participants mapped the non-legal problems that, when present, add to the complexity of a client's legal issue. From their experience, they considered what other things in a person's life interact with 34 different high-level civil, criminal and family law legal problem types. Figure 2 shows the non-legal problems participants identified. The font size in the word cloud reflects the frequency with which each issue was identified as a non-legal need, complicating the resolution of a client's legal needs.

It is notable that housing is the most commonly identified non-legal issue associated with numerous legal problem types. Participants mentioned housing affordability, availability and quality, and homelessness and housing instability as issues that complicate the resolution of a person's legal needs. Financial stress, often described by participants as poverty and sometimes as unemployment, also featured strongly as an essential compounding factor. A third key focus of the workshop contributor's attention was on the intensifying effects of trauma, mental health, anxiety and depression, drug and alcohol misuse, stigma and shame, and social isolation. These are issues impacting clients directly, for which they may need significant assistance, and are also factors complicating and amplifying difficulties with resolving legal problems. A large number of participants also mentioned relationship breakdown, domestic and family violence, financial abuse, coercion and violence—against family law

problem types, of course, but also more broadly as being co-present with other legal problem types. The life course impacts of being in out-of-home care (OoHC), particularly for the legal (and non-legal) problems of young people seeking help from LAS, were also described.

Other non-legal issues include not having reading, digital or financial literacy or not having access to technology, phone services or the internet. Outstanding fines, precarity due to visa status and not having identification documents are also often also present alongside legal issues. Interestingly, many participants nominate living in a rural or remote area with limited community and health services and transport options as a 'non-legal problem' intersecting with the legal problem under discussion. They conceive of these resource constraints as significant 'needs' to be accounted for when seeking a resolution for a client's legal issues. Chronic health problems and disability are also a feature impacting the resolution of legal needs for many clients. Finally, participants talked about how being a member of the LGBTQIA+ community, racism and other forms of discrimination related to identity are increasing the complexity and dimensionality of a person's legal problems across multiple problem types.



Figure 2: Non-legal problems adding to the complexity of a client's legal issue

Due to the complexity and diversity of non-legal problems for clients of the LAS, the response of a legal service to the person's needs may not always foreground a legal response. Some respondents talked about an ongoing shift away from past practices, which used to see a much stronger delineation

between what lawyers do and what social workers do. In reaction to the complexity of client problems, the answer of a legal service to the person's needs may not always foreground a legal response:

It's not straightforward, in the sense that sometimes our assistance can blur into that social assistance. Not to say that it's not necessarily a legal issue. But I think sometimes, especially being in community practice, you need to be aware that the definition of a legal response is going to be stretched as far as it can possibly be stretched. And I guess that's what I mean, is just sort of having a broader approach to what a legal issue is.

The interaction of legal and non-legal needs means that, for one interviewee, the definition of meeting legal need for sector clients can never be purely 'resolving a legal matter'. For clients to have meaningful outcomes and see fundamental changes in their life, there needs to be engagement by a range of service providers delivering timely and integrated outcomes-focused interventions.

There is nothing neat or linear about the relationship between legal and non-legal issues. Responding to clients' legal needs in this sector requires flexibility and a capacity to look holistically at what is happening in someone's life, consider the interaction of their likely multiple needs, and collaborate with different service responses.

It's finding out what the client actually needs, 'cos there are so many issues, it's trying to prioritise them. Which one do you do first. You're untangling this kind of ball, these balls of string [...] People come in [to a legal assistance service] and they don't know really what their legal needs are. You unwrap that and find there's lots of different parts to it and then you think, 'well, we can deal with this, we need to get you here for that'.

Early intervention is something that all services talked about as their objective: to halt the development of a problem into something larger and more complex.

We did some journey mapping, which was where we interviewed clients [...] not about their legal need as such but about their journey, and in doing that you get a good picture of complexity and legal need [...] What I mean is that when people come in, there is this big, big problem that comes with them, and it's got that way because they haven't been able to get what they've needed earlier on. It just gets bigger and bigger and bigger until they finally go to a community legal centre.

A common theme is that by leaving things too long, they can get worse. For problems generally able to be solved through a legal process, not obtaining early advice can create a significant future issue. A lack of partnerships or close engagement by legal services with, for example, social workers can mean that non-legal responses taken early to an issue can limit later legal choices.

Respondents flagged their concern that the sector's funding models do not acknowledge well enough the connections between a broad range of social needs and legal needs, and do not support the time required for adequate collaboration between services:

With the current model [...] it doesn't intersect [other needs] with the legal need. Because what I'm not convinced is happening properly is an understanding that someone has a legal need, and they have a family and domestic violence service need, and they have a health need, and they have a housing need. And then we're not seeing [the service response] crossover very well.

Participants argue that connecting through meaningful relationships with other services enables legal services to assist early. They have an opportunity to stop an issue from escalating, maybe in ways the other service may not have anticipated. Collaboration with other services can clear the ground of non-legal needs and make the legal need easier to identify:

There are so many contributing factors that are going to escalate a legal need, or they're going to make a legal need difficult to understand or to find [...] by facilitating referrals to other services, sometimes it can become clear later, once the need for housing or medical attention has been met, it can become apparent that there is a very specific legal need, but sometimes it's difficult to identify.

The intersection between legal and non-legal needs seems to be well recognised in the sector, and was particularly strongly argued by those with CLC and FVPLS experience:

I think community legal centres deal with legal needs and non-legal needs, because we're holistic services. But we try very hard to identify where an issue has a legal solution, or a legal remedy. And where the client would benefit more from us working in conjunction with other professionals. So, you know, for a lot of our clients, there's legal needs alongside financial counselling needs and social worker needs and mental health support needs. And I think our role is to try and unravel or understand where those intersect and unravel what's legal and what's not, and then try to provide a wraparound service through partnerships to address the client's needs holistically. All of their needs.

However, many respondents highlighted the need for other community services and the Government to be more aware of the complexity of legal need and the intersection of legal and non-legal social, health, employment, housing and other issues. This knowledge needs to translate into how they do things, including how they structure the funding models:

One of the things [we've] been working on strategically is increasing the understanding of other sectors and decision makers. So, for instance, policy makers, government agencies, of where legal assistance fits as part of a broader social service response. Say you're supporting someone around housing and homelessness or child protection or family and domestic violence, articulating and demonstrating the value of that early legal assistance to that social issue.

Therefore, an increased capacity to meet legal need is not just about changing the relationship of the legal assistance sector to community and other services, but also changing the attitude of community and other services to the legal assistance sector to facilitate strong bi-directional referral pathways.

In summary

Legal and non-legal needs form a web of multiple and often complex issues for clients of the legal assistance sector. To bring about good client outcomes, participants speak of the need for early intervention to stop problems from getting worse, holistic and comprehensive services in response to complexity, and strong engagement and partnerships with other services and organisations in the community. However, they flag that current funding models do not support these more time-consuming approaches well.

6

The context of legal need – towards causal explanation

This final section of the report summarises the observations of participants about the contexts and triggers of legal needs for their clients. It is a preliminary attempt to map the landscape where legal needs develop. As such, it is a primarily descriptive account of *what* is understood by people in the sector as implicated in the generation of legal need, rather than a causal account of *how, why, for whom, or in what contexts* legal need develops. It is offered as a motivation and platform for further research within the Legal Needs Project and other studies.

The findings are presented in three categories or sub-sections, representing different conceptualised parts (layers or strata) of the social world.

- 1) **Social and cultural structures** – the systems, ideologies, and social arrangements or relationships that exist in society. These are both emergent from and constraining and enabling individuals' actions.
- 2) **Individual experience, behaviour and characteristics** – the events that happen to us and the things we do as individuals; our personal characteristics framing choices and opportunities.
- 3) **Psychology, mental health and agency** – factors influencing our individual and internal reflexivity and decision-making.

There is some overlap between these categories as they seek to look at the causal landscape for legal need from different directions or through different lenses. There is also significant overlap with previous sections of this report for the same reason.

6.1 Social and cultural structures

Housing. The structures of the Australian housing market are a significant backdrop to the development of legal needs for clients of the LAS. Participants mention interactions with public housing authorities, particularly concerning termination of tenancies in cases where additional social

and other supports would help clients maintain tenancies. One workshop attendee said powerfully that the “lack of housing supports are the legal needs”. Participants also point to public housing ‘blacklisting’ as a source of legal need, particularly in cases where being Indigenous, domestic and family violence, drug and alcohol misuse are present, or where a tenant is held responsible for the actions of others and their account is not believed. The length of public housing waiting lists, and the resultant unresolvable housing insecurity contributing to and exacerbating legal need for clients, is also an issue. At the same time, the private rental market is characterised by unaffordability, lack of availability of suitable housing stock and tenancy insecurity. Participants identify non-renter-friendly tenancy laws and widespread discrimination as two significant features of the private rental system that negatively impact their clients.

Welfare. Many participants see Australia’s welfare system as instrumental in keeping people in poverty through low support payments, with poverty understood as a critical driver of legal need for their clients. Mutual obligation requirements, discrimination and the culture of Centrelink—including to “cut first and ask questions later”—create a time and emotional burden for welfare recipients, contributing to stigma, stress and anxiety. Some workshop attendees highlighted the role of the Child Support Agency within the welfare system in the context of legal need related to domestic and family violence and family separation.

Administrative systems. Participants blame an extensive range of administrative and commercial systems for generating legal need for clients of the LAS. In the case of child protection around the country, attendees want policies and processes to be improved, increased resourcing of services, better training of staff and a more family-supportive culture. Specifically, some suggested increased funding to support families with multiple, complex and intersecting needs as an alternative to child removal (and the resultant costs to the foster system). The National Disability Insurance Scheme (NDIS) is another administrative structure where the system’s complexity operates as a barrier to assistance or claims and generates the needs of clients of the LAS. One participant expressed the frustration that the paperwork is so burdensome that people “need a lawyer” just to apply. They also discussed immigration and citizenship processes, taxation and Centrelink in this context. The increasing requirement for online lodgement and communication is also impacting clients and generating issues that end up needing legal assistance to resolve. Finally, contracts and leases in the commercial or financial world (e.g., phone and internet) are another source of confusion and potential exploitation, which can become issues that develop into legal needs.

The law. Several features of the law are understood to create or exacerbate clients’ legal issues. Inconsistency between federal and state laws (and between the states themselves) creates problems. A few participants expressed frustration that some laws are ineffective and lack remedies for the difficulties or injustices they observe impacting people. Likewise, several workshop attendees mentioned how Australian laws intersect or interact with human rights as a source of problems. Regarding specific areas of law, participants from the Northern Territory are concerned about mandatory sentencing outcomes. More broadly, the LAS points to issues with policing culture, prisons and incarceration, particularly in the context of racial targeting and lack of justice for Indigenous people, the age of criminal responsibility.

Demographic characteristics. Participants recognise that there are legal needs generated by structural inequalities experienced by members of some groups, or by virtue of those groups having increased interaction with specific types of government, welfare, and community support systems. These groups include First Nations peoples, older people, children and youth, single parents, tenants, culturally and linguistically diverse populations, members of LGBTIQ+ communities, prisoners, those exiting prison, refugees and recent migrants. As discussed in more detail below, those living with chronic health conditions or disability and women are also experiencing structural inequalities.

Health and disability. Poor mental health, chronic health conditions and disability are factors that

influence individual behaviour and agency. However, participants also see how structural inequalities in the accessibility of services and the potential for reliance on administrative and financial assistance and practical support systems create additional risks for the development of legal issues. A lack of sufficient coordination or referral pathways between hospitals, housing providers, legal and other services can also be an issue. The availability and cost of mental health services create conditions that may generate a legal dimension to different problems or bring people into contact with the criminal justice system.

Gender. Gender is understood as a source of inequality for women driving legal (and non-legal) need in many areas of their lives. Participants recognise women's role in care and family, their economic inequality, the prevalence of domestic and family violence directed against women and their over-representation as single parents as both contexts for legal need and potential triggers. Several participants also referred specifically to the 2006 changes to the *Family Law Act* and its implications for contributing to women's legal need.

Remoteness. A consistent theme is the connection between increased legal need and a limited availability of legal, social, community and health services. Participants talked about the 'thinness' of services in regional and remote areas; the appropriate types and quantity of services are unavailable for people outside the main cities. Additionally, the availability and cost of transport increase legal needs by reducing accessibility to any existing services and limiting employment options.

Disasters. In the wake of disasters such as bushfires, flooding, and drought, LAS workers have identified significant increases in people's legal needs within their catchment. Navigating emergency housing and financial assistance often require legal support. Importantly, insurance arrangements can be complex to set up—with assumptions about what is covered and when, leading to potentially poor decision-making—and successful claims may need to be fought for.

Service provision. How assistance is provided (or not) by services within the LAS also contributes to developing (or protecting clients from) legal needs.

- The *availability* of legal (and non-legal) services needs to be in a mode (e.g., face2face or online) that is most suitable for the client and must be timely and appropriate. Early intervention is consistently understood to be vital in halting the progression and severity of legal needs. Early intervention means clients have better knowledge of their options before things worsen. The LAS participants believe that timely and quality services will help clients better understand the implications of their actions (or inaction) and equip them to make decisions supporting improved outcomes. However, services must be available in adequate numbers and types for this to be possible. They need "lawyers with sufficient resources to spend the time helping clients to understand the advice" to achieve good outcomes. Participants recognise substantial issues in some geographic catchments and in family law matters with 'conflicting out', i.e., one party cannot be assisted due to the other party already being represented by a service. The availability of services is also a function of speakers of Indigenous languages and non-English speakers without access to interpreters.
- Services may not be able to respond appropriately in cases where the client is *dependent on a third party*. For example, this could be the case for some people living with disabilities, young people, migrants (cultural and language differences to the mainstream) and Indigenous peoples and communities.
- The *adequacy* of legal service provision can be compromised when clients do not trust a service or feel alienated from the law and legal systems. In cases with high and complex needs, legal services can be inadequate without more intensive wraparound social, psychological, welfare and health services, as for clients eligible for assistance through the LAS there is often an initial "need for social support more than legal support". For Indigenous peoples, services need to be culturally safe, with many participants advocating increased funding for Aboriginal-

controlled organisations and less ‘mainstreaming’ of services. For clients of all backgrounds, legal services must listen to them and go to people “where they are”.

- Many participants advocate for increased *specialist legal services* in areas including disability, migration, employment law, prisoners and elder abuse. Several also highlight the challenges of working with people who are impacted by foetal alcohol spectrum disorder (FASD) or other cognitive impairments and the importance of specialist services to support self-determination and good outcomes for people in this group.
- The *funding* of services is an issue concerning most participants. In the context of service provision, inadequate funding (and funding instability) constrains service delivery by reducing the number of people who can be assisted and potentially narrows the available service responses. It increases staff churn, thereby reducing clients’ trust in services and increasing stress for the remaining staff. It also makes the recruitment of new staff extremely difficult.

Discrimination. Participants identify structures of discrimination, where there is unjust and unequal treatment of different categories of people, as a significant source of legal need. In particular, they recognise prejudicial treatment for Indigenous peoples, migrants, prisoners, LGBTQIA+ people, those living with a disability, and according to age and gender.

Infantilisation. Several workshop participants and interviewees recognise that there are groups within the community whose access to justice, particularly in terms of self-determination, are compromised by others seeking to speak and make decisions for them—as if they are children. A culture of ‘infantilisation’ is more often observed when people and institutions interact with, for example, Indigenous peoples, non-English speakers, those with disabilities, older people, people with low levels of education, mental health issues and experiencing domestic and family violence or trauma.

Intersectionality. Participants are very aware that ‘risk’ clusters around people of different groups or with similar vulnerabilities. The interaction of these risks increases the complexity and complications of their legal and non-legal needs. The most common factors contributing to a possible ‘intersectional’ risk of legal need include gender, culture, age, income, domestic and family violence, being Indigenous and other demographic characteristics that attract discrimination or power inequalities.

6.2 Individual experience, behaviour and characteristics

Financial resources. Access to limited financial resources means that people can’t afford legal representation and are dependent on the services of the LAS—if they are eligible or able to access them. They are more likely to have no employment or put up with bad jobs, poor housing, food insecurity, and limited access to technology, which services increasingly require as a gateway to assistance. In the context of financial resources, participants also speak of the role of gambling, fines and debt in increasing financial stress and the risk of legal need. Financial resources also connect to a person’s capacity to escape domestic and family violence. Importantly, participants identify poverty as a key driver of legal need for their clients.

Unpaid fines and access to transport. One of the workshop groups made the connection between having unpaid fines and the demographic of people on welfare benefits, observing that “fines are structurally inequitable, with the cohort of people less well-off getting fined more often”. They spoke of how poverty and limited transport options intersect—particularly for their Indigenous clients, young people and single parents—to increase the likelihood of their clients having unpaid fines and a lost driver’s licence.

Experience of the law. Accessing legal support may lead to other issues, for example, in the case of being a victim of crime, in guardianship cases or where someone seeks a protection order. Some

participants describe how their clients may have experienced the “disempowering nature of the legal system” and had negative previous experiences that stopped them from accessing help early enough.

Housing. As discussed earlier in this report, homelessness and housing insecurity are identified as significant triggers and context for legal need for clients of the LAS. Specific drivers of legal need include insecure tenancies, housing quality, health and mobility needs and housing, overcrowding, discrimination in the private rental market (against larger families, single parents, people of colour especially Indigenous Australians) and the difficulties of finding affordable housing. Many participants shared examples of tenants losing their public housing due to problems getting an abusive partner or family member off the lease, ‘blacklisting’ practices, or terminations of public housing tenancies during incarceration. One spoke of how eviction “destroyed her [a client’s] life, it doesn’t have to be very complex to have a massive impact”. Participants frequently mentioned access to safe, affordable and secure housing as a critical non-legal need that generates and complicates clients’ legal needs and compromises a services’ capacity to assist.

Documents. Missing identification documents, lack of access to bank accounts and the burden of assembling the documents required as evidence for application process can all be related to legal need.

Relationship breakdown and family conflict. Particularly for parents, relationship and family breakdown are drivers of the potential for legal need. Participants draw attention to the difficulties of navigating co-parenting and relationships with children, court orders, money and employment, moving house and losing a home, and communication in the context of arguments and conflict. One workshop attendee specifically made the connection between family breakdown and the number of other potential stressful changes that are occurring at the same time in terms of income, housing and parenting—each of which have the potential to generate legal need, particularly in the context of poverty. Domestic violence is a significant theme for participants when they consider the legal need of people experiencing relationship breakdown.

Domestic and family violence. Participants see domestic and family violence as a major contributor to many types of legal needs and associated with many other risk factors. These include interactions with drug and alcohol misuse, mental health issues, overcrowded housing, poverty, intergenerational disadvantage and experiences of violence, housing and financial stress. Domestic and family violence can increase police intervention and the encroachment of the law into a family’s life, which increases their potential for legal needs in other areas. Some participants connect the legal need of those experiencing domestic or family violence to their lack of ‘legal consciousness’, that is, a lack of knowledge that coercive and abusive behaviours are illegal and of their rights.

Visa status. A person’s visa status can increase their vulnerability to legal need. For example, the visa conditions for international students increase their risk of work and housing exploitation, particularly in the context of Australia’s housing market. Women experiencing domestic or family violence, but whose immigration status is tied to a partner visa, have added impediments to leaving unsafe situations because of a fear of deportation. Non-citizens are also at risk of deportation after a criminal offence, depending on their sentence.

Access and use of technology. Lack of access to technology includes lack of access to a telephone and the internet. People increasingly need digital literacy to navigate information and the service systems that require online access and lodgement. Participants know access to and ability to use technology is not a given for many people and how this increases their potential for legal need.

Physical health. Chronic and acute health conditions can potentially increase risk of legal need, particularly in conjunction with other factors discussed in this section.

Ability to speak English. Participants see that inadequate English language competency can be a significant driver of legal need for clients. Legal issues can arise due to the risk of poor outcomes with administrative and legal systems and increased danger of exploitation by individuals and companies.

Many workshop attendees mentioned that the availability of interpreters is insufficient to meet demand.

Education. Poor literacy is an issue for many LAS clients. In addition to reading, writing, and comprehension difficulties, financial and digital literacies generate legal needs or compound their severity or complexity. Participants often used 'level of education' as a signifier of clients' lower levels of critical thinking or cognitive capacities and increased difficulties grasping legal processes, principles and consequences. Education is also understood in terms of a person's lack of knowledge of the law or their rights, whether they recognise their issue as being legal, act in time, or can self-assist.

Social capital and networks. Access to social capital and networks are seen as strong protective factors for clients because they provide informal, practical supports and help shield people from the emotional effects of isolation and loneliness. On the other hand, participants identify increased risk of legal need with being isolated from friends and family and a lack of support in the community. They also describe how social and family histories influence a person's emotional state as well as the things that happen to them, with traumatic events and conflict being factors that may contribute to the generation of legal need.

Victim of crime. Being a victim of crime, particularly in the context of poverty or being a member of some groups within the population, is understood by participants to increase legal needs. Depending on the nature of the crime, there can be injuries and impacts to housing and employment. The negative impacts of these events can be compounded without adequate support. Being a victim of crime can trigger a 'service response', increasing government agency or police scrutiny of a family and potentially involving child protection. Participants highlight that the increased risk of being a victim of crime is associated with multiple other 'vulnerabilities', for example, being Indigenous, young, in a dysfunctional relationship or having recently moved to a new area.

Police interaction. Several participants, particularly those working with a high proportion of Indigenous clients, connected the risk of legal need to any form of interaction with the police, including interactions simply as a consequence of being in a public space.

6.3 Psychology, mental health and agency

Constraints on agency. This section on psychology, mental health and agency is grounded in the idea that people's actions, the decisions they take and their behaviours are influenced by the social structures with which they interact (Section 6.1), the events and circumstances of their individual life (Section 6.2) and mediated by the psychologically-influenced and reflexive processes through which they navigate these influences (Section 6.3)³⁵. Feeling that you have the power to act is a fundamental precondition for conscious action by activating our human agency. Participants described the debilitating effects on the actions of clients in relation to their legal needs, when feeling they have limited options, limited chance of success, or the fear that taking action will bring about new and alarming challenges.

Mental health and drug and alcohol misuse. Mental health challenges and drug and alcohol misuse have implications for a client's capability to self-assist, their behaviours and emotional regulation, and how accessible services are to them. Participants see these impacts of mental health and addictions adding to the complexity of legal needs and their resolution. They change how clients interact with the legal service and advice they are given by compromising their capacity to process information and make decisions.

Impacts of experiences. The kinds of negative interactions with the law described above can leave

³⁵ Margaret Archer, *Structure, Agency and the Internal Conversation* (Cambridge: Cambridge University Press, 2003).

people feeling that the law will not protect them; seeking a legal resolution to an issue will only generate more trouble. Some participants connected previous poor interactions with individual services, service workers, and administrative systems to their clients' unwillingness to seek services early enough or take the action they recommend.

Psychological states. Negative expectations, paralysis in the face of stress, shame and avoidance are all identified by participants as psychological characteristics of people that impair decision-making or their capacity to meet challenges. Trauma, anxiety, depression and PTSD—either from recent or past events—are also features limiting client capability to solve their legal (and other) problems, as well as the time and resources that services require to work with them for good outcomes.

Psychological resources. Participants describe psychological resources such as resilience, self-awareness, and communication skills as protective and positive factors for avoiding legal needs or dealing with them when they arise. Many argue that psychological resources can be supported and bolstered through timely access to psychologists or counsellors. Trauma, stresses from coping with abuse, violence or relationship conflict can also diminish a person's psychological resources. Also, such resources can be challenged with the stress of job loss, finding housing or new children.

7

Conclusion

This report summarises the expertise of workers in the legal assistance sector on the nature of the legal need experienced by their clients and where it comes from.

‘Legal need’ is more than just having a legal problem. Based on the evidence collected in 24 interviews and from 138 sector workers through online workshops, legal need can be conceptualised as having three dimensions: legal *knowledge* needs, legal *capability* needs and legal *accessibility* needs.

By recognising these more nuanced and complicated facets of legal need, it is possible to extrapolate that meeting the legal need of the clients eligible for help from the legal assistance sector requires adequate funding for service delivery that:

- Provides appropriate and timely advice and information
- Recognises the additional ways in which clients need support to exercise their self-determination and obtain legal outcomes that meet their needs; and can offer more intensive, individualised and holistic assistance and representation and facilitate adequate support through strong referral pathways and partnerships
- Provides targeted education to the marginalised and disadvantaged populations it is funded to assist so that they have the knowledge to identify a legal issue or that they are experiencing something that can be dealt with by the justice system; and then have the resources required to meet the need for assistance that this generates in ways that are appropriate, timely and accessible to their clients.

Legal problems intersect and interact with non-legal problems in complex ways. It is unrealistic to expect that the sector can resolve the legal issues of most of their clients without also dealing with their non-legal problems—or at least their impacts and the complications they manifest. Bringing about good client outcomes requires early intervention to stop issues from getting worse, holistic and comprehensive services in response to complexity, and strong engagement and partnerships with other services and organisations in the community.

Legal needs are generated in the context of the complexity of the social world through the interaction of different structural, individual and psychological factors. Explaining the generation of legal need (and working towards better methodologies to predict unmet legal need in populations) requires increased research. As an initial step, this report has started by identifying what the sector knows of the landscape in which legal need develops. Their collective expertise and experience confirm that legal need is the product of the causal mechanisms of a diverse set of interacting and contingent factors. They include social and cultural structures such as the housing market, discrimination and the degree to which legal and non-legal services are available and appropriate. Factors relating to each individual's life experience, the events that happen to them and their actions are also implicated. Finally, how people process information and make decisions is impacted by their emotional and psychological states, and this needs to be considered as part of a casual explanation for legal need.

Discovering more about the nature of these factors, the causal mechanisms through which they bring about outcomes, and how, in what combinations, for whom, and in what contexts needs to be the focus of future research.

8

Appendix 1

8.1 Study design

The first stages of the Legal Needs Project research were designed to capture the experience and knowledge of people who work in the LAS about the nature and generation of their clients' legal needs. This work incorporated two stages of qualitative data collection.

8.2 Stage 1: Interviews with employees of the LAS

We identified a sample of 37 potential study participants through professional contacts, online sources, and the recommendations of other interviewees. We developed the list to cover a range of experience in diverse categories of sector organisations and occupational categories. Prospective participants were contacted by email with an invitation to participate. In late 2021 and early 2022, we conducted 24 Zoom-facilitated online interviews with those who responded and agreed to participate. Interviews lasted between 51 and 93 minutes, were recorded with participants' permission and transcribed verbatim.

As illustrated in Table 1, interviewees are employed across five areas of activity within the sector, with many working within two or three organisational types across their careers. Two-thirds of the participants are lawyers, and one-third have qualifications and experience in the social sciences, community services, business administration, community development, or research and evaluation. Most interviewees have worked in the sector for ten years or more. Just over half of the participants work in organisations in New South Wales. Community Legal Centre employment is the most prevalent type of legal assistance sector experience within the sample (although not all worked for Community Legal Centres at the time of interview). The discrepancy between the characteristics of the more 'balanced' sample contacted initially and those who agreed to participate may be explained by the researcher's previous engagement with the Community Legal Centre sector in New South Wales and their consequent increased recognition by participants.

Table 1: Characteristics of Interviewees (n=24)

Australian State	No.	Profile of interviewees	No.
New South Wales	13	Community Legal Centre *	14
Queensland	2	Legal Aid *	3
Victoria	3	Family Violence Prevention Legal Service *	2
South Australia	1	Research/evaluation *	5
Western Australia	3	Peak Organization *	8
Australian Capital Territory	1	Qualified lawyer	16
Tasmania	1	Ten years or more in the sector	16
Total	24		

Note: * These categories are not mutually exclusive and represent roles performed across the participant's career in the sector

Initial thematic analysis coding combined anticipated descriptive themes reflecting the research questions informing the interview guide and inductive codes for additional themes emergent from the interview data. Second-cycle coding mapped all themes through inductive theoretical coding to develop the conceptual categories informing the structure of the findings presented here.

8.3 Stage 2: Online workshops

Stage two of the research, in late April 2023, delivered three 90-minute online Zoom-facilitated workshops to 138 employees of organisations across the legal assistance sector (see Table 2) Table 1. We recruited participants through sector engagement, with the assistance of peak organisations of CLCs and FVPLS, and by direct approach to managers within LACs and ATSILS nationally. We designed the workshop to test and extend the preliminary conceptual framework for legal need developed in stage one of the project.

We combined two existing workshop methodologies and innovatively adapted them for an online environment and to the specific research objectives of the project. Both approaches use cumulative small group facilitated deliberative discussion to develop new synthesised knowledge about complex and relational systems and social problems. World Café³⁶ is a method for facilitating small group conversations about 'questions that matter' by people with diverse experiences and perspectives on the problem. The conversations of each group on a particular question are 'harvested' and used to 'seed' the conversations of each subsequent group, creating rich collective responses to questions through collaborative conversation. Warm Data Labs methodology also influenced the workshop design approach³⁷. It employs collaborative small-group conversations leading to mutual learning but with explicit recognition of causal complexity and the role of context. Ten Macquarie University Law School and School of Social Sciences postgraduate students supported the workshop as research assistants and facilitators.

Table 2: Characteristics of workshop participants (n=138)

Service location*	%	Service type	%
New South Wales	19.6	Community Legal Centre *	62.3
Queensland	10.9	Legal Aid *	23.2
Victoria	15.2	Family Violence Prevention Legal Service *	1.4
South Australia	6.5	Aboriginal and Torres Strait Islander LS	6.5
Western Australia	27.5	Family Relationship Centre	2.2
Australian Capital Territory	3.6	Other Support Organisation	4.3
Tasmania	5.1		
Northern Territory	9.4	Participant profile	%
National	4.3	Lawyer	65.9
		Non-lawyer	31.2
Service area	%	Lawyer in training	2.9
Remote	8.0		
Regional	20.3	Years in the sector	Yrs
Capital city	23.2	Average	11.6
Statewide service	48.6	Median	9.5
		Minimum	<1
		Maximum	42

* 3 participants nominated two states for their location/catchment

The workshops used an online Zoom environment and the Miro electronic whiteboard platform to collect and share information. The use of this technology both constrained and enabled accessibility and participation. Compared to an in-person design, online workshops reduced participants' resource costs (time and money) and allowed outstanding participation rates from a geographically diverse cohort. However, some workshop participants found using unfamiliar digital technologies difficult and frustrating. Others reported that the workshop format did not allow them to share everything

36 Juanita Brown and David Isaacs, *The World Cafe: Shaping Our Futures through Conversations That Matter* (San Francisco: Berrett-Koehler, 2005).

37 N Bateson, "Aphanipoiesis," *International Society for the Systems Sciences* 1, no. 1 (2022).

they wanted, unlike the longer-form responses that would have been possible in an interview or with more time available in a extended in-person workshop format. In retrospect, a two-hour workshop would have enabled a more relaxed pace whilst still respecting the time imposition on participants that involvement in the research placed on them. Unfortunately, feedback from a couple of participants was that they found the experience unsatisfying and irritating. Others reported they they enjoyed it and found the process interesting. Approximately 25 attendees emailed us after the workshop with additional comments and resources (including reports, websites and submissions). On balance, although aspects of the methodology could be improved if used again, the workshops were able to generate extremely rich data on sector perspectives on the legal needs of clients of the LAS.