

Submission in response to the National Legal Assistance Partnership Issues Paper

The Victoria Law Foundation is an independent statutory body.

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We consent to publication of this submission on the review website, identification of our submission, and direct quotation in the report of the review.

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We welcome the opportunity to make a submission in response to some of the questions posed in the NLAP Review Issues Paper.

This NLAP Review and the next NLAP are an opportunity to build the legal assistance service and policy environment so that it is fit for purpose in addressing unmet legal need and fit for the future. The NLAP is a significant policy instrument, playing a central role in affording access to justice for many Australians, particularly those who would otherwise fail to overcome significant access barriers.

This Review provides an opportunity to deliver on the long-identified need to build the evidence base, close knowledge gaps, and support effective policy and service design, implementation, and assessment. The terms of reference on legal need, the quantum of funding, effectiveness and challenges of service delivery, and the focus on data are particularly pertinent. A thorough analysis of these is long overdue. We particularly welcome the invitation to address quantum of funding, which consistently presents as barrier and solution to delivering both frontline service provision issues, and backend operational and service design, monitoring and evaluation.

In our submission we focus on areas of our expertise. We are committed to the development of the evidence base, the quality and utility of legal assistance data and lifting capability in the sector in order to close knowledge gaps and support evidence informed policy and practice.

We have previously submitted a number of our reports to the Reviewer and his team, including –

- Public Understanding of Law Survey (PULS) Volume 1 – [Everyday problems and legal need](#)
- Data Mapping Project on the use and utility of administrative data in -
 - Legal assistance - [Apples, Oranges and Lemons](#)
 - Courts and Tribunals - [Smarter Data](#)
 - Complaint and dispute resolution - [Mixed Bunch](#)
 - Across the sector and potential directions - [Calibrating Justice](#)
- [Workforce reports](#) – survey of the Victorian community legal assistance sector workforce.

To that end, our comments below are in addition to the content submitted in these reports.

1. Effectiveness

To what extent has the NLAP achieved the overall objectives and outcomes?

Overall, the NLAP policy and strategic direction have pointed in the right direction, with findings from the PULS supporting the focus in legal assistance policy on those facing disadvantage. However, the inadequacy of data makes accurate assessment of its effectiveness largely speculative.

Recently published findings from the PULS demonstrate high rates of unmet legal need in Victoria. Where expert help was sought from legal services (public and private) legal need was unmet for 90% of the legal problems reported by the 6,008 PULS respondents. Where people looked for help from any independent experts (non-lawyers), 78% of the legal problems resulted in unmet need.¹ On either measure, unmet need is the norm and met need the exception.

This data calls into question the adequacy of NLAP funding and service provision to meet the strategic aspiration to maintain the rule of law and keep the justice system within reach. We have no reason to believe that this finding would be different for other Australian states and territories, but rather, from what we know of relative legal assistance service infrastructure, the findings for Victoria may well be marginally better. This is something that should be investigated through a national legal needs survey, employing best practice measures and methodology.

Evidence quantifying outcomes from NLAP funded services remains immature, although service data (putting aside questions of data quality and consistency²) does point to provision of services to disadvantaged and other priority cohorts. Whether people can access legal assistance which matches their capability and needs requires further investigation and this is the subject of forthcoming PULS reporting.

A commitment to client-centric service provision has been made in both the National Partnership Agreements on Legal Assistance Services (NPA) and continued in the NLAP. This has not been matched by a commensurate shift in data collection and analysis.

Currently available data and other information makes assessing achievement of the NLAP against its objectives and outcomes difficult. Data remains largely limited to compliance with NLAP reporting requirements rather than assessment of performance of the NLAP or adequacy of funded service provision. The available data does not systematically measure legal need (met and unmet), NLAP service provision inputs and outcomes, or the effectiveness of different models of legal assistance service and strategies for different legal matters and client cohorts. The aims and objectives of the NLAP continue to be dislocated from data and other structured information required to monitor and assess NLAP policy.

One critical consequence of the failure to implement key recommendations from the 2014 Productivity Commission report on *Access to justice arrangements*, is that the legal assistance evidence base remains stunted. In the intervening period, the state of the evidence base has arguably been eroded, with national legal needs survey information now outdated, legal assistance service data continuing to suffer from data quality, consistency and accuracy challenges, and slow and sparse progress towards outcomes measurement.

There is a cost to building a strong, robust evidence base to appropriately inform legal assistance policy such as the NLAP. For too long this has been seen as either coming at the price of frontline service provision, and/or imposing too great a burden on service providers. Successive NPA and other access to justice reviews have consistently highlighted deficiency in the evidence base as a failure of leadership and

¹Balmer, N.J., Pleasence, P., McDonald, H.M. & Sandefur, R.L. (2023). *The Public Understanding of Law Survey (PULS) Volume 1: Everyday Problems and Legal Need*. Melbourne: Victoria Law Foundation.

² On the issue of the quality of legal assistance service data, see McDonald, H.M., McRae, C., Balmer, N.J. Hagland, T. and Kennedy, C. (2020). *Apples, Oranges and Lemons: The use and utility of administrative data in the Victorian legal assistance sector*. Melbourne: Victoria Law Foundation.

partnership. This remains a significant shortcoming of NLAP policy and we warmly welcome examination by the NLAP Review. Potential benefits – for NLAP funded service providers, state, territory and national governments, and ultimately, Australians in legal need who stand to benefit from provision of public legal assistance – abound.

2. Legal needs

To what extent does current legal assistance meet the overall scale and breadth of the legal needs of disadvantaged Australians?

As noted above, PULS findings point to a gaping mismatch between demand and supply: between the legal need of disadvantaged Australians and the current provision of legal assistance.

The PULS confirms the association between legal problem experience and demographic characteristics. Consistent with the national Legal Australia-Wide (LAW) Survey report³, the PULS reveals that disadvantaged cohorts have heightened experience of legal problems and are more likely to have clusters of legal problems. It shows clear inequality in legal problem experience, handling, and unmet legal need across the Victorian community. For the first time it also demonstrates that disadvantage is linked to longer legal problem duration.

The PULS provides compelling new evidence of higher rates of unmet legal need experienced by Aboriginal and Torres Strait Islander peoples, the unemployed, those with low educational achievement, those with severe mental distress, single parents, and those on very low incomes (such as those who reported that there were unable to heat, heat or cool their home due to lack of money). We refer the Reviewer to the PULS volume 1 for substantial detail on current legal need, and the fact that so much is unmet demonstrates that current legal assistance falls short of meeting the needs of disadvantaged Australians.

Beyond Victoria, the level of unmet legal need remains unknown. The LAW Survey, based on fieldwork in 2008, demonstrated broadly similar patterns of legal problem experience and legal problem-solving behaviours across Australian states and territories. Given that PULS reflects similar trends there are very likely to be similar rates of legal problem persistence and unmet legal need across the nation.

What is required

Surveying legal need is an important tool, but only one in the suite of data collection which is critical to understanding the reality of civil legal experience in Australia. To provide evidence of improvement, legal need must be gauged regularly and consistently. However, for national initiatives like the NLAP to succeed, a broader approach to evidence is essential. This could include small area modelling of need, close analysis of legal capability at a national level, (which will be explored for Victoria in PULS volumes 2 and 3), and rigorous evaluation of effective services. Periodic online surveys which take the pulse on key issues and in addition test emergent areas of need (e.g., disaster response, particular areas of economic change, intersect of gambling and legal problems, and other emergent issues) would generate valuable feedback and insight between major surveys.

To better understand the difference legal assistance makes across the life course, such as benefits of early intervention and prevention, there is also a need for investment in longitudinal study. This is an important missing piece in the existing data and empirical legal research in Australia. A well-designed longitudinal study is also the only appropriate method to answer many recurrent policy questions. For example, access to legal assistance following relationship breakdown could support fair and equitable distribution of property, and consequently help put people in better financial circumstance in later life. The alternative can

³ Coumarelous, C., Macourt, D., People, J., McDonald, H.M., Wei, Z., Iriana, R. and Ramsey, S. (2012), *Legal Australia-Wide Survey: Legal Need in Australia*. Sydney: Law and Justice Foundation of New South Wales.

be financial pressures and/or risk of homelessness in older life due to unjust and insufficient property settlements years earlier.

Such survey and longitudinal work would be much more effective using the available expertise in empirical legal research in Australia, at the very least in the design phase. The ABS is well positioned to undertake some of this suite of work but does not have depth or history in this field. In addition, deeper analysis by the ABS is typically fee for service and so the Commonwealth and NLAP partners would need to fully fund it to deliver full benefit to the sector.

4. Disadvantaged groups

Are there other systemically disadvantaged groups, either existing or emerging, who are not supported adequately?

As noted above, the PULS findings are consistent with the LAW results, showing heightened need amongst disadvantaged cohorts. Because NLAP service data collection reflects the current priority groups, there is some visibility of legal assistance services to these disadvantaged groups.

One area of emerging need is disaster recovery. The PULS findings demonstrate heightened legal need in people with experience of the fires, including all matter types, clusters of legal problems, and longer legal problem duration, and higher rates of unmet legal need. Early follow-on analysis of the PULS dataset also demonstrates that those who were financially disadvantaged *and* affected by bushfires had even higher rates of legal problem clusters compared to others.

It may therefore be beneficial to add those affected by disasters (bushfires, storms, floods, landslide etc.) in recognition of the disruption and disadvantage that flows from them.

New PULS findings on those experiencing a higher number of legal problems (i.e., five or more legal problems) indicate elevated rates for Aboriginal and Torres Strait Islander peoples; those in de facto relationships with children; single parents; those not working and seeking work, as well as those not working due to ill health, home, family, caring and other reasons; those with long-term illness or disability; those with the lowest levels of educational achievement; those experiencing moderate and severe distress; those with the lowest household income or in receipt of low-income government payments; and those who reported being unable to eat, heat or cool their home in the previous year due to financial difficulties.

More broadly, legal needs surveys and other empirical research demonstrates the heightened legal and service needs of multiply disadvantaged Australians, and further analysis of the PULS dataset is anticipated to demonstrate similar findings. This points to the intersections of disadvantaged and marginalised cohorts as having heightened vulnerability to clusters of legal need.

Legal need survey research also demonstrates the importance of geographic and place-based considerations. Generally, the overlay between social and economic disadvantage, geography and public legal assistance service infrastructure, continues to be a service provision and policy challenge. This is true in both areas of high growth as well as more dispersed populations. Areas of rapid population growth, including some in outer metropolitan Melbourne, often with a higher proportion of financially struggling cohorts, and where there is relatively less provision of legal and other social service infrastructure, should be identified as emergent areas of heightened legal need.

Follow-on geographic analysis of the PULS dataset employing small area modelling techniques, will further examine geographic dimensions of legal need, and may further signal geographic areas and demographic groups who may not be adequately supported.

5. Regional and remote

How should the challenges of service delivery in regional, rural and remote locations be addressed through future agreements?

The PULS divided Victoria into metropolitan, inner regional, outer regional and remote areas. Prevalence of some problem types was highest in inner regional areas (family, government payments and injury or illness related problems) whereas for other problem types, prevalence in regional and remote communities were lowest (goods and services, housing, fines, employment, government or public services and business or investment property related problems). Those living in outer regional and remote areas experienced lower overall problem prevalence (25%), compared to those living in major city (43%) and inner regional areas (44%). This geographic variation broadly reflects relative exposure to certain problem types, consistent with previous findings from the LAW Survey. Problem duration was also related to geography in the PULS findings, with those in outer regional or remote areas amongst those groups reporting longer duration problems.

However, there is no question that service delivery is unequal across Victoria and Australia. The range of legal service options is smaller, there are real challenges in the provision of legal assistance in regional areas, and there are well recognised issues of conflict of interest. Funding models and conflicts of interest can then become a significant issue in accessing justice.

Increased use of technology in public legal assistance service, particularly during and following the COVID-19 pandemic, has had substantial and mixed impact which has not been adequately investigated. Such technology has been seen as having the potential to reduce the tyranny of distance that characterises many areas in Australia where there is a lack of local legal assistance service infrastructure.

We undertook a survey in conjunction with the Federation Community Legal Centres in Victorian, which looked in part at the impact of COVID-19 on public legal assistance services, clients and workforce.⁴ This report found that COVID-19 circumstances accelerated technological reforms, through dedicated investment in public legal assistance service IT to enable services and the justice system to continue to operate. This investment enabled substantial service reforms, most notably through use of online communication platforms to work with clients and justice system institutions. However, there were also widespread accessibility concerns, especially for the most disadvantaged client cohorts, with poorer access to technology and coverage, as well as increased difficulty for legal practitioners working with high need clients in online rather than in-person service environments.

While there is much promise, and undoubtedly more to learn about harnessing improved technology capability, this will require infrastructure, skills and systemic adjustments – all of which require leadership and resourcing. This too is an area where a national mechanism such as the NLAP could deliver real dividends, and particularly in regional and remote areas where broadband technology is available, and local public legal assistance is not.

6. Funding models

To what extent does the funding model support appropriate distribution and quantum of Commonwealth resources to meet current and future needs?

We believe a more nuanced approach to NLAP funding quantum and distribution is required to better realise NLAP policy aspiration. NLAP funding constraints, like those of the preceding NPAs, continue to negatively affect legal assistance service assessment, planning and innovation. Funding constraints also

⁴ Kutin, J.J, McDonald, H.M., Hagland, T., Kennedy, K. and Balmer, N.J. (2022). *Working in Community Legal Centres in Victoria - Results from the Community Legal Centres Workforce Project: COVID-19 experiences and lessons*. Melbourne: Victoria Law Foundation.

continue to impede collaborative service planning, as well as critical backend activities such as data collection and measurement.

A shortfall of the current Funding Distribution Models (FDM) under the NLAP is dislocation from the drivers of legal need and unmet legal need. Funding is neither responsive to factors driving demand, nor factors driving cost of supply. At a minimum, NLAP funding should be responsive to population growth and increase in CPI within the funding cycle.

Fixed funding that fails to keep pace with increasing demand for and cost of legal assistance is associated with increasingly restricted service eligibility and provision, as well as staff turnover due to relatively poorer remuneration and lack of employment security.⁵

NLAP funding should also consider how to appropriately incorporate change in the costs of private practitioners undertaking legally aided work, as well as cost factors negatively affecting the sustainability of public legal assistance services. Evidence continues to point to private practitioners withdrawing from legally aided work, while legal practitioners continue to leave public legal assistance due to the uncertain, and often short-term nature of their employment contract, as well as relatively poorer salary, and lack of career opportunity and progression.⁶

There continue to be reports of private practitioners in regional and rural areas withdrawing from performing legally aided work due to low remuneration for clients under a grant of legal aid compared to privately paying clients. This is of particular concern due to family law principally being an area of Commonwealth responsibility, and also PULS findings demonstrating the relatively longer duration of family law problems and higher rates of unmet need.

Funding goes hand in hand with service eligibility and the funding envelope, creating a tension between providing higher levels of assistance to a smaller number of people in need, or a lower level of service to more people. Funding that is not responsive to changing demand and cost, means that service providers are faced with having to tighten service eligibility or ignoring rising demand, and often both, to control budget overruns, and maintain service sustainability.

Consequently, many in need and at risk of heightened disadvantage are squeezed out between funding cycles, unless additional ad hoc funding can be obtained. This can create a situation where funding can lurch from crisis to crisis, distorting service delivery profiles to those areas where additional funding can be found (e.g., family violence). It also results in funding cliffs when ad hoc funding and programs lapse.

PULS findings demonstrate the mismatch between what people need and what they receive. In particular, new evidence of legal problem duration calls into question both the adequacy and utility of at least some of the legal assistance service provided with NLAP funding, particularly with respect to family problems, as already noted, one of the main areas of Commonwealth responsibility.

Legal assistance services that are insufficient to meet legal need risk being wasted. They can also have a negative impact on clients' confidence and wellbeing, not only eroding access to justice, but potentially trust and confidence in the legal system too.

We welcome consideration of funding indexation, and efforts to more clearly tie funding quantum to evolving legal need and changing service demands across the life of the NLAP and into the future.

⁵ See Kutin, J.J., McDonald, H.M., Balmer, N.J., Hagland, T., and Kennedy, C. (2022). *Working in Community Legal Centres in Victoria. Results from the Community Legal Centres Workforce Project: Building and maintaining a sustainable workforce*. Melbourne: Victoria Law Foundation.

⁶ See, for example, TNS Social Research (2013). *Study of the participation of private legal practitioners in the provision of legal aid services in Australia: a research report*. Canberra: TNS Social Research.

8. Wrap around services

How can holistic service provision improve outcomes and reduce the demand for legal assistance services?

9. Early intervention

How should legal assistance funding support activities that at an early stage reduce or prevent legal need, including activities not purely of legal character?

These questions are dealt with together below.

Wrap around services are not just legal services

Wrap around services responding to legal problems come in many shapes and sizes. Some are comprehensive legal services which engage other social services to respond to complex circumstances; and others are based in social assistance services (e.g., health, housing, employment, education), connected with legal services to address those aspects of client needs.

Data from the PULS underscores the importance of the second of these two circumstances.⁷ Independent help provided by a wide variety of non-legal services feature as an important aspect of community legal problem-solving behaviour. From a client's point of view, they might present with a problem, not recognising it has a legal aspect, and they receive useful information and/or referral.

This goes to two important findings in the PULS. First, that 66% of respondents do not recognise their justiciable problem⁸ as legal. If you don't see your problem as legal you are much less likely to seek legal advice. This is a fundamental and critical access to justice barrier. Secondly, even if people understand their problem to be legal, 29% seek advice from independent sources (i.e., non-legal sources like community organisations, health services, councils, unions etc). This number is even higher in regional areas.

While PULS demonstrates that independent non-legal advisers often play a significant role in successful legal problem resolution and in meeting legal need, we also know that this tends to be for less severe legal problems. The ability of independent non-legal advisers to provide effective paths to justice also depends on *their* legal capability and capacity to effectively identify those in need, and often their ability to refer them to appropriate services.

With these data points in mind, it is critical that the legal dimensions in problems are identified wherever they are disclosed, and that staff in those places have the capacity to provide relevant information or referrals. Where these services are providing other kinds of support (e.g., social work, education, housing, local government) and drawing in legal services where required, they are understood to be looking at the broader experience of the client, and therefore described as wrap around.

There is no question that in cases of significant legal complexity, holistic services provided by legally centred services are invaluable in untangling the components and addressing them appropriately. This can be essential for complex and intractable problems. On the numbers however, more PULS respondents had legal need met by non-legal than legal services. Such services are better positioned for some groups, through their community engagement and the way in which they frame services. Ensuring that social service and health professionals (e.g., social workers, maternal and child health workers, teachers,

⁷ Balmer, N.J., Pleasence, P., McDonald, H.M. & Sandefur, R.L. (2023). *The Public Understanding of Law Survey (PULS) Volume 1: Everyday Problems and Legal Need*. Melbourne: Victoria Law Foundation. Face to face survey of a population sample of 6,008 Victorians.

⁸ A justiciable problem is one which raises legal issues. See further, Genn, H. (1999). *Paths to justice: what people do and think about going to law*. Oxford: Hart.

allied/health practitioners etc) have capacity to identify legal aspects to problems disclosed to them, or embedding lawyers and/or legal pathways in these settings, has a real impact on access to justice.

In terms of reducing the demand on legal assistance, it is likely that this kind of problem noticing could address legal issues before they escalate, with earlier resolution and less cost – that is, early intervention. There may also be reduction in the demand on legal assistance through timely referral to other resolution bodies, for example ombudsman, waiver or payment plan options. A rigorous evaluation of the spectrum of these kinds of service blends is essential to understanding their efficacy, and supporting their legal knowledge and proliferation.

As one of the co-authors of the PULS Professor Rebecca Sandefur has put it, justice professionals need to 'share the quest for solutions with others: other disciplines, other problem-solvers, and other members of the public whom the justice system is meant to serve.'

Another area of policy interest is the difference that legal assistance can make to other areas of personal and community need. For example, legal assistance has been widely seen to make a difference to health outcomes. One well-known example of client health outcomes being improved by legal assistance services is dealing with black mould in a residential tenancy. Other examples of integrated legal and other human assistance services abound, although the broader benefits of legal and related services continue to be under-appreciated in policy circles, and under-evidenced by research.

There is need for further and better information about the impact of wrap around services, whether based in law or other social services. However, we also recognise the resource and data challenges in this area.

Comprehensive legal services have a critical role

As noted above, there is also a critical role for more services which can work on several intersecting legal problems at once.

The PULS shows that more people report multiple justiciable problems than single problems, with 15% of people with a problem reporting five or more. This percentage has nearly doubled since the last legal needs survey in 2008 covering Victoria. It is clear therefore that problems beget problems: the more you have, the more you are likely to have.

Multiple problem experience is also concentrated among the most vulnerable. Of the 15% reporting five or more problems, almost 20% also reported having to go without meals or being unable to heat or cool their homes because of a shortage of money.

Some types of problems tended to cluster more often than others. Notably, respondents who had faced debt or money problems or issues with government and public services, were also likely to report a broad range of other problem types.

Timely intervention and a more comprehensive legal response are necessary to achieve resolution. Staunching the accumulation of legal problems and addressing them in appropriate sequence is likely to reduce downstream demand on legal assistance, as well as other parts of the justice and other systems. For example, resolving fines and infringements early can halt escalation of legal problems, as well as relieving financial pressure which might have later resulted in defaults on rent, mortgage and other payments, with much greater consequence.

Duration and long-term impact

The PULS also reveals for the first time the duration of legal problems. While 50% of civil legal problems end after 9 months, alarmingly 30% across all problem types persist for five years or more with some particularly stubborn. Those associated with money or debt, injury, government and public services, and particularly family law, tended to last longer. Early intervention and holistic service may reduce duration in some instances.

Duration can also serve as an indicator of the severity of problems, and this exacerbates other effects revealed in the PULS – on the individual, their families, and on the community. Whilst it may not be surprising that 72% of respondents experienced stress as a result of their legal problem, 38% described a loss of confidence, 20% ill-health or injury, and 15% and 13% losing jobs or housing respectively. These can have far reaching and deeply detrimental impact, likely to be more profound with long running legal problems. Early, client-centred responses could reduce these effects significantly.

Further research, quantification of impact and assessment into these models is required, but there is considerable potential for stronger wrap around services (of all types) and early intervention to address the clear shortfall shown through the PULS findings on both legal problem duration and met and unmet need.

11. Efficiency

To what extent are administrative processes of funders placing unnecessary regulatory burdens on legal assistance providers?

One important dimension that is under examined is the adequacy of funding to support service providers comply with baseline operating costs in the face of overwhelming community demand. Where funding is delivered to service providers in periodic blocks tied largely to reporting requirements, inevitable tensions between expenditure on frontline services and so-called back-end administrative, operational, and regulatory burdens are created. In fact, anything that diverts funding from frontline service provision can be seen as a burden.

Our study on the use and utility of administrative data generated by Victorian legal assistance services canvassed funder reporting requirements.⁹ Legal assistance data was most frequently used by service providers to fulfil funder reporting requirements. We found that, on average, Victorian legal assistance services reported on nine funding streams (median = six). This most frequently covered a mix of core and non-recurrent funding from a mix of Commonwealth and Victorian Government, Victorian Legal Services Board and local council funding streams. Reporting to a wide range of other funders was also reported, including philanthropic bodies, foundations (including the Victoria Law Foundation) and other grant programs.

Consequently, there may well be opportunity to streamline reporting requirements, at least as it applies to the NLAP partners. We note however that some public legal assistance services receive funding under an assortment of Commonwealth and state health, human and community service programs.

We found many public legal assistance services which had sought funding for data initiatives, reported that there were few available sources, and that both government and philanthropic funders often directed ad hoc and project funding to frontline legal assistance services.

We have also previously advised that it is imperative that NLAP data and reporting requirements result in information that is meaningful, useful and has value exceeding the cost and burden of its collection. However, we also recognise that the quality and utility of legal assistance data needs to be improved. Consistent with the rest of this submission, we urge the NLAP review to prompt examination of what is required to lift the national legal assistance evidence base, including what is necessary to improve systematic collection of quality information to inform future policy decisions and expenditure.

⁹ See McDonald, H.M., McRae, C., Balmer, N.J., Hagland, T., and Kennedy, C. (2020). *Apples, Oranges and Lemons: The use and utility of administrative data in the Victorian legal assistance sector*. Melbourne: Victoria Law Foundation.

13. Labour market

How does workforce supply and remuneration impact on the provision of legal assistance services?

Our survey of the Victorian community legal centres (CLC) workforce revealed several pressing issues in workforce recruitment, retention and sustainability. In particular, we note that this workforce is overwhelmingly female (77%) and in many respects has more in common with other human and social services than private legal services.

The median income category of Victorian CLC employees was \$65,000 to \$77,999 per annum. More than half (59.5%) of survey respondents believed their salary was somewhat or significantly less than others in a similar role outside the CLC sector.

For further information on workforce issues, we refer the NLAP review to following reports:

Working in Community Legal Centres in Victoria. Results from the Community Legal Centres Workforce Project: [Workforce profile.](#)

Working in Community Legal Centres in Victoria. Results from the Community Legal Centres Workforce Project: [Building and maintaining a sustainable workforce.](#)

14. Data

To what extent are the current reporting processes sufficient to support monitoring, continuous improvement and achievement of objectives?

Above we have set out how current reporting processes and data are insufficient to support a reasonable assessment of the adequacy of national legal assistance policy, or to appropriately evaluate service design and provision. We again stress the need to build a reliable and quality evidence base.

Notwithstanding substantial efforts by some service providers, in our view the legal assistance evidence base remains immature and continues to face constraints that have plagued efforts to close knowledge gaps. In particular, we point to issues of data quality, consistency and accuracy, lack of information on outcomes produced by legal assistance funding and other inputs, and what works to most effectively and efficiently meet legal needs.

We noted above and in our Data Mapping Project work the need for people-focussed data to mirror the shift to client-centred legal assistance service provision and approaches to justice, as described in the NLAP. There is a need to see different people, problems and places in justice data, in order to assess access to justice for different cohorts, types of legal matters and locations. We have also noted how both oversight of paths to justice, and insights into what works to build effective referral pathways is critical to understanding performance of services, and barriers to access.

We have seen these issues not only in public legal assistance services, but also in courts and tribunals, and other formal dispute and complaint resolution bodies. There is a pressing need to learn more about client outcomes and the legal needs of diverse sub-populations, particularly those experiencing heightened legal needs together with social and economic disadvantage.

As we have reported in Data Mapping this requires -

- a legal assistance quality data framework, to elevate and maintain data quality
- a suite of people-centred justice data needed to close knowledge gaps and reliably answer a broad range of policy, monitoring and evaluation, and service provision questions

- a more comprehensive and ambitious national data strategy that goes beyond a narrow focus on NLAP compliance
- increased data standardisation and coverage to facilitate monitoring and assessment as well as comparison of standard and innovative forms of legal assistance
- improved oversight of legal assistance service inputs together with a move from outputs to outcomes measurement and reporting
- investment in wider public legal assistance data capability and utility.

The NLAP alone cannot close gaps in access to justice and unmet legal need. Other justice institutions also play critical roles, including courts and tribunals, other dispute and complaint resolution bodies, pro bono legal assistance and private legal services. However, the NLAP is the primary national public legal assistance policy instrument and can be strengthened to more effectively shape and support access to justice, particularly access to civil justice.

It can also play a pivotal role in defining, supporting, and standardising data measures, collection and reporting. We are aware from our own and recent ABS work on collation of national legal assistance unit record data, that there are substantial data quality and practice issues to be addressed to increase what that can reliably be used for. We would add from our Data Mapping Work that there is also more to do to increase data coverage and prospects for data joining to add further value to unit record service data.

The justice system is a complex ecosystem, where separate institutions are tightly-coupled, and where reform in one part of the system can profoundly affect others, positively and negatively. Sound justice data can also help identify the impact of law reforms and practice innovations across the sector, and monitor change in demand.

Better data is a sound investment – in more effective policy settings, stronger services and greater access to justice.

15. Opportunities

What other changes to the NLAP would further improve service delivery outcomes and maximise use of resources?

Commonwealth leadership

Australians don't care which jurisdiction their legal problem falls under. They don't necessarily know - and shouldn't have to know – if their issue is in a state or federal domain to get the support they need. To that end collaboration across all tiers of government and service provider types is critical.

As the key agency in the delivery of the NLAP, the Commonwealth must play a co-ordinating role, with departmental commitment and expertise for the duration of the agreement. The current agreement has just under two of five years to run and yet there is little to no activity on existing commitments – particularly around a national Data Strategy for the future and the development of an outcomes framework.

Data developments

The VLF comes to this as an empirical legal research body with a consequent commitment to data and building an evidence base which is then applied to support better services for all Australians. This concept is consistently articulated in the National Strategic Framework for Legal Assistance and the NLAP.

There have been some developments in data collection in the current agreement period with the engagement of the ABS, but we would suggest there is need for greater clarity of purpose to strengthen the commitment of all players. Agencies are less likely to willingly participate in data collection if they are not confident in the methods, get no direct benefit from the effort, and/or have concerns about how data will

be used. A renewed commitment to a national Data Strategy, well suited to NLAP policy aspiration, is key to moving to better data collection and more sophisticated and useful application of it.

There are numerous mentions in the NLAP and the Strategic Framework on the value of developing data literacy and other related skills in the sector. Some agencies around the country have achieved impressive results and have developed appropriate practices and useful resources, however this is far from universal. Nationally, the spread of capability is too wide to give confidence in data use and utility, and beyond that, for any meaningful aggregation. To achieve real benefits, all players need support to build their capability. Oftentimes legal assistance faces an invidious choice between front line services and data work, with the latter usually running a distant second. This should not be an either/or decision. Legal assistance needs adequate funding to do data properly, just as useful data is needed to do policy, funding and service provision properly.

Legal need is growing. Most of it is unmet. We will not move towards an adequate level of service unless we understand it better, and that requires data and analysis. PULS findings reiterate the need to know more about what publicly funded legal assistance services do and achieve, particularly with respect to the information, education, advice and minor task assistance services that constitute the overwhelming majority of public legal assistance services. The NLAP is a powerful opportunity to agree meaningful data requirements and to resource their collection. This must be the baseline for understanding what services make a difference for Australians in legal need.

Outcomes measurement

One area where policy development and investment are needed is outcomes measurement. This is a long-standing issue, which NLAP parties agreed should progress under the current agreement. Section 30 (e) sets out the development of an outcomes framework for legal assistance services for potential implementation from 1 July 2025. It is our experience that the broader public legal assistance service and policy sector does not have a shared understanding of what an outcomes framework and any associated measurement may entail.

Substantial foundational work is required to build a framework to effectively move from outputs to outcomes measurement, develop the evidence base, and inform national legal assistance policy. Time is now likely too short to deliver an agreed framework before July 2025, but this is important work and deserves high level attention and effort.

Frameworks live or die on the utility of the measures and the quality of the data and information they generate. We have previously commented on high levels of mistrust and misapprehension about data collection and outcomes across the legal assistance sector. Some of this is based on previous negative experience, perceived wasted effort in piloting collection of new information under the terms of the NLAP (such as 'estimated time spent' measures); on lack of explanation about how outcomes information will be used, and how it may affect future funding provision; and concern about the lack of resources and infrastructure to support collection of quality information.

We are aware of many NLAP funded service providers who are concerned about resource implications that implementing an outcomes framework may entail, particularly where demand for frontline services is significantly outstripping supply.

One place to start is measurement of client outcomes. Including whether NLAP funded services have successfully met legal need. Notwithstanding significant NLAP investment and provision of legal assistance services, there continues to be too little known about the outcomes of both standard and innovative legal assistance services. This also means that there is too little known about any impact and benefits, for better or worse, of change, reform and innovation.

The Victorian Collaborative Planning Committee's Outcomes Pilot Study, with which we've been involved, explored the development and implementation of a shared set of outcomes measures across Victorian

public legal assistance services, going to core client outcomes. The findings of this pilot will help inform what will be required in developing a national outcomes framework.

Developing an effective framework is neither a small nor simple task, and as we have said, there is necessary foundational work to be done to foster trust and support, explain purpose and build shared understanding and practices around what for many stakeholders is a new frontier. It is also critical that leadership is backed by engagement and development with service providers, that it is appropriately funded, and that there is forward commitment to development, operationalisation and collection of outcomes measures.

Clear understanding of what services work effectively and efficiently for different types of legal matters and cohorts, remains a stumbling block for evidence informed policy development and service provision. Reviews of national legal assistance policy have been repeatedly hamstrung by the lack of appropriate evidence to assess both policy and service efficiency and effectiveness. Recent PULS findings on the level of unmet legal need in the Victorian community have revealed, for the first time, that people are more likely to have their legal needs unmet than met. Where needs are unmet, there is no access to justice.¹⁰

Put bluntly, we must learn more about outcomes and what works in NLAP funded service provision. It is key to fundamental policy questions, such as the adequacy of NLAP funding quantum and distribution, and service design and delivery relative to legal need.

Digital transformation

As described in our Data Mapping Reports the sector is already moving to introduce new technologies to improve service and efficiency. They are doing so in disparate ways, with the Victorian Government and CLCs investing in new legal practice management system, Actionstep, for increased data capability. The picture across legal assistance is checkered however, with different systems in use and different skill levels and resources, as discussed above.

The advent of AI adds urgency to the need to investigate, understand and implement appropriate measures. This field is moving fast but a national commitment to exploring the potential to improve access to justice through technology is essential if the public legal assistance sector is not going to be left even further behind.

The next NLAP must take account of these developments if it is not going to be redundant long before the expiration of the five-year term. A commitment to engaging with the sector on the potential of technology, appropriate applications and resourcing should be factored into the next NLAP.

NLAP as an engine for improvement

As this submission makes clear, our view is that the NLAP is a critical policy instrument and the primary vehicle for addressing gaps in knowledge about civil justice, and for building the evidence required to inform, review and assess both service provision and policy. Successive access to justice reviews and reports have identified a data deficit as a barrier to assessing even basic questions about community need and funding.

For too long, building that evidence base has been stalled. The cost has been borne by Australians who have been unable to meet their legal needs, and who have suffered adverse consequences. The cost has also been borne by other social and community services, and ultimately, by Australian taxpayers.

Empirical evidence makes clear that there is a need to know more about what works and at what cost, to really drive policy reform and successfully deliver potential cost and wellbeing dividends. Our experience is that many service providers are committed to making a difference and have a strong appetite to know more

¹⁰ Balmer, N.J., Pleasence, P., McDonald, H.M. & Sandefur, R.L. (2023). *The Public Understanding of Law Survey (PULS) Volume 1: Everyday Problems and Legal Need*. Melbourne: Victoria Law Foundation.

about what their services are achieving. They know they turn away too many people in desperate need, and that many of those they assist need more than they are able to provide.

NLAP data needs to be fit for NLAP review and assessment, but it has much greater potential. To meet this, it is critical to build a strong relationship between the legal assistance sector and government on the appropriate collection of data and the purposes to which it is put. This requires agreement both on the high order aims of evaluation and the specifics of data collection. It requires consistency of approach, and confidence that the sector will not be put to additional effort to justify its services.

A revived national legal assistance Data Strategy under the NLAP with broad commitment from all parties will go a long way towards realising the potential of existing and new data collection to build a compelling evidence base demonstrating the value of services and supporting future funding.

Investment in quality data is key to unlocking a new era of understanding about access to justice and to responding to growing legal need with better service capability. Resourcing this effort is critical – it won't get done without leadership and dollars, but moving in this direction could go a long way to tackling some pressing and recurrent justice policy questions and meeting the aspirations to make justice accessible.

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