

The Allen Consulting Group

Review of the National Partnership Agreement on Legal Assistance Services

Working paper three: Market analysis

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Overview

This working paper

The Australian Government Attorney-General's Department has engaged the Allen Consulting Group to undertake a Review of the National Partnership Agreement on Legal Assistance Services (the Review). The National Partnership Agreement on Legal Assistance Services (NPA) sets the shared outputs, outcomes and objectives for Commonwealth funded legal assistance services delivered by legal aid commissions.

The Commonwealth Government also funds legal assistance services provided by Aboriginal and Torres Strait Islander legal services (ATSILS), community legal centres and family violence prevention legal services (FVPLS). The objectives of the programs through which the Commonwealth funds these providers are consistent with, and support, the outcomes and objectives articulated in the NPA (even though these services are not funded or governed by it).

This working paper is part of the Review, presenting a supply and demand market analysis of legal services across Australia and an analysis of the rationale for government provision of these services such as market failure and equity reasons, including the provision of merit goods.

The gap between demand and supply of legal services is examined including how the gap may be filled. Particular focus is given to the demand and supply of legal assistance services, which incorporates government funded legal services delivered by ATSILS, community legal centres, FVPLS and legal aid commissions. The pro bono contribution made by the private legal profession is also discussed.

This working paper then looks at whether existing legal assistance services have been effective in addressing the specific market failures. In doing so, the working paper identifies any opportunities that may exist to increase the current supply of legal assistance services.

This working paper is organised as follows. Chapter 1 discusses the market for legal services and legal assistance services. Chapter 2 analyses the demand for legal services while Chapter 3 analyses its supply. In Chapter 4, the gap between what is supplied and what is demanded is analysed, along with the all important question of why government should care about this gap i.e. why the gap should be the focus of policy and government action and intervention. Chapter 5 analyses the types of intervention that are currently used in Australia and opportunities for more effective provision of legal assistance services.

Chapter 1

The market for legal services and legal assistance services

1.1 Legal services

Legal services are services provided by lawyers (also referred to as legal practitioners), which includes barristers and solicitors holding a current practicing certificate under the relevant state or territory legislation. Lawyers may provide legal services as a member of the private profession, as an employee of an ATSILS, community legal centre, FVPLS, legal aid commission or other organisation (including as an 'in-house' lawyer). Lawyers provide services in a range of ways; on a 'for fee' basis, in line with their duties as an employee, on a pro bono basis where the cost of provision is borne by the firm for whom the lawyer works, and on a voluntary basis where services are provided in the lawyers own time. Legal services are provided across a broad range of areas of law.

1.2 Legal assistance services

This market analysis defines legal assistance services as a subset of the legal services market and includes the services provided by ATSILS, community legal centres, FVPLS and legal aid commissions that receive Commonwealth Government funding. Legal assistance services include the provision of legal services and related support services that are not legal services, however this market analysis focus on the provision of legal services only.

It is not possible under present program arrangements to tightly define legal assistance services for market analysis purposes by the type of legal assistance provided. This is because it is not possible to state, in a manner that is consistent across Australia, the circumstances in which potential clients of all legal assistance services will be successful in accessing the legal assistance they require at a particular point in time. Numerous factors influence the legal assistance service provider's decision to provide services including the characteristics and circumstances of the person seeking assistance, the nature (including importance and complexity) of their legal problem and whether this fits within the remit of the service provider, expertise and available resources of the service provider.

While the following chapters explore the demand for and supply of legal services broadly, analysis focuses on legal assistance services as this includes the areas of law where government has particular concern about the ability of individuals to access legal services when needed.

Figure 1.1 shows one way of conceptualising legal assistance services (the legal service component) as a subset of legal services generally. The total area on the diagram represents the legal services required by clients of all capabilities (which includes capability to identify and understand they have a legal problem and pay for legal services) facing a wide variety of legal problems.

Legal assistance services are represented by the shaded area. These services are provided to clients who have a relatively low capability to resolve their legal problems themselves (i.e. either actually themselves or by hiring and paying for a lawyer) in circumstances where the importance or complexity of the legal problem is relatively high. The concept of client capability draws upon a combination of factors that impact on an individual's ability to resolve their own legal problems, such as education or family support, as well as financial ability to engage a private lawyer. Complexity of legal problems relates to the inherent complexity of the type of law matter, and can be escalated if not addressed at an early stage.

Figure 1.1

LEGAL ASSISTANCE SERVICES AS A SUBSET OF LEGAL SERVICES

Source: The Allen Consulting Group

In Figure 1.1, the shaded area is the combination of low capability and high importance and complexity of the legal problem for which legal assistance services are provided.

- For issues that are of low importance/complexity, such as, for example, non-payment of a cat registration, legal assistance services are not provided, regardless of client capability. The rationale for this is that resources devoted to legal assistance services are always going to be finite and constrained, therefore it would not be good policy to spend them on minor matters where relatively little is at stake.
- As the level of client capability increases, the importance and complexity of the legal problem must also increase for the client to receive legal assistance services. At some point, regardless of the complexity or importance of the legal problem, no legal assistance services are provided due to the high capability of the client (such as being very wealthy).

Determining the criteria that describes the shape of the shaded area is a key concern for government. The rationale is one of resource allocation, principally based on considerations of equity. Given the finite resources available for legal assistance services, government does not wish to devote resources to addressing legal problems that are unimportant, or provide services to clients who have a high capability to address their legal problems themselves.

The size and shape of the shaded area in Figure 1.1 depends on numerous factors. If more resources are made available for legal assistance services, then these could be spent through a combination of increasing the scope of the types of legal problems for which legal assistance services are provided and providing them to more people. This would be represented in the figure as shifting the boundary of the shaded area up and to the left (see Figure 1.2).

Figure 1.2

IMPACT OF ADDITIONAL RESOURCES MADE AVAILABLE TO LEGAL ASSISTANCE SERVICES: SERVICE EXPANSION

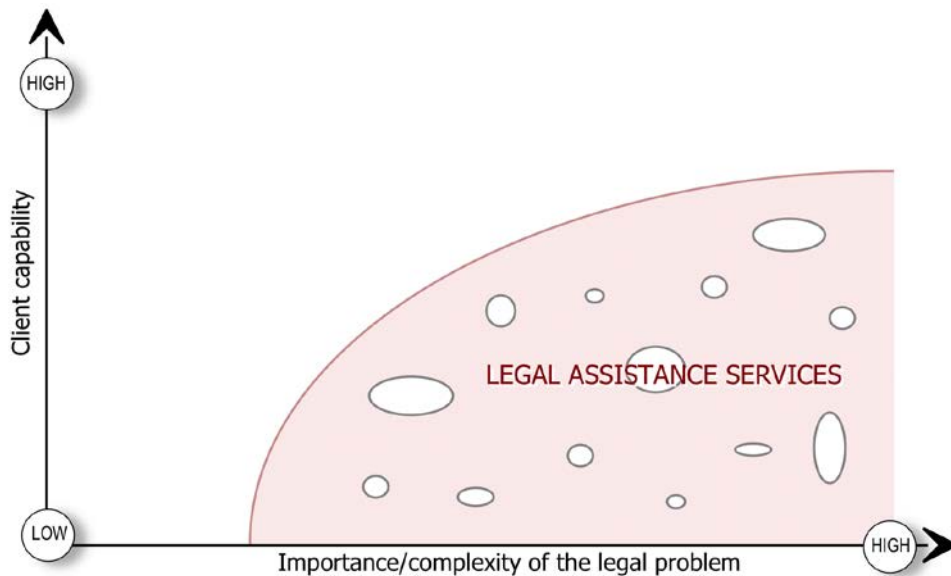


Source: The Allen Consulting Group

However, in considering use of additional resources, it is also important to recognise that not everybody currently eligible for legal assistance (ie fits within the shaded region) is necessarily receiving assistance. Service gaps or holes (see Figure 1.3) below the curve may exist for numerous reasons, including a lack of knowledge about available services, a lack of services available in a particular location relevant to the law matter at hand, or as a result of service rationing in the face of high levels of demand. In this situation, any increases to available resources may be prioritised towards filling service gaps, ensuring all people meeting the current eligibility criteria for legal assistance services receive services, as opposed to expanding the area of eligibility.

Figure 1.3

IMPACT OF ADDITIONAL RESOURCES MADE AVAILABLE TO LEGAL ASSISTANCE SERVICES: FILLING SERVICE GAPS



Source: The Allen Consulting Group

Alternatively, for a given amount of resources devoted to legal assistance services, the scope of services could be reduced while providing them to people with higher levels of capability (see Figure 1.4).

Figure 1.4

REPRIORITISATION OF LEGAL ASSISTANCE SERVICE FUNDING



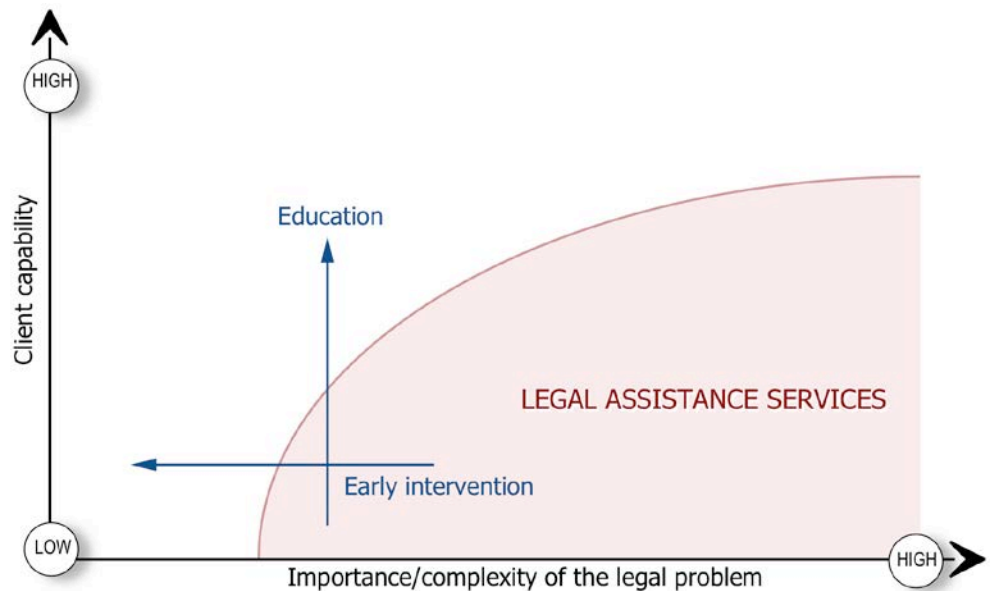
Source: The Allen Consulting Group

At issue is what legal services everyone should have access to when living in a civil society. Given that funding for legal assistance services will always be constrained, in addition to determining the policies that describe the shape of the shaded area in the figures above, government may also look to ways to stimulate a reduction in the cost of legal services so more people can afford to purchase services themselves. Other strategies can also contribute towards moving individuals out of the shaded area (thus reducing demand) through increased client capability or decreased complexity.

Figure 1.5 conceptualises these strategies. One way is through education. This increases an individual’s capability to address their own problems, even if the complexity of their legal problem is undiminished. Another way is through early intervention. This may reduce the complexity of a legal problem, so, for a given level of client capability, legal assistance services may not be required.

Figure 1.5

IMPACT ON LEGAL ASSISTANCE SERVICES OF REDUCING THE COST OF LEGAL SERVICES AND OF EARLY INTERVENTION SERVICES



Source: The Allen Consulting Group

Chapter 2

Demand for legal assistance

2.1 The Australian legal services market

This chapter considers the demand for legal services in Australia by reviewing the value of legal services purchased in Australia, by area of law, together with estimates of unmet demand for legal services.

The value of legal services purchased in 2012-13 is estimated at \$21 billion (IBISWorld 2012). The distribution of this amount by area of law is shown in Table 2.1 below.

Table 2.1

ESTIMATED LEGAL SERVICES MARKET BY AREA OF LAW 2012-13

Area of law	%
Commercial law	35.0
Personal legal services (including personal injury, workers compensation, family law and wills and estates)	20.0
Property law	17.0
Administrative, constitutional and other law	9.9
Community legal services (includes legal aid commissions and community legal centres)	6.0
Industrial and workplace relations	4.5
Intellectual property law	4.4
Criminal law	3.2
Total	100.0%

Source: IBISWorld 2012, p13

Provision of commercial law services generates the largest share of industry revenue, estimated at 35 per cent for 2012-13, and includes all legal services provided to business (IBISWorld 2012). Activity levels in this sector of the legal services market is influenced by the level of economic activity and stage in the business cycle. Margins are often higher for commercial law work than in other areas of private legal practice.

Personal legal services, which includes personal injury, workers compensation, family law and wills and estates, is estimated to represent the next largest share of revenue for legal services in 2012-13 (IBISWorld 2012). This includes but is not limited to areas of law where legal assistance services are involved in provision, such as family law.

Property law (property conveyancing and other property related work), is estimated to represent the third largest share of revenue to legal services, and is heavily influenced by activity in the property market, which in turn is influenced by the state of the economy more broadly (IBISWorld 2012).

The category reported as community legal services in Table 2.1 above, which refers (in these data) to the value of funded legal services provided through community legal centres and legal aid commissions, is estimated to represent 6 per cent of legal services in 2012-13 (IBISWorld 2012). Legal services provided encompass a broad range of civil, family and criminal law matters.

Revenue generated from criminal law beyond that provided through public funding of legal aid commissions and community legal centres, is estimated to comprise 3 per cent of legal services in 2012-13 (IBISWorld 2012).

The legal services market as a whole is forecast to grow between five and six per cent per year over the next five years (IBISWorld 2012, p39). While growth forecasts by type of law are not available (as far as the authors of this report are aware), key drivers of demand for legal services expected to be of relevance over the next five years include (IBISWorld 2012):

- increases in international business activity due to the strong Australian dollar;
- changes to environmental laws, particularly as they impact upon the mining and resources sector;
- increases in mergers and acquisitions activity particularly in the energy and resources sectors;
- increases in initial public offering activity, increasing demand for workplace relations and employment law services;
- continuing rates of divorce;
- increasing numbers of class actions arising from product and service liability claims; and
- and increasing numbers of personal bankruptcies (although expected to increase this is unlikely to significantly impact upon total legal services revenue).

Of particular relevance to legal assistance services are the increases in demand for workplace relations and employment law services, family law services and personal bankruptcies. Also of relevance to legal assistance services is the impact on the demand for criminal law services arising from the tough-on-crime policies being pursued by a number of state and territory governments (described further in the state and territory context section of *working paper two* that forms part of the Review).

2.2 Survey evidence

The data presented in Section 2.1 are revenues of the legal profession, and while certainly related to the demand for legal services (and by extension, the demand for legal assistance services), they do not relate to demand *per se*. The demand for legal services is a derived demand in that it comes from people who are experiencing legal problems, are aware they are experiencing a legal problem and seek legal assistance.

The evidence presented in the *Legal Australia-Wide Survey: legal Need in Australia, Access to Justice and Legal Needs* (the LAW Survey) (Coumarelos et al 2012) is useful in that it provides information on individuals experiencing legal problems, as opposed to the information presented in the previous section relating to the entire legal services market (which includes companies experiencing legal problems). The LAW Survey points to the proportion of Australians experiencing legal problems in the 12 month period preceding the survey, the types of problems incurred and the characteristics of people most likely to have problems.

The types of legal problems experienced by LAW Survey respondents, the proportion of respondents experiencing legal problems, the proportion of respondents experiencing substantial legal problems and the proportion of respondents experiencing multiple legal problems are shown by problem group in Table 2.2.

Table 2.2

PREVALENCE OF LEGAL PROBLEMS BY PROBLEM GROUP

	Percentage of all legal problems experienced by LAW Survey respondents (% problems in this group)	Percentage of all LAW Survey respondents with problems (% problems in this group)	Percentage of LAW Survey respondents with substantial legal problems (% problems in this group)	Percentage of LAW Survey respondents with multiple legal problems (% problems in this group)
Accidents	3.4	7.7	1.1	8.7
Consumer	20.8	20.6	9.0	44.9
Credit/debt	6.6	6.4	3.4	42.4
Crime	14.9	14.3	6.0	41.1
Employment	6.4	6.2	3.8	39.6
Family	7.1	5.0	3.9	41.9
Government	8.3	10.7	5.4	35.8
Health	2.9	3.3	2.3	35.0
Housing	12.5	11.8	5.5	38.9
Money	4.9	5.7	3.0	35.2
Personal injury	4.5	7.0	3.3	23.0
Rights	7.6	5.8	3.3	50.3
Total	100.0%	49.7	27.2	63.0

Source: Coumarelos et al. 2012, p62

Overall, around half (49.7 per cent) of respondents experienced legal problems. Of these, 18.4 per cent experienced one problem, 9.5 per cent experienced two problems and 21.8 per cent had three or more problems. Over half (54.8 per cent) of respondents with legal problems experienced substantial legal problems (classified as problems having a moderate or severe impact on everyday life) or 27.2 per cent of all respondents. Of respondents who reported having legal problems, 63.0 per cent had multiple problems.

The legal problems most frequently reported as experienced by LAW Survey respondents were consumer (20.8 per cent), criminal (14.9 per cent), housing (12.5 per cent) and government (8.3 per cent) (Coumarelos et al 2012, p62). These problem types were also the most frequently reported substantial legal problems — which is important information when considering the provision of government funded legal assistance. Problem types experienced by survey respondents reporting multiple legal problems were generally spread, with a high rate of incidence across all types, except accidents, and to a lesser extent personal injury.

A notable feature of the data is that a small number of people experienced a large percentage of the legal problems. Nearly one third of all legal problems (32 per cent) were experienced by just 1.7 per cent of the survey respondents; they each experienced 25 or more problems in the 12 month period covered by the survey. Survey respondents experiencing 10 or more problems comprised only 5.7 of the total, yet between them experienced 54.8 per cent of the total problems experienced by respondents to the survey. While the LAW Survey does not link these findings to the demand for legal assistance services, it seems reasonable to believe that people experiencing significant numbers of legal problems within a relatively short period of time form a significant part of the demand for legal assistance services.

The LAW Survey also reports on the prevalence of legal problems by demographic characteristics, and these data lend weight to the argument that people experiencing multiple legal problems are likely to also be experiencing disadvantage, and therefore fall within the groups that legal assistance services are targeted to assist. The strongest independent predictors of both legal problems and substantial legal problems reported by the LAW Survey were age (people aged 15-64 years), disability status (people with a disability) and family status (single parents). The strongest independent predictors of multiple legal problems were age (people aged 15-64 years), disability status (people with a disability) and housing type (people who had lived in disadvantaged housing). Single parents, people who had been unemployed, Indigenous people, people with post school qualifications, males and people living in regional (rather than major city) areas were also significantly more likely to experience multiple legal problems.

Clusters of legal problems

An important point arising from the above analysis is that legal problems do not arise in isolation as many people experience multiple legal problems, and experiencing one legal problem can be a cause of other legal problems. Equally, multiple legal problems can have common causes, arising from the same circumstances. The LAW Survey reports three main clusters of legal problems that tended to co-occur. The first cluster included the four most frequent problem groups, namely consumer, crime, government and housing problem groups, and also included the money problem group. The second cluster included credit/debt and family problem groups. The third cluster included rights, employment, personal injury and health (the weakest component of the cluster) (Coumarelos et al 2012).

Chapter 3

The supply of legal services and legal assistance services

3.1 The supply of legal services

The legal services industry employs around 104,000 people (IBISWorld 2012), including lawyers (both solicitors and barristers) and non-lawyers. A report prepared in 2011 for the Law Society of New South Wales estimated there were just over 59,000 practising solicitors in Australia (Urbis 2011). Of these, 73 per cent reported working in private practice, 14.8 per cent as corporate solicitors and 9.3 per cent with government (Urbis 2011). In addition to the number of solicitors is the number of barristers, which was estimated at nearly 2,900 in 2008 by the Australian Bureau of Statistics (ABS 2009).

There are an estimated 22,415 establishments (locations from which organisations operate) and just over 18,000 organisations providing legal services (IBISWorld 2012). The legal services industry comprises a large number of small firms, with almost half of all firms being sole practitioners or partnerships employing no additional non-partner staff. There are also a small number of very large firms. While the majority of firms provide services within Australia, an increasing number of firms have established international operations. The four largest firms are estimated to account for 10.5 per cent of industry revenue. In 2012-13, total industry revenue for legal services is estimated to reach a level of \$21 billion (IBISWorld 2012).

Most legal services firms elect to limit the areas of law in which they provide services. The large law firms tend to provide legal services to business and corporate clients specialising in areas of law such as mergers and acquisitions, private equity, insolvency, intellectual property, workplace relations, tax, energy and resources, infrastructure, commercial arbitration and litigation and provide very few, if any, services to households.

The legal services industry is considered relatively mature. Although the industry experienced -0.4 per cent growth over the five years to 2012-13 (as a result of the global recession), growth is forecast to recover to an estimated 5.6 per annum for the period to 2017-18 (IBISWorld 2012). The industry is reported as highly profitable, with net profit before tax estimated at 30.0 per cent for 2012-13 (IBISWorld 2012). It should be noted that this profit level is an average and is not evenly distributed across firms or practitioners. Prices charged for legal services vary depending on a number of factors including the area of law in which services are provided, the extent to which competition in that area of law is based on price (as opposed to reputation, specific expertise, ability to provide services nationally or internationally, local presence), the availability of alternative suppliers, the basis of engagement (hourly rate, fixed fee or 'no-win no-fee' arrangements), and prevailing fee scales set in each state and territory by the relevant authority. The major cost to legal service providers is labour costs, with increasing wage rates placing pressure on profits, as are the increasing levels of competition arising from modest (or negative growth) in revenue.

Legal services are not uniformly spread across Australian states and territories. The geographic location of solicitor practices is presented in the table below and shows a concentration of practices in New South Wales and Victoria. This reflects the strong presence of businesses, including large corporate entities, and household concentration in those jurisdictions. The spread of solicitor practices across states and territories is provided in Table 3.1.

Table 3.1

LOCATION OF SOLICITOR PRACTICES BY STATE-TERRITORY

	ACT	Qld	NSW	NT	SA	Tas	Vic	WA
Percentage of solicitor practices	1.5	16.7	40.2	0.6	5.9	1.0	26.7	7.4

Source: IBISWorld 2012, p18

The majority of solicitors' workplaces — and therefore the base for services provided — are located in the capital city of their state or territory (57.2 per cent), with 26.7 per cent in a suburban location and 12.8 per cent in a country or rural location (Urbis 2011). It is recognised that a minority of total services are provided in locations other than where the solicitor is based, such as telephone based services or those provided on an outreach basis. Interestingly, country/rural based workplace locations are least prevalent in the Northern Territory, Western Australia and South Australia, all of which have large geographic areas across which to provide services. A breakdown of location of solicitors' workplaces by jurisdiction is provided in Table 3.2.

Table 3.2

SOLICITOR WORKPLACE LOCATION BY STATE-TERRITORY

Location	ACT %	Qld %	NSW %	NT %	SA %	Tas %	Vic %	WA %	TOTAL %
City	NA	49.3	51.9	96.2	76.1	69.9	60.2	72.4	57.2
Suburban	NA	17.8	30.9	0	18.3	0	29.8	20.8	26.7
Country/rural	NA	31.0	12.8	3.2	4.2	30.1	7.3	3.9	12.8
Other	NA	2	4.4	0.6	1.4	0	2.8	2.8	3.2
Total	NA	100	100	100	100	100	100	100	100

Notes: NA data not available, Other includes interstate, overseas and unknown

Source: Urbis 2011, p17

The main barrier to entry to the legal profession is the requirement to hold a current practising certificate. This requires completion of an approved legal qualification and practical legal training with a certified provider, together with other requirements associated with insurances, undertakings and character. Newly qualified lawyers who meet the requirements for admission to practice in the relevant state or territory are issued with a restricted practising certificate and must be supervised by a person holding an unrestricted practising certificate, usually for two years.

A source of potential supply of legal services is people with a qualification in law who are not working as legal professionals. Gaining accurate, recent data on the number of new graduates with law qualifications is problematic, partially due to the increasing number of universities offering post graduate law qualifications in place of, or in addition to, undergraduate programs. While it is acknowledged that many people completing law qualifications do not intend to practice as lawyers, it is unclear whether the high percentage of graduates working outside the legal profession is due to personal choice or a shortfall in employment opportunities. Anecdotal evidence suggests high numbers of applications for legal trainee positions, suggesting an oversupply of new graduates relative to positions available. Between 2001 and 2006, the number of legal professionals increased from 42,373 to 51,798 while the number of people with legal qualifications increased from 64,351 to 87,858 i.e. the increase in numbers of people with legal qualifications was double that of legal professionals (Daly 2012).

3.2 The supply of legal assistance services

The National Partnership Agreement on Legal Assistance Services (NPA) defines legal assistance services as:

all of the sector-wide legal service providers, including legal aid commissions, community legal centres, Aboriginal and Torres Strait Islander legal services and family violence prevention legal services. Use of the term 'legal assistance services' in the Agreement is intended to refer to services provided in this broader context.

Thus, legal assistance services are those provided by service providers funded by the four Commonwealth programs (noting some services are also funded by state and territory governments): the Aboriginal and Torres Strait Islander legal services (ATSILSs), community legal centres, family violence prevention legal services (FVPLS) and legal aid commissions. The private profession contributes to the provision of legal assistance services to the extent that they provide services to the community on a fee-for-service basis on behalf of ATSILS, community legal centres, FVPLS and legal aid commissions. Pro bono contributions by the private profession, while important, are not included in the NPA definition of legal assistance services and are discussed later in this section.

In 2011-12, the Commonwealth Government provided approximately \$315.5 million in funding to the four legal assistance service programs, as shown in Table 3.3 (figures provided by Attorney-General's Department). State and territory governments also provide funding to community legal centres and legal aid commissions, with one state government (Victoria) also providing funding to the FVPLS in that state. The contribution to legal assistance services providers by state and territory governments in 2011-12 is estimated at just over \$300 million, with almost 90 per cent of that amount flowing to legal aid commissions. Legal assistance service providers also receive funding from other sources including interest from the operation of solicitors' trust funds and philanthropic donations. Total funds flowing to legal assistance service providers in 2011-12 is estimated at \$799 million (figures provided by Attorney-General's Department).

Table 3.3

COMMONWEALTH FUNDING OF LEGAL ASSISTANCE SERVICE PROVIDERS 2011-12

ATSILS \$m	Community legal centres \$m	FVPLS \$m	Legal aid commissions \$m
68.2	33.7	18.5	195.1

Source: Figures provided to the Review by Attorney-General's Department

Aboriginal and Torres Strait Islander Legal Services (ATSILS)

ATSILS are designed to improve access to justice for Indigenous Australians, and to provide high quality and culturally sensitive legal aid services, enabling them to exercise their legal rights (AGD 2010). There are eight ATSILS, one operating in each state and territory (with the exception of the Northern Territory, which has two ATSILS, and New South Wales/Australian Capital Territory (NSW/ACT) which have one between them). ATSILS received \$68.2 million in Commonwealth funding in 2011-12 (figure provided by Attorney-General's Department).

ATSILS provide services predominantly in the area of criminal law, with some family and very limited civil law services provided. ATSILS may provide a range of additional services funded from sources other than the Indigenous Legal Assistance and Policy Reform Program.

In order to be eligible to receive services, applicants must be of Aboriginal or Torres Strait Islander descent, identify as such, and satisfy means and merit tests.

In 2011-12 ATSILS provided just under 200,000 services, the majority (84 per cent) of which were in criminal law. Of the criminal law cases, 43 per cent were advice matters; 41 per cent case matters; and 16 per cent duty matters. Around 70 per cent of the remaining family and civil law matters were advice matters (figures provided by Attorney-General's Department).

Community legal centres

Community legal centres are independent community managed not-for-profit services, providing legal assistance to disadvantaged people. Some specialise in particular areas of law; some specialise in servicing particular target groups; and others provide diverse services to a diverse client base. Services are generally provided free of charge.

Eligibility for services depends on the individual community legal centre: some provide services to particular groups only while others do not restrict service provision other than as resources dictate. In general, community legal centres only provide legal representation to clients who are not eligible for a legal aid grant.

There are around 200 community legal centres operating across Australia, 138 of them receiving Commonwealth funding totalling \$33.7 million in 2011-12. In that year Commonwealth funded community legal centres provided nearly 240,000 occasions of advice, provided information on over 167,000 occasions, opened over 50,000 cases, conducted over 3,000 community legal education projects and nearly 1,300 law or policy reform projects (figures provided by Attorney-General's Department).

Family violence prevention legal services (FVPLS)

FVPLS assist Indigenous Australians who are victims, or are at immediate risk, of family violence or sexual assault. There are 14 organisations providing services across 31 regions, receiving Commonwealth funding of \$18.5 million in 2011-12, with an additional \$0.24 million received for prevention and early intervention activities.

The majority of FVPLS services are delivered for family and domestic violence issues, including injuries compensation, child protection and other family issues related to circumstances involving family violence. In 2011-12 FVPLS providers opened more than 2,000 cases, provided 3,500 legal advices and 7,200 non-legal advices.

There is no means or merit test for FVPLS; the only eligibility test is that the applicant must be of Aboriginal or Torres Strait Islander descent, and identify as such.

Legal aid commissions

Legal aid commissions provide criminal, family and civil law services to disadvantaged clients. There is a legal aid commission in each state and territory. They are independent statutory authorities established under state and territory legislation. In 2011-12, the LACs received \$195.1 million from the Commonwealth Government (figure provided by Attorney-General's Department), and \$399 million from the states/territories and other sources (National Legal Aid 2012).

Eligibility for legal aid grants is subject to a means test and a merit test. These ensure that legal aid is provided only to those in the most need. The means test considers income and assets, both of the applicant and any third party that may provide support to the applicant. The merit test considers whether it is a sensible case to fund, on the basis of likely success.

In 2011-12 legal aid commissions provided:

- more than 32,000 grants, the majority of which were in NSW, Queensland and Victoria;
- nearly 340,000 early prevention services, and 21,000 dispute resolution services;
- more than 17,000 duty lawyer services and 22,000 litigation services; and
- more than 15 million preventive services (the majority of which were via hits on the legal aid commissions' websites) (figures provided by Attorney-General's Department).

Legal services provided by the private profession to legal assistance services providers

A significant amount of legal assistance services are outsourced to the private profession. Legal aid commissions in particular outsource work to private lawyers to extend the reach and depth of expertise of services the commissions are able to provide. Very rough estimates of the extent of outsourcing, based upon incomplete survey data, indicates the total amount of legal services outsourced to the private profession in 2011-12 was \$131 million, the vast majority (\$128 million) of which was from legal aid commissions.

Members of the private profession are known to perform work for ATSILS, community legal centres, FVPLS or legal aid commissions at rates below their usual level.

Private lawyers play a significant role in providing legal services to disadvantaged people through provision of services on a ‘pro bono’¹ basis. The private profession often receives pro bono clients via state-based referral schemes, which act as a pseudo-triage agent. Approximately 37 per cent of the private profession’s pro bono contribution is to individuals; the remainder is to organisations (National Pro Bono Resource Centre 2013).

Private lawyers provide, on average, 29.9 hours of pro bono work per year to individuals and organisations. Not all of this pro bono activity occurs through legal assistance service providers. Total value of the pro bono effort contributed by the private profession may be roughly estimated at \$344 million annually. This is calculated based on the estimated number of solicitors in private practice (73 per cent of 59,000 in 2011 (Urbis 2011)) plus the number of barristers (2,900 in 2008 (ABS 2009)), multiplied by the average number of pro bono hours worked per year by private lawyers (29.9 hours (National Pro Bono Resource Centre 2013)) using an hourly rate of \$250 (an estimate based on a range of fees for various activities outlined in the High Court Rules (Amendment)(November 2012)).

It is important to consider the areas of law in which pro bono effort is provided when viewing the private profession as a potential way of augmenting services provided by legal assistance services. As mentioned previously, many private lawyers do not provide services to households, specialising in areas of law more relevant to businesses. Table 3.1 shows the major pro bono practice areas, in terms of the percentage of firms that ranked matters in these practice areas as among the top five most accepted.

Table 3.4

TOP 5 PRO BONO PRACTICE AREAS 2011-2012 (% OF FIRMS THAT RANKED MATTERS IN THE PRACTICE AREA AS AMONG THE TOP 5 MOST ACCEPTED)

	Per cent
Governance	47
Deductible gift recipient applications	39
Employment law	36
Commercial agreements	36
Incorporations	22

Source: Derived from Chart 8, National Pro Bono Resource Centre 2013

These areas of law contrast to the areas of law provided by most legal assistance services, namely criminal law, family law and specific areas of civil law relevant to individuals such as employment law. Table 3.5 shows the areas of law that private firms nominated as their most frequently rejected areas for pro bono activity.

¹ A significant portion of the following relies on evidence from the “National Law Firm Pro Bono Survey” (National Pro Bono Resource Centre 2013). This surveys law firms with greater than 50 lawyers about their pro bono activities. This has been assumed representative, an assumption that has obvious potential flaws, but which reflects the dearth of available data in this area. It is noted that pro bono work of barristers and small firms is not captured in the survey.

Table 3.5

**MOST FREQUENTLY REJECTED PRO BONO PRACTICE AREAS 2011-12
(% OF FIRMS THAT RANKED MATTERS IN THE PRACTICE AREA AS AMONG THE
TOP 5 MOST REJECTED)**

	Per cent
Family Law (other than domestic violence)	25
Wills/probate/estate	25
Criminal law	19
Employment law	17
Deductible gift recipient applications	13

Source: Source: Derived from Chart 10, National Pro Bono Resource Centre 2013

The major barriers to increasing the level of pro bono contribution identified by the private profession are firm capacity, insufficient expertise in the relevant areas of law and concern about conflict of interest with fee paying clients (National Pro Bono Resource Centre 2013). This reinforces that there is an important mismatch between work performed by many private lawyers and the work performed by legal assistance services.

3.3 Discussion

Noting that funding provided by the Commonwealth Government to legal assistance services differs in nature from the revenue generated by legal services and from the pro bono contribution of the private profession, when examining the supply of legal services and of legal assistance services it is informative to consider the order of magnitude associated with all these elements.

As mentioned previously, total revenue generated by the legal profession is estimated to reach \$21 billion in 2013 (IBISWorld). By comparison, in 2011-12 legal assistance services received an estimated \$799 million from all sources. When added to the derived pro bono contribution of \$344 million, it can be estimated that legal assistance services plus pro bono contribution is roughly equivalent to 5 per cent of legal services revenue.

While the contribution of the private profession to provision of legal services to disadvantaged Australians is important, and includes provision of services on a 'for-fee' basis as a result of outsourcing by legal assistance service providers and pro bono effort, the majority of legal services provided to disadvantaged Australians on a free (or nominal contribution basis) rests with legal assistance service providers. The major factor constraining the supply of legal assistance services is funding, although over coming years there *may* be some downward pressure on salary costs as the number of law graduates rises and competition for employment as a lawyer intensifies, potentially increasing the number of services that may be provided for a given funding envelope. The flow through effect to legal assistance services may be delayed, as salary costs in these services are not as high as those paid by the more profitable of the private firms.

If competition within the private legal services industry intensifies, as is typical for a maturing industry, private firms may become more attracted to providing services demanded by clients of legal assistance services providers. However, this will only occur if funding is made available, and is available in a way that enables participation of the private profession (either through outsourcing arrangements or by giving clients the choice of provider).

It is an open question, deserving of more research, whether the private profession can be 'encouraged' to provide more services to people who are currently unable to afford them, either by changes in regulatory arrangements, government incentives or through increased competition in traditional markets. Issues raised in the discussion above including expertise in relevant areas of law, and presence in locations where services are demanded (such as outside capital cities), indicate that increased supply of services similar to those provided by the legal assistance service providers, is unlikely to occur in the immediate terms without increases in funding from governments.

Chapter 4

The gap between demand and supply of legal assistance services

4.1 Introduction

In most markets, it is difficult to define, much less measure, any gap between demand and supply. This is because it is assumed that any incipient gap is closed by appropriate changes in prices. For example, if at a given price the demand for peanuts (i.e. the quantity of peanuts that consumers are willing to buy) exceeds the supply (i.e. the quantity of peanuts that producers are willing to sell), then the price will rise, thereby reducing the amount that consumers are willing to buy, and increasing the amount that producers are willing to sell. This process stops when a price is reached whereby the amount willing to be bought equals the amount willing to be sold i.e. an equilibrium is reached in the market, where there is no excess demand (or supply).

Furthermore, it is generally assumed that transactions take place only at equilibrium prices, so the market data that are observed (the amounts bought and sold, and the prices at which these transactions take place) by definition never involve a situation of excess demand or supply.

With legal assistance services, however, the situation is different. For one thing, excess demand is not eliminated by a price mechanism, since legal assistance services are nearly all unpriced, at least from the perspective of the clients generating the demand for services. Second, because of various market failures (see later this chapter), even if they were priced, the market outcome would be inefficient, so it would be undesirable to eliminate excess demand through a price mechanism. Third, from an equity viewpoint, it would also be undesirable to eliminate excess demand through a price mechanism. For example, suppose a community legal centre, faced with more potential requests for assistance than it could handle, announced to its potential clients that it would service the highest bidders until it had run out of service capacity. It could do this by running a Dutch auction, starting with a high price which someone with a high willingness and ability to pay would accept, then progressively lowering the price until it had supplied all the work that it had the resources to do. There are some markets that work this way, but few people would argue that this is a desirable way to supply legal assistance services given that clients do not have much, if any, capacity to pay.

Price mechanisms serve as a way of rationing demand so that it is equal to supply. Demand can still be rationed in the absence of a price mechanism. With legal assistance services, demand is rationed by limiting the types of services that are supplied and by limiting their supply to people who do not have the capacity to secure their own supply in the broad market for legal services.

4.2 Quantifying the gap between and supply and demand

It is impossible to quantify the extent of unmet demand for legal assistance services by examining market data, and so this has to be answered by other means, e.g. by surveying people who demand legal services.

The extent of legal problems experienced by Australians was outlined in Section 2.2 drawing on the LAW Survey (Coumarelos et al 2012). Clearly, the prevalence of legal problems experienced compared with the limited supply of legal assistance services implies that there is unmet demand for legal services and for legal assistance services.

The LAW Survey also explored the actions taken by individuals in response to their legal problem. Commonly reported responses are summarised in Table 4.1. It is interesting to note that only 51.1 per cent of respondents experiencing a legal problem sought advice from a professional or formal advisor.

Table 4.1

RESPONSES TO LEGAL PROBLEMS

	Proportion of respondents %
Sought advice from a professional or formal advisor	51.1
Communicated with the other side	38.1
Consulted relatives or friends	26.6
Used websites or self-help guides	19.5
Court or tribunal proceedings	9.8
Formal dispute resolution sessions	8.8

Source: Coumarelos et al. 2012, p106

According to the LAW Survey, the nature of the legal problem experienced strongly influenced the response to that problem. Respondents experiencing money and family problems were most likely to take action, while those experiencing personal injury, crime, accidents and family problems were most likely to seek advice when taking action. Respondents experiencing substantial legal problems were more likely to take a greater number of actions and reported seeking higher levels of advice. Of particular relevance to ascertaining the level of unmet demand (including unexpressed demand) for legal assistance services, respondents from the following demographic groups were significantly less likely to take action compared to their counterparts (in descending order of strength):

- people whose main language was not English;
- people aged 65 years or over (versus 18-54 year olds); and
- people with low education levels (versus those without post school qualifications) (Coumarelos et al 2012, p107).

When action was taken in response to a legal problem, survey respondents from the following demographic groups were less likely to seek advice (in descending order of strength):

- 15-34 year olds (versus those aged 65 years or over);
- people whose main language was not English; and
- people who had been unemployed (Coumarelos et al 2012, p107).

The above information suggests that there are significant numbers of people experiencing legal problems who do not seek legal assistance. In particular, expressed demand for legal assistance services may be understated for people from specific demographic groups, including people whose main language is not English, people aged 65 years or over, people without post school qualifications, people aged 15-34 years and people who had been unemployed.

A measure of the excess demand for legal services was reported in a survey prepared for the Victorian Department of Justice (Peacock, Bondjakov and Okerstrom 2007). It found that 32.8 per cent of people took no action in response to legal issues. The major reasons for not taking action were variations on the theme of lack of information, or poor information. Financial reasons did not feature highly in this instance.

4.3 Why does the gap matter, why should governments intervene?

In general governments aim to not regulate markets. However, in some cases unregulated markets do not lead to efficient outcomes i.e. resources being allocated to their highest value uses. These are situations of market failure and have several causes, discussed below. Many are relevant to the market for legal assistance, justifying at least in concept, the idea that governments may intervene in a market to improve its efficiency (though whether a particular intervention is effective in this regard is a question always worth asking). Other reasons for intervention, which have nothing to do with efficiency are firstly, social welfare objectives and secondly, *merit goods*.

Social welfare objectives are about fairness or equity, such as improving the distribution of income, or opportunities. At a more nuanced level are the concepts of vertical and horizontal equity. Vertical equity is the idea that the distribution of incomes, or opportunities, should be made more equal, but there is no simple answer to the question of how much more equal. Horizontal equity is the idea that people in equal circumstances should receive equal treatment. Other social welfare concepts include the idea that it is the role of government to remove entrenched disadvantage, the presence of which is not only unfair but acts as a barrier to individual advancement.

Intervention in the market for legal services, including the provision (or funding) of legal assistance services, can be justified on all of these grounds, though it is not justified for all types of legal services (for instance, those of very low complexity or where very little is at stake).

A merit good (or service) is a term from the public finance literature in economics (Musgrave 1957). The idea here is that there are some goods or services that everybody in society should have, on the basis of need, rather than ability and willingness to pay. Such goods or services in modern societies include universal health care, public education, sanitation — and access to the legal system. Merit goods are closely aligned to social welfare objectives but the idea here is the service should be available to everybody (though not necessarily for free), not just disadvantaged people in society.

The concept of thin markets is that, on occasion, a market is not large enough to support a sufficiently large number of suppliers. This may apply in legal matters involving two parties, where representation is required from two law firms, but, particularly in rural areas, the market might be large enough to support just one firm and so one party to the matter will be unrepresented. Thin markets have both an efficiency dimension (it takes two legal suppliers to conclude a legal transaction, and so with only one the transaction can't be concluded) and an equity dimension — it is unfair for only one party to a dispute to be represented.

There are also situations where lawyers are present in a geographic market but they do not practice in many areas of the law because they are not sufficiently lucrative, given other opportunities.

These reasons for intervention in the market for legal assistance services are discussed in more detail below.

4.4 Market failure

Information failure

There are three key types of information failure that apply in the legal assistance market:

- asymmetric information;
- incomplete information; and
- limited ability to understand complex issues.

Asymmetric information

Asymmetric information occurs where one party to a transaction (generally the seller – in this case legal practitioner) has more information about aspects of the transaction than the other party. In the market for legal services, consumers generally do not have much experience in choosing a lawyer and assessing the quality of lawyers. In addition, legal practitioners both diagnose the problem when the client first sees them and are responsible for fixing the problem. This leads to the issue of moral hazard where legal practitioners have an incentive to overstate the problem and suggest a more costly solution than is strictly necessary (Stephen 2004). In a market where a potential client is not responsible for the payment of legal assistance services, this problem may be exacerbated, although there may well be processes in place to review the expenditure on any particular client matter, as is the case with legal assistance services.

Incomplete information

Due to the highly specialised nature of legal services consumers may not have all the information they need to make the best decisions. For example, they may lack knowledge about their rights, about how, when and where to seek help, and on how to prevent issues from arising in the first place. This may lead to individuals seeking help for legal issues too late, leading to worse outcomes than may have occurred with prompt intervention.

For example, a person who is in arrears on their car loan may be able to arrange an alternative payment plan with their lender if they sought help early. This may prevent the person from going into debt further and having the car repossessed. Early intervention in this case benefits both the client, who gets to keep their car, and the lender, who will get their money back (Legal Aid Queensland 2007).

Limited ability to understand complex issues

Due to the complicated nature of some legal problems, even if people have all the information they need, they are still unable to make optimal decisions because they are unable to process all the information. People are likely to make decisions based on heuristics and past experience (their own and that of people around them) instead of basing decisions on all the information available to them. This may lead to sub-optimal outcomes in a number of ways.

For example, someone may delay seeking help for an issue because a friend had a similar issue and it turned out fine without intervention. Or someone may accept an offer for compensation when they should wait for a higher offer, because they wish to resolve the issue quickly (Estrada 2001).

Externalities

The provision of access to legal assistance to disadvantaged people ensures they maintain a degree of faith in the rule of law and also ensures they are not further disadvantaged through lack of access to legal services. Apart from this general benefit there are other key sources of public benefit from access to justice: resolution of disputes with a high degree of public interest; and encouraging desirable methods of dispute resolution (AGD 2009). These aspects are briefly discussed below.

Type of dispute

The degree of public benefit of disputes depends on the nature of the legal matter. For example, the benefits from contractual disputes and conveyancing services are mostly private. However, legal/court processes regarding formal native title recognition could be seen to have a broader public benefit.

Encouraging desirable methods of dispute resolution

Providing early and affordable access to justice can encourage more desirable methods of dispute resolution to be utilised where appropriate. Through early intervention, disputes are more likely to be resolved through mediation (or other alternative dispute resolution methods), without having to go through the court system. The cost of providing mediation is significantly lower than the cost of hearing a case in court, which benefits both parties involved, and reduces the cost to the public. An additional benefit of resolving a dispute through mediation is that the relationship between the two parties may be better than if the matter was settled through litigation. This is of particular interest in family law when children are involved.

4.5 Other reasons for intervention

Merit goods

It is generally agreed that access to justice should be available to everyone in the community, regardless of their ability to pay (though this does not mean that everybody should have access to justice free of charge). This is due to the positive effects associated with the provision of legal services as well as the significant impacts legal disputes can have on individuals.

When people do not take action when facing a legal problem, it may be because they are unaware of the severity of the situation or do not recognise the private benefits of resolving the matter early.

The early resolution of legal issues generates positive spill-over or flow on effects to the wider community by:

- allowing the justice system to work more efficiently by preventing the escalation of the matters in court creating more demand; and
- reducing litigation and other economic costs borne by society.

That is not to say every legal problem is deserving of the same amount of government assistance. For some problems providing information or basic advice may be sufficient to ensure appropriate outcomes; in others litigation is the only option. Other cases may be considered too inconsequential in terms of the impact of the legal problem on the person's life, or risky in terms of the likely outcome, to warrant any publicly funded assistance, although they may be pursued using the person's own money. For example, legal problems where the potential impact on the person's life is substantial, such as periods of incarceration, may be considered more important and therefore more deserving of government funded legal assistance than a problem such as seeking a refund when an inexpensive but faulty good has been purchased.

Whether or not a particular legal service can be considered a merit good will depend on the degree of public benefit derived from it. This is comparable to health care where some items are partially covered under Medicare (e.g. GP visits, maternity services) while others have to be paid for privately (e.g. most forms of cosmetic surgery).

Social welfare objectives

The proportion of people living in poverty in Australia rose between 2010 and 2012 with up to 20.9 per cent of Australians living below the poverty line (Australian Council of Social Service 2012a). Financial constraint is a key reason listed as a barrier to seeking legal help.

The key social welfare objectives in the provision of legal assistance services include improving access to justice, which would result in better outcomes for those ordinarily precluded from such service provision.

Today it is widely accepted that legal needs are ubiquitous in society, as they cover a myriad of aspects in everyday life and are recognised as having impacts on a range of areas including physical, emotional and social well-being, employment, education, health and housing. This is largely due to the fact that the law permeates many aspects of public and private life.

Access to legal services can be reduced for some groups due to their particular characteristics, e.g. due to mental health issues, disability, financial disadvantage or cultural background. Legal assistance services play an important role in providing legal services for the most disadvantaged groups.

Thin markets

In most cities and regional centres in Australia there are a number of providers of legal services, and it is likely that the local population will potentially have access to a suitable lawyer (their ability to pay for the services is a separate issue). However, in rural and remote areas the number of lawyers is often limited (see Table 3.2), or a suitable lawyer specialising in the area of law at hand may not be available. In addition, in some cases there may not be enough independent solicitors to serve both sides to a legal dispute.

Potential clients may face other access issues as well. For example, some workers (e.g. shift workers, truck drivers) may have difficulty taking time off work to see a solicitor in person. Others may not be able to travel to see a solicitor (e.g. the elderly or disabled). This limits their ability to seek legal assistance due to a thin market, which is of increased interest to governments when consumption of the good or service relates to a merit good, as is the case with some legal services.

Possible solutions to these access issues include more flexible working hours for solicitors (e.g. taking appointments in the evening or on weekends), providing client visits (e.g. going to a client's home), and increased use of technology and virtual law offices (e.g. Skype consultations and email contact). Government may play some role in realising these solutions by providing incentives to service providers and improving local infrastructure.

Chapter 5

Actions and opportunities

5.1 How effective have the NPA and associated programs been in addressing market failure?

Legal assistance services have been in existence since 1973 (Denniss et al. 2012), with Legal Aid Commissions established in all states and territories when the *Commonwealth Legal Aid Act 1977* was enacted. As a consequence, the base case scenario for comparison is not one where there is no government legal assistance — as such a ‘counterfactual’ does not exist. This analysis is concerned with examining the question of whether government intervention has addressed the market failure and other social welfare objectives that it was meant to overcome. That is, the evidence presented below demonstrates the level of market failure that may still exist despite government intervention.

This assessment is conducted in two parts. The first assesses available published evidence at a sector wide level while the second, examines the experiences of the four specific programs covered through the NPA. The Australian literature is relied upon noting, where relevant, international evidence.

The impact of government intervention is assessed for: (i) information failure; (ii) externalities; (iii) merit goods; (iv) thin markets; and (v) social welfare objectives.

Information failure

Incomplete information and lack of capacity to understand

Evidence suggests that many individuals do not take action when experiencing a legal problem. For example, the LAW Survey found that 18.3 per cent of people did not take any action in response to their legal problem (Coumarelos et al. 2012). For 21.4 per cent of individuals who did not take any action reasons included ‘didn’t know what to do,’ while 56.2 per cent indicated that they did not take action because it ‘would make no difference.’ The LAW Survey found that individuals taking no action had significantly lower odds of achieving a favourable outcome when compared to individuals that sought advice or handled the problem without advice (Coumarelos et al. 2012).

The LAW Survey also found that 30.6 per cent of consumers chose to handle their legal issues with no formal advice, with people experiencing financial issues least likely to seek help (47 per cent) (Coumarelos et al. 2012).

Common reasons for not taking any action or failing to seek advice is that legal services may be highly specialised in nature and consumers may not have all the information required to make the best decision. For example, they may not be aware of their rights or are unaware of the availability of services.

The LAW Survey found there were sizeable gaps in survey respondents' awareness of not-for-profit legal services. Recognition rates of respondents varied significantly depending on whether they were cued or uncued, and were highest (both cued and uncued) for legal aid commissions, followed by ATSILS, community legal centres and court services. Uncued recognition for legal aid commissions was 41.0 per cent and 87.7 per cent when cued, uncued recognition rates for ATSILS was 18.0 per cent and 67 per cent when cued, uncued recognition rates for community legal centres was 8.6 per cent and 36.3 per cent when cued, and uncued recognition rates for court services was 3.3 per cent and 34 per cent when cued (Coumarelos et al. 2012, p134).

The LAW Survey results also indicated that a low proportion of people facing legal problems sought help through legal assistance services. The survey found that of the 33.3 per cent of respondents who sought help when faced with legal problems, only 0.1 per cent accessed help via the ATSILS, 1.7 per cent via a community legal centre, 6 per cent used legal aid while the majority (21.3. per cent) hired private lawyers (Coumarelos et al. 2012, p112).

These data — that a significant proportion of people experiencing legal problems did not seek any legal assistance, that a smaller but still significant proportion sought legal assistance from private lawyers, while a substantially smaller proportion sought assistance from legal assistance services — highlight a number of important points. Firstly, this reflects the intention of government funded legal assistance services, that they are intended to assist disadvantaged Australians who are not in a position to gain advice from private lawyers, and are not intended to provide services to all Australians. Secondly, the data invites further exploration to explain whether the relatively low number of people who sought help from legal assistance services indicates that only a small number of those who would be eligible for assistance actually sought it, or that there was a good understanding of eligibility criteria for legal assistance services and therefore those unlikely to qualify to receive services did not present themselves. The low recognition rates of the legal assistance services, combined with the information (discussed in greater detail in Section 4.2) regarding disadvantaged groups in the community who tend not to seek legal assistance when experiencing a legal problem, suggests there is at least some level of 'incomplete information' present.

This finding is supported by comments from consumers in Australia who did not seek help for their legal problems who indicated their lack of knowledge and capability to do so (80 per cent), as well as feelings of disempowerment and exclusion (AGD 2009) contributed to their decision to not seek help. Other evidence suggests that some consumers may have limited capacity and skills to understand the legal system. For example, a survey of adult literacy and life skills conducted by the Australian Bureau of Statistics in 2006 found that 46 per cent of Australians aged 15 to 74 did not have the literacy levels necessary to 'meet the complex demands of everyday life and work in the emerging knowledge-based economy' (ABS 2006).

Externalities

The outcomes of even minor legal problems can have potentially significant consequences (e.g. bankruptcy) and costs for individuals (e.g. adverse health outcomes from stress). These can in turn result in further costs borne by society (e.g. healthcare costs). Appropriate access to legal assistance services can prevent or reduce the escalation of such adverse consequences.

Although such negative externalities are difficult to describe and quantify, there is evidence to suggest that government intervention in legal assistance can lead to a reduction in negative externalities.

Australian evidence

Without appropriately targeted legal assistance services, there is a percentage of the community who would not be able to afford legal representation, and therefore would not be able to pursue their legal rights (PwC 2009a). When legal assistance services are available to such clients, potential negative externalities are reduced (Coumarelos et al. 2012).

The Institute for Sustainable Futures explored the economic value of services provided by Australian community legal centres and, when examining a very small sample, reported that community legal centres provide significant value in 'avoided' costs and benefits to individuals and society. Other studies indicate the returns can be attributed to cost savings from a range of factors, including reduced private and public health costs and lower rates of absenteeism (Edgerton and Partridge 2006).

International evidence

International studies have shown the savings that legal assistance programs can generate from reducing the demand for other services. Reports from the UK found that there were adverse consequences associated with unresolved legal problems, particularly in the case of young people. Problems associated with unresolved legal issues can further disadvantage young people (e.g. chance of keeping and getting a job, which can negatively impact on government funding). Around seven per cent of young people lose their homes as a result of unresolved civil justice problems (Sound off for Justice and Just Rights 2012).

Merit goods

There is limited available evidence to assess whether under consumption and under supply have been impacted by government intervention.

Under consumption

There is limited available information, both in Australia and internationally, that measures the extent of under consumption of legal assistance services. Proxy measures which assess the extent to which people do not take any action when facing legal problems, or do not seek formal help, may provide some indication of the under consumption of legal services (notwithstanding that some people choose not to seek advice for legitimate reasons). These data have been outlined previously (see information failure).

An English and Welsh Civil and Social Justice Survey (Pleasence et al. 2010) found that of those who were eligible for legal aid services 12.5 per cent did nothing, 41.9 per cent handled their legal problem alone, 15 per cent handled their legal problem with informal help and 30.7 per cent obtained advice. These findings are consistent with the Australian LAW Survey cited previously in this working paper (Coumarelos et al. 2012). Taken together, these findings may point to a failure to recognise the benefits of obtaining professional legal advice, such as resolution of legal issues.

The percentage of people self-representing is another proxy that may be used as an indication of the extent of under-consumption. Recent research found that the number of self-represented litigants has risen from previous decades in all Commonwealth courts and tribunals (Richardson, Sourdin and Wallace 2012). Factors impacting on the rate of self represented litigants include the nature of the case, the informality of the forum and the availability of publicly funded legal resources (Richardson, Sourdin and Wallace 2012).

Under supply

Some reports have commented on the decline in Commonwealth Government funding for legal aid commissions. For example, a report by PricewaterhouseCoopers in 2009 reported continuation of a decrease in Commonwealth legal aid funding per capita in Australia in real terms since 1997, together with an expectation that revenue from public purpose funds would decrease (PwC 2009b, p2). However some funding injections were made to legal assistance services in 2010-11 and 2012-13. Funding of legal assistance services is explored in greater depth in Chapter 8 of *working paper two* of the Review of the National Partnership Agreement on Legal Assistance Services.

Unmet demand

The Australian Council of Social Service in their *Australian Community Sector Survey 2012*, found 14 per cent of requests for service provision were turned away. The agencies providing services noted that the demand for legal assistance services is on the rise. Legal assistance service was listed in 8th place among the top 10 high needs services that people were missing out on (ACOSS 2012b).

The survey also found that 73 per cent of community legal service providers reported difficulties in meeting demand, 62 per cent required staff/volunteers to work longer hours, 82 per cent reported rationing services and almost 70 per cent reported increases in waiting times (ACOSS 2012b). The proportion of people seeking help but reported by community legal service providers as being turned away remained relatively stable at around the 13 per cent mark from 2009-10 to 2010-11 (ACOSS 2012b). It is not clear what proportion of people seeking help who were turned away were eligible to receive assistance.

A survey by the Australian Institute found that the percentage of legal aid applications refused under the relevant means and merit tests, ranged from 6 to 16 per cent depending on the matter type and state/territory (not including cases where no applications were made) and that 12 per cent of respondents had legal needs² in the previous five years that were not met (Denniss et al. 2012).

There is also evidence to show that certain groups in society report higher levels of unmet demand for legal assistance. These groups include: the younger population (under 35); the Aboriginal and Torres Strait Islander population; and those living in regional and remote communities (Coumarelos et al. 2012; Denniss et al. 2012; Densten et al 2006, and Pope et al. 2012).

² Legal need in this study was defined as situations where money or knowledge was a barrier to receiving legal assistance. The survey found that nine per cent of respondents who had experienced a legal problem did not seek legal advice for financial reasons and three per cent due to lack of knowledge.

Thin markets

Thin markets occur when there are few buyers or sellers in the market. In this case, low levels of legal assistance in regional and remote areas limit the ability of people to access adequate legal services, providing a case for government intervention.

The available evidence suggests thin markets for legal assistance services remain an issue in remote parts of Australia.

The barriers to accessing mainstream services for those in rural and remote communities have been well documented (see eg Office of Evaluation and Audit 2009). The available evidence suggests that this trend extends to the provision of legal services. A recent report into the demographics of those practising law has revealed that over half of Australia's solicitors (57.2 per cent) are working within the capital city of their jurisdiction, whilst only 12.8 per cent work within country or rural areas (Urbis 2011). For solicitors within rural and remote communities this is particularly problematic. Just under half (43 per cent) of the principals in rural and remote communities indicated they do not have enough lawyers to service their client base (Law Council of Australia & Law Institute of Victoria 2009).

The shortage of lawyers in rural and remote communities will continue to exacerbate over the coming years. Evidence suggests that 30 per cent of young lawyers (20-29 years) intend to leave their work in rural and remote areas to seek better remuneration in the cities (Law Council of Australia & Law Institute of Victoria 2009). Moreover, 42 per cent of legal practitioners in rural and remote communities anticipate that they will not practice law in the next five years (Law Council of Australia & Law Institute of Victoria 2009). The shortage of legal practitioners is of particular concern to those wishing to access legal aid as regional, rural and remote communities account for a larger proportion of legal aid recipients than do their city counterparts (Law Council of Australia & Law Institute of Victoria 2009).

Notwithstanding this, future provision of legal assistance services is likely to include increased provision of services other than through face to face arrangements. For example, the advancement of high bandwidth internet through the National Broadband Network is likely to facilitate further increases to the use of video conferencing as a way of providing legal services to disparate locations. The National Broadband Network Regional Legal Assistance Program is already providing funding to facilitate innovation in delivering legal assistance services in regional and remote Australia.

Social welfare objectives

Governments intervene to provide legal assistance services to ensure a more equitable distribution of goods and services, especially when a good or service could be too costly to access for certain disadvantaged groups or people. In 2009, the Law Institute of Victoria estimated that the average cost to private clients who engage a law firm ranges between \$2,370 and \$11,290, dependent on the type of matter (Denniss et al. 2012). These amounts are unaffordable for large numbers of people.

Some disadvantaged groups are more likely to face legal issues (AGD 2009). For example, the 2012 LAW Survey identified people living with a disability, single parents and people who have been unemployed as more likely to experience legal issues (Coumarelos et al. 2012).

In assessing legal assistance services, evidence suggests these programs have been successful in servicing the requirements of some of Australia's most disadvantaged people. This is consistent with the Commonwealth Government's social welfare objectives for legal assistance. However, the presence of unmet demand from disadvantaged Australians suggests more remains to be done to mitigate negative impacts arising for individuals experiencing legal problems.

Are the reasons for government intervention still relevant?

The fundamental reasons for government intervention in legal assistance services have remained the same over time. The evidence presented in Section 5.1 suggests that traditional market failure arguments of information failures, externalities and the absence of a legal assistance market (or thin market) in parts of regional and remote Australia, still apply today — despite significant Commonwealth, state and territory government intervention.

This suggests it is worthwhile to explore whether there is room to improve current government intervention in the market for legal assistance services.

Similarly, other reasons for government intervention relating to merit good and social welfare objectives remain relevant. It is important that all people in society have access to basic legal information and services, and that people are not excluded on the basis of capacity to pay. While evidence suggests much has been achieved in ensuring the most marginalised in society have access to legal services, the continuing presence of unmet demand by disadvantaged Australians indicates more needs to be done. In particular, questions remain about how to best target services to maximise client outcomes given current levels of government investment.

Key points: reasons for government intervention

The reasons for government intervention in the market for legal assistance services have remained unchanged over time.

Traditional market failure reasons for intervention include: information failure and externalities. The absence of a legal assistance market (or thin market) in some parts of regional and remote Australia still applies.

The ongoing presence of market failure, despite government intervention, suggests it is worthwhile to explore ways in which current government intervention may be improved.

Other reasons for government intervention covering merit goods and social welfare objectives also remain relevant.

5.2 Options for the way forward

This section examines the evidence about potential improvements that may be available to government to expand the reach of legal assistance service funding, given there is evidence of ongoing, unmet demand for legal assistance services and a well founded argument justifying government intervention to assist with provision of services to meet this demand. Rather than simply look for increased funding to address the service shortfall, it is appropriate to consider innovations in the provision of legal assistance services and whether they have relevance to Australia.

An extensive literature search was conducted of innovations and alternative approaches to provision of legal assistance and legal services more generally. International and Australian evidence was reviewed. The types of innovations and approaches have been broadly classified according to: (i) service delivery; (ii) information provision; and (iii) funding arrangements. In addition, case studies have been collected from legal assistance service providers in relation to preventative and early intervention activities.

A detailed summary of the literature search results is outlined in Appendix A with Table A.1 providing a summary of innovative service delivery models, Table A.2 providing a summary of information provision innovations and Table A.3 summarising innovative funding arrangements. Note that these models are not necessarily alternative policy options and some reflect specific aspects of service delivery only.

The key findings from the literature search are provided in this section.

Innovative service delivery models

Within this section, the different service delivery models have been classified as follows:

- where legal assistance service provision by the government has been partially or fully outsourced to private legal practitioners;
- where a multidisciplinary approach in the provision of legal services has been adopted either via formal partnership agreements or co-locations with other non-legal service providers;
- service models that strive to reduce cost barriers and increase access to legal services;
- service models that promote a self-managed approach; and
- service models that adopt a gateway approach.

Models that contract out legal assistance service provision

Legal assistance services in Australia are provided through a mix of salaried lawyers and private practitioners. For example, in 2011-12, 72 per cent of legal aid grants provided by Victoria Legal Aid were made to private practitioners for the provision of legal representation services. Victoria Legal Aid also utilises private practitioners for duty lawyer services (VLA 2012). Over the same period, Legal Aid NSW used private lawyers in 67 per cent of legal representation cases and 37 per cent of duty lawyer services (LANSW 2012). These types of arrangements represent common practice throughout Australian states and territories.

There is a range of outsourcing models adopted internationally. These are summarised in Box 5.1, including full outsourcing and partial contracting out for specific areas of law or types of legal services.

Box 5.1

MODELS THAT CONTRACT OUT LEGAL ASSISTANCE SERVICE PROVISION

Where some or all casework is outsourced to private legal practitioners by the relevant government agency. There are various model types:

- **Judicare model** – Delivering legal aid through commissioning and procuring legal aid services from private providers.
 - The Legal Aid Agency delivers legal aid in England and Wales by commissioning and procuring legal aid services from providers (solicitors, barristers and the not-for-profit sector). Much of the casework for the poor and disadvantaged is referred to lawyers in private practice.
- **Client Option Mixed System** – Delivering legal aid through a mix of salaried lawyers and a judicare-type model.
 - Quebec (Canada) has a large province-wide network of offices staffed by salaried lawyers. Applicants entering the system will be assessed at one of the offices, to determine the applicant's eligibility, before being given an option of requesting representation by either one of the office's salaried lawyers or by a private lawyer who is compensated by the government.
- **Subject Matter Mixed System** – Salaried lawyers specialise in some areas of law, while private lawyers are used for other areas of law.
 - Ontario (Canada) has a province-wide network of "legal clinics" staffed by salaried lawyers who handle only "poverty law" cases relating to government benefits, housing and consumer law. Family law and criminal law cases are outsourced to private lawyers.
- **Functions-Based Mixed System** – Salaried lawyers provide legal advice and resolve legal problems but do not complete litigation. If litigation is required, the client is referred to a private lawyer.
 - The Netherlands has established neighbourhood "law counters" staffed with salaried lawyers and supervised paralegals, who diagnose the applicant's problems (or set of problems) and provide legal advice. Private lawyers handle all the litigation services that are required.
- **Mix of the Function-Based and Client Option Mixed systems**
 - Finland has established a nation-wide network of legal aid offices staffed by salaried lawyers. The salaried lawyers determine application eligibility for government-funded services, and provide diagnostic assistance and advice. Applicants requiring litigation services are given the option of asking for representation through a salaried lawyer or a private lawyer.

Source: See Appendix A

Multidisciplinary approaches

A multidisciplinary approach recognises the benefits of co-location or co-provision of legal services with other social services for disadvantaged clients. This can occur through formalised partnership arrangements or a loose affiliation of services such as co-location of legal services with health care providers.

The adoption of a multidisciplinary approach is becoming increasingly popular in some jurisdictions where the provision of legal services is combined with the provision of other non-legal services. This trend is driven by recognition that disadvantaged people have a multitude of legal and non-legal issues. The resolution of legal problems will be made more difficult if these other non-legal needs are not addressed at the same time. Moreover, these issues cut across both Commonwealth and state/territory responsibilities.

Box 5.2 provides some examples of multidisciplinary models that have been adopted in Australia and internationally.

Box 5.2

MULTIDISCIPLINARY APPROACH: EXAMPLES

- *Baylink* (Australia) is a facility in the Eurobodalla Shire (NSW) that brings together a range of Commonwealth and state government agencies, as well as community organisations together in one single location. Services provided through Baylink include health, Centrelink and child support services.
- *Multidisciplinary legal practice models in community legal centres* (Australia). Examples include, Victoria's Neighbourhood Justice Centre and the New South Wales Cancer Council Legal Referral Service.
- *Medical-Legal Partnership (MLP) or Advocacy-Health Alliances* (US): There are 83 MLP sites incorporating 235 partnerships with hospitals and healthcare services across the US, with lawyers and front-line healthcare providers serving a range of disadvantaged and vulnerable populations.
- *Community Legal Advice Centres and Networks* (CLACs and CLANs) (UK) provide integrated social welfare law services by coordinating legal and non-legal services. CLACs involve co-locating services at a single centre while CLANs enhance coordination between a network of services in a local area where lower population densities do not facilitate a single centre. Both adopt a client-focused, case management approach. They provide seamless, integrated and tailored services.

Source: See Appendix A

Models to overcome cost barriers

Models that overcome cost barriers provide free or reduced cost legal services for people who would otherwise be unable to afford the services of lawyers.

The models shown in Box 5.3 highlight ways to minimise the cost and increase access to legal services. Some of these models (e.g. low fee and franchised models) are of particular relevance as they provide assistance and increase access to legal services for people who do not meet the eligibility criteria for government funded legal assistance but are nonetheless unable to afford a lawyer at the normal charge out rates.

Box 5.3

MODELS TO OVERCOME COST BARRIERS: EXAMPLES**Free legal services**

- *Cross subsidisation model*—the profit-making arm of a legal practice or other entity subsidises the provision of legal services to people unable to afford a lawyer.
 - *Salvos Legal Humanitarian (Australia)*: Salvos Legal provides commercial and property law advice on a paid basis. Profits from Salvos Legal fund Salvos Legal Humanitarian, a full service free law firm for the disadvantaged.
- *Pro bono effort* by private lawyers providing services to those who are unable to afford a lawyer.
 - *Pro Bono Provisions in Government Tender Arrangements for Legal Services (Australia)*: (i) The Victorian Government Legal Services Panel Arrangements requires law firms tendering for government work to commit to providing pro bono legal services to the value of 5 to 15 per cent of the fees that they derive from that work. (ii) The Commonwealth Legal Services Directions require each Commonwealth agency, when procuring legal services, to take into account the amount and type of pro bono work the law firm has carried out or will carry out, and whether the firm is a signatory to the National Pro Bono Aspirational Target.
 - *The National Pro Bono Resource Centre (Australia)* is an independent, non-profit organisation that promotes and supports pro bono through its independent role as advocate, broker, coordinator, researcher and resource provider. Individual case referrals are directed to pro bono clearing houses and schemes, which exist in many states.
 - *Pro Bono Law Ontario (Canada)* is a charity founded by the legal profession as a response to unmet legal needs. It creates and facilitates opportunities for lawyers to provide free legal services to low-income people with civil (non-family) legal problems not covered by legal aid.
- *A not-for-profit model* is where an organisation provides legal services on a not-for-profit basis (generally free). Any 'profits' that result are reinvested in the service delivery model to ensure services offered are as low-cost as possible.
 - *Community legal centres*. There are around 200 community legal centres providing Australians with around half a million free legal services each year – including advice, information and representation.
 - *Community Legal Assistance Services for Saskatoon Inner City (US)* has a walk-in advocacy clinic where an eligible case is assigned to a law student who works closely with a supervising lawyer on every aspect of the client's matter and a legal advice clinic, where volunteer lawyers assist clients with guided self-representation in family law, civil litigation and criminal law matters.

Reduced cost services

- *A low bono model* is where clients who meet certain eligibility criteria are referred to lawyers who accept a reduced fee.
 - *The Arizona Modest Means Project (US)* provide low-cost legal assistance to individuals who cannot afford a lawyer at the standard rate, but do not qualify for free legal aid. Lawyers participating in the program have agreed to provide one hour of services at a reduced rate. A lawyer may offer to provide additional assistance or representation, and will do so at the reduced rate.
- *Franchised model* where law firms set up in more accessible locations provide affordable (but for-profit) legal services.
 - *Quality Solicitors (UK)* is a law firm grouping that sets out to build a nationally recognised legal chain to promote uniformed customer-care staff, extended opening hours, free initial consultations and a range of fixed fee services. The next stage will see branches opening in locations such as shopping centres.
- *Further use of videoconferencing* to extend service provision in remote locations and in prisons and places where people requiring legal assistance gather (eg refugee/community centres). Activities that reduce travel time also reduce cost of provision, which may extend delivery of pro bono services, or reduce the unit cost of provision of services so that otherwise unviable services become viable. Equipment establishment and operating costs need to be taken into account.

Source: See Appendix A

Self managed models

Self managed models encourage or enable people with legal problems to solve their problems themselves. These models aim to increase the legal knowledge and legal capability of some individuals facing legal problems, and enable them to obtain some form of formal advice. In some circumstances, this may reduce the demand for legal assistance by resolving issues at an earlier point. Another benefit is that people who do not qualify for government funded legal assistance may also benefit under these models. It is possible that such self managed approaches may also be relevant for some clients that are in receipt of legal assistance.

Examples of such models are listed in Box 5.4.

Box 5.4

SELF MANAGED APPROACH MODELS

- **A 'do it yourself approach'** is where people are able to seek advice or self help kits (e.g. legal documents, forms or templates) from law firms on their own. It has been suggested that self help initiatives are more suited for more educated and affluent people and will not benefit disadvantaged groups with poor legal knowledge and capability (Coumarelos et al. 2012).
 - Law Central (Australia) is an automated legal document provider that enables individuals to build their own legal documents online. It uses interview technology that asks questions and provides an individual with helpful legal hints. The answers are then used to customise and produce a document to suit the individual's needs. Every Law Central legal document is written and maintained by a lawyer and signed off by the authoring law firm. This service only helps with basic documents that are fairly standard.
 - World Law Direct (US) is an organisation that provides: (i) legal forms and documents that can be purchased and downloaded; (ii) legal advice over email; and (iii) recommendations for lawyers if required.
- **An advocacy model** is where an individual uses a lawyer or a non-lawyer advocate to advise on aspects of legal service provision. In some circumstances, targeted clients may be funded to seek advice from 'advocates' to help them navigate the legal services scheme.
- **Assisted self-representation** is where an organisation provides advice and information that aids a client to self represent in court.
 - The *Queensland Public Interest Law Clearing House (QPILCH) Incorporated Self Representation Service* (Australia) offers discrete task legal advice and assistance throughout the progress of the client's civil litigation, including drafting and amending pleadings, advice on disclosure and evidence, settlement negotiation and preparation for trial. All eligible self-represented litigants who approach the service with proceedings in the appropriate courts are given an initial hour-long appointment. Ongoing assistance is provided only to people who cannot afford private representation.
 - *Self-help Assistance to Unrepresented Litigants* (US) is a program similar to the QPILCH model where the Californian court system provides self help programs that enable unrepresented litigants to produce decent written pleadings, give them an idea of what evidence they have to collect and present to the judge, and provide some preview of how the judge will expect them to behave when they enter the courtroom. To foster the self help assistance programs within the judicial system, it was essential to have 'active' judges, where judges take an active role in asking most of the questions, not just evaluating the answers witnesses give to questions the parties or their lawyers ask.

Source: See Appendix A

A self managed advocacy approach has been implemented in the health sector that involves triage of clients based on personal capacity. The Victorian Department of Health's (DoH 2011) new case management approach involves targeted service responses, where the intensity of assistance provided to clients varies with their support needs and capacity for self management. Those with highest level of support need and/or lowest capability to self manage will be provided with managed support. Those with less intensive support needs and a greater capacity for self management will receive guided support. A range of other individuals and families who have low support needs and a sustained capacity for self management will be provided with the information and tools to manage their own needs (noting that it still needs to be resolved who will be providing the case management services).

Gateway models

Gateway models are where legal or non-legal professionals act as gatekeepers to the legal system. An example of a UK model of this type is summarised in Box 5.5.

Box 5.5

GATEWAY APPROACH MODELS: EXAMPLE

Family Advice and Information Network (UK) is a program that uses family lawyers as gatekeepers to the system. Family lawyers are encouraged to address a client's legal problems, and then refer the client to other services for assistance with non-legal issues. In this way, family law clients are offered a holistic service, with the lawyer acting as a 'case manager' who helped match services to their client's individual needs.

Source: See Appendix A

Information provision innovation

There is a clear role for governments to ensure that all Australians have access to basic legal assistance, and that information should be provided to improve the 'legal literacy' of all Australians, irrespective of socio-economic background, race or geographic location. This role for governments is related to the 'merit good' argument, noting that the private sector is unlikely to provide information of this sort, given it cannot 'internalise' the benefits of producing such material.

There have been innovations in the approach taken to providing legal information to specific groups of individuals and communities more generally. Innovations in information provision include: (i) models that provide education material that will help people increase their legal knowledge and capability; and (ii) directories that help people locate lawyers and identify quality lawyers. These two main types of information provision are highlighted in Box 5.6.

Box 5.6

INFORMATION PROVISION MODELS**1. Educational**

Website or organisations providing resources that help people define their problems or information needs, navigate through various options and access needed resources (background documents, step-by-step instructions, court forms, contact information).

- Lawstuff (Australia) is a website dedicated to providing legal information to children and young people in Australia. The website is run by the National Children's and Youth Law Centre which is an independent, non-profit organisation working for and in support of children and young people, their rights and access to justice.
- "What's the Law?" (Australia) is an education toolkit that addresses common legal issues that new immigrants may encounter including driving, tenancy, child protection, contracts and family violence. Its aim is to prevent potential legal issues from arising or escalation. The information is provided through each state and territory's legal aid commission website. The innovation here is that participants do not necessarily sign up for a course on law, but want to learn English, and are exposed to the material.
- Clicklaw (Canada) in British Columbia is a website operated by the Courthouse Libraries BC to improve public access to legal information. Courthouse Libraries BC is a non-profit organisation providing access to legal information resources and information services to members of the legal community and the public of British Columbia. Clicklaw features legal information and education resources aimed at the public contributed to the site directly by 24 founding contributor organisations.
- Advicenow (UK) is an independent, not-for-profit website providing accurate, helpful information on rights and legal issues for the general public. It provides advice on going to court, guides, information on discrimination and rights when living together.
- Law for Life: the Foundation for Public Legal Education (UK) is an independent charity set up to ensure that ordinary people have the knowledge, confidence and practical skills needed to deal with the law related issues they are likely to encounter in the course of their lives. The website provides public legal education materials such as (i) Going to Court guides, (ii) CASHflow, developed by the Money Advice Trust that is assisted self-help designed to help clients solve their own debt problems, (iii) Dealing with discrimination at work guide, (iv) homelessness guide and (v) divorce guide etc.
- LawHelp.org (US) helps low and moderate income people find free legal aid programs in their communities, answers to questions about their legal rights, and find forms to help with their legal problems. It provides links to 56 individual state's websites that provide information on problems related to housing, work, family, bankruptcy, disability, immigration and other topics. LawHelp is the gateway to America's non-profit legal aid providers.

2. Directories

- Locating lawyers
 - Access to justice (Australia) is a website set up by the Australian Government to help consumers find someone in their area who can provide information, help them understand their options, and decide what to do.
 - Total Attorneys (US) is a company that has used IT to sell customer relationship management services to small law offices that enables a potential client's phone call to be returned almost instantly by an employee of Total Attorneys, who collects relevant information and acts as a representative of the lawyer. This is designed to enable a sole practitioner to appear very responsive to the potential client and increase the chance that the client will be retained.
 - LawHelp.org (US) (see above for details).
 - World Law Direct (US and international) is an organisation that provides: (i) legal forms and documents that can be purchased and downloaded; (ii) legal advice over email; and (iii) recommendations for lawyers if required.

Source: See Appendix A

Innovative funding arrangements

The models listed in Box 5.7 consider how innovative funding arrangements may be used to fund the provision of legal assistance services. These range from the provision of interest free loans to insurance schemes and client linked funding arrangements. Box 5.7 discusses these models in more detail.

Box 5.7

INNOVATIVE FUNDING MODELS

1. Interest free loans

Implementing an income-contingent interest-free loan scheme akin to the Higher Education Contribution Scheme (HECS).

- A Legal Expenses Contribution Scheme (LECS) (Australia) would provide greater access to justice for middle income Australians who are currently excluded from legal assistance services but may not be able to afford a private lawyer. Such a scheme could also cover civil litigation for plaintiffs and defendants. However, this would be different from HECS in that the person taking out a loan would not necessarily be getting anything back that makes the loan easier to repay (eg an education). Costs to the taxpayer could be justified on the basis that improved access to the legal system is in the public interest, but this could need to be capped e.g. by limiting eligibility. Legal aid commissions have contributions policies that operate along these lines for a limited number of recipients, where payment, either in part or in full, are sought (and may be secured through caveats over property) and/or made by instalment.

2. Legal insurance scheme

Similar to health insurance, a legal insurance scheme would be a prepaid legal insurance plan to cover the costs associated with legal assistance. For example, in Australia, similar to a Medicare levy type arrangement or the National Disability Insurance Scheme, a levy could be imposed to fund legal assistance services.

3. Client directed funding

- *Voucher based funding or client direct funding* is where clients with a greater capacity for 'self management' could receive funding directly, with the client then determining how that funding should be spent on legal services. This contrasts with arrangements where providers are funded directly.
- Case managers or 'advocates' would advise clients on how funding should be spent, though a distinction would be needed between publicly funded vouchers and those provided by private providers as a marketing/pro bono activity. An alternative funding model is a mixed model, where some organisations are funded directly to provide certain legal services, while clients are allocated funding in other areas. Overseas evidence suggests in the UK and USA, a number of legal services now offer generic 'vouchers', which can be used to purchase legal services. (Some commentators have suggested this trend may lead to provision of legal services where the focus is on processing high volumes of similar matters and that individualise or tailored advice may not be provided.)
 - In Australia, these forms of funding are common in the disability sector (e.g. individual client funding models are used in Victoria).
 - Durham Legal Services (UK) offers 'vouchers' to be spent on legal services at its facility.
 - In the US, legal services vouchers are offered through a daily-deals website (Groupon) with the vouchers available for use at firms that have signed up to offer discounted legal services.

4. Other initiatives

- *Class action funding* is where listed companies fund large (mainly commercial) claims, including some class actions. Such practices have grown in popularity in Australia and have also become accepted in England and Wales (noting that these are really only useful for civil actions when someone with deep pockets is being sued).
 - IMF Limited (Australia) is a public listed company providing funding of legal claims and other related services, in Australia and in other jurisdictions, where the claim size is over AUD \$5 million

Source: See Appendix A

Preventative and early intervention activities

A preventative and early intervention approach embraces a range of activities that can be undertaken during the lifecycle of a problem, from taking action to prevent a problem emerging (prevention) through to taking action early in the life of a problem to stop it from getting worse or to limit its impact (early intervention) (New South Wales Government 2011).

Strategies aimed at building community capacity to help prevent problems from occurring and/or intervene earlier to stop problems from escalating have become recognised as good practice, holistic program responses in a number of sectors, notably in the health area. For legal assistance services, this trend is illustrated by the NPA focus on increased delivery of prevention and early intervention services and earlier resolution of legal problems. Prevention and early intervention in this context is defined in the NPA as shown in Box 5.8. While the definition is specific to legal aid commissions, it is applicable to all four programs that make up legal assistance services for the purposes of this Review.

Box 5.8

NPA DEFINITION OF PREVENTION AND EARLY INTERVENTION

Preventative legal services:

“legal services provided by legal aid commissions that inform and build individual and community resilience through community legal education, legal information and referral”.

Early intervention services:

“legal services provided by legal aid commissions to assist people to resolve their legal problem before it escalates, such as legal advice, minor assistance and advocacy other than advocacy provided under a grant of legal assistance”.

Source: National Partnership Agreement on Legal Assistance Services

There is evidence of substantial cost to the community of the impact of personal legal problems and of unmet legal need including among disadvantaged and vulnerable people (Coumarelos et al 2012). The potential benefits of prevention and early intervention strategies are illustrated by Figure 1.5 and include increases in community capability and/or mitigating escalation of legal problems, thereby helping reduce demand for legal assistance services and potentially reducing the complexity of matters with wider system benefit.

Many legal assistance service providers have already adopted innovative prevention and early intervention activities. For example, Box 5.9 provides an example of prevention through assisting communities to impose liquor licencing conditions, thereby building community resilience to alcohol related legal problems. This case study illustrates the importance of working with communities to identify local opportunities for preventative action and drawing from the evidence base for action such as the understanding of the determinants of community violence and other alcohol related problems. It also recognises the role of the community in supporting efforts to modify behaviour and the long term nature of the intervention in achieving improved outcomes. The Aboriginal Legal Rights Movement (ALRM) has been a collaborator with community, council and other stakeholders in a whole-of-community preventative intervention that focuses in this instance on supply reduction.

Box 5.9

CASE STUDY: ATSILS PREVENTION ACTIVITIES

Since 1991, ALRM have assisted Aboriginal and Torres Strait Islander communities who wish to impose liquor licencing conditions that aim to reduce alcohol related violence in their communities. This work started in 1991 with licence conditions being imposed on hotels in Nundroo, Nullarbor and Penong to limit take away sales to people resident at, or travelling to, the Yalata community. This has resulted in a significant drop in presentations to the Yalata clinic flowing on from alcohol related violence. This work is continuing as instructed by the community.

Source: provided by the Aboriginal Legal Rights Movement

Further example case studies showing the potential for good outcomes from prevention and early intervention are set out in Appendix B. These case studies show the potential for good outcomes from prevention and early intervention activities spanning legal literary programs, information for new migrants delivered through English classes and early intervention advice and assistance.

Although the potential for prevention and early intervention is significant, to systematically identify and address the causes of legal problems the importance of a collaborative, multifaceted approach needs to be recognised, including a role for government in providing leadership and helping build evidence to inform service priorities. This is highlighted through an examination of the range of partners and collaborators required for a holistic prevention and early intervention response (see Table 5.1).

Table 5.1

EXAMPLE OF PREVENTION AND EARLY INTERVENTION RESPONSE TO CHILD PROTECTION

	Intervention	Partners/Collaborators
Prevention	Programs to reduce alcohol and substance abuse among new parents	Legal assistance Police Health Child Protection Drug and alcohol services (lead)
Early Intervention	Mandatory education programs for parents identified as at risk	Health Private and public providers Legal assistance Child Protection (lead)

Source: The Allen Consulting Group

As a result of these cross sector linkages, successes in prevention and early intervention are generally associated with a strong policy directive with cross sector support, appropriate resourcing and a strategic plan that sets priorities within an assessment of the costs (social, economic and individual) of the problem and the likely return on investment, and the feasibility of action. The plan will set out roles and responsibilities at local, state and national levels and identify partners to implement, oversight and monitor activities in key action areas.

5.3 Opportunities for more effective service provision

The discussion on opportunities for improvement is structured according to:

- who should be eligible for legal assistance services;
- what types of government interventions are justified; and
- the future role for the Commonwealth Government?

Who should receive services?

Appropriate access to justice should apply to everyone, regardless of socio-economic background, race or geographical location. While appropriate access should apply to everyone, this differs from the concept of universal provision of free legal services. The National Partnership Agreement on Legal Assistance Services (Schedules A and B) outline Commonwealth legal aid service priorities and principles for assessing eligibility for a grant of legal aid. These principles provide guidance on service priorities that attract Commonwealth Government funding, noting a series of means and merit tests exist for a range of legal assistance services, which determine a person's eligibility for assistance. Similarly, program documentation for the funding of ATSILS, community legal centres and FVPLS outline the service priorities for these providers and focus the vast majority of services towards disadvantaged Australians.

While legal assistance services should focus on meeting the legal requirements of those who need it the most, there is an increasing recognition that some people are better able to help themselves while others require greater support. This may hold for clients who are eligible for legal assistance, as well as those who may (just) miss out.

In the future, there may be opportunities to better 'triage clients' according to a person's capability to help themselves that move beyond the current means and merit tests applying to legal assistance services. Opportunities exist to examine whether such triaging should occur: (i) to determine eligibility for assistance; and (ii) suitability for different forms of service provision once eligibility is determined.

Key points: who should receive services?

Government funded legal assistance should be targeted to meet the needs of the most disadvantaged in the community.

In addition to social welfare considerations, there is significant individual and community benefit arising from appropriate consumption of legal services. This includes consumption of legal services by people who cannot afford to purchase them but are not eligible for legal assistance services.

Triaging of clients according to their capability to help themselves should be considered as a way of determining which individuals receive which types of services funded by government.

What types of government interventions are justified?

Evidence suggests unmet demand for legal assistance services is a significant and pressing issue for government. The following types of interventions are justified as a means of addressing unmet demand by increasing access to other forms of legal assistance, by increasing the effectiveness of legal assistance services including through interventions that assist people to prevent or, where appropriate, to resolve legal problems earlier than currently occurs. Relevant interventions include those that:

- increase the capacity of the person to assist themselves;
- reduce the cost of private legal advice and therefore contribute to the above;
- provide alternative approaches to funding of legal assistance;
- increase the effectiveness of legal assistance for recipients who require more intensive support; and
- deal with legal problems earlier (where appropriate) to reduce escalation of the problem.

In determining the specific intervention to be adopted by government consideration may be given to adopting a set of principles similar to those developed in the United Kingdom, where the government suggests that legal assistance can be guided by the principles set out in Box 5.10 — noting an explicit reference to the litigant’s capacity to present their own case.

Box 5.10

GOVERNMENT INTERVENTION PRINCIPLES

Principles to consider in the provision of legal aid:

- the importance of the issues;
 - where cases involving an individual’s life, liberty, physical safety, homelessness or where the individual faces intervention from the state or seeks to hold the state to account are considered high priority;
- the litigant’s ability to present their own case;
 - considerations need to be given to the type of forum in which the proceedings are held, whether they were inquisitorial or adversarial and whether the litigants belong to a disadvantaged or vulnerable group;
- the availability of alternative sources of funding; and
 - considerations on whether litigants are able to fund their legal problems in other ways e.g. legal insurance
- the availability of alternative resolution routes.
 - considerations should be given to whether people might be able to access other sources of advice to help resolve their legal issues, thus avoiding the need for legal proceedings.

Source: Ministry of Justice 2011

Increasing the capacity for self help

Individuals covered by this category are deemed eligible for the receipt of legal assistance but may have some capacity for self help. This may present opportunities to reconsider how assistance may be provided. It is possible that for some clients, only a small part of their case could be appropriately self managed, depending on the complexity of their legal problem. Alternatively, a case may require limited support and in such situations it is possible to envisage that client directed funding could allow an individual to develop a service response most suited to their needs from a list of ‘preferred providers’ (Bazely 2009).

One advantage of a self managed approach is that it may allow for more cost effective service provision, in that this cohort of people take greater responsibility for resolving their issues. However, such a system would need to have appropriate safeguards, noting that this approach may only be relevant for less complex cases or people with less severe disadvantage. Depending on funding available and demand for services at a given point in time, this may or may not enable services to be provided to more people, as in times of very constrained funding and strong demand, only the very disadvantaged facing complex legal problems receive legal assistance services.

Reducing the cost of private legal assistance

Many individuals have legal problems, but for a range of reasons may be ineligible for legal assistance services. In a recent survey of Australians who face legal problems, between six and 16 per cent of the sample had unmet demand for legal advice as they were refused legal aid because they failed a means test. This does not take into account people that did not apply for legal assistance because they believed they would not be eligible (Denniss et al. 2012).

Studies suggest affordability is an issue for individuals in this cohort. Evidence from the USA estimates that more than 40 per cent of households with legal issues, attempt to resolve the issues by themselves, and between 26 to 38 per cent take no action (Robertson 2012). The key factor, driving these trends is affordability.

The role of the Commonwealth Government in trying to influence the price of privately provided legal services needs to be carefully considered, as does the appropriateness of any measures. There is a possible role for government to support or subsidise low cost options for legal resolution, noting there have been a range of innovations in this area — many without government support. A possible consequence is that government support, although well intentioned may ‘crowd out’ private initiatives. Innovative examples are described below.

- *Models that seek to overcome cost barriers by providing reduced cost services.* For example, in the United Kingdom, a *Co-operative Legal Services Model* offers services on a fixed fee basis to provide certainty about costs. Other firms operate on a no-fee-no-win basis, including many plaintiff firms in Australia. In the USA, there are examples of community legal assistance models where an eligible case is assigned to a law student who works with a supervising lawyer on the case, thereby reducing costs to the client (Buhler 2012). However, this approach does not necessarily reduce the cost to the provider. Not-for-profit type models are a further consideration — including where profits are reinvested to lower the costs of ongoing service provision.

- *Franchise type models* with overseas examples including law firms in the United Kingdom (e.g. Quality Solicitors) that are seeking to build a chain of low cost legal services that ultimately seek to locate in shopping centres. Initial consultations are free and a range of fixed fee services are offered (Lind 2012).
- *Brokerage models* are also a relevant consideration. In Canada, the Law Society of Manitoba operates a brokerage model for the Family Law Access Centre. It buys legal services at a discounted price (approximately two-thirds of what lawyers usually charge), with these services then available for eligible clients (Law Society of Manitoba 2013).
- *Pro bono, or 'low' pro bono services:* governments are increasingly linking the tender obligations for government work, to the provision of pro bono advice. In Victoria, legal firms that qualify must commit to providing pro bono services worth 5 to 15 per cent of any fees derived from their work (Hilton et al. 2008). The Commonwealth legal services multi use list also requires law firms to subscribe to the National Pro Bono Resource Centre aspirational target. Private law firms are also establishing service arms and sponsoring research centres that focus on the most disadvantaged. there is also a range of rural and remote pro bono initiatives, with the Cooperative Legal Service Delivery Model in New South Wales involving a range of legal and non-legal services providers, working together to reduce the cost of service provision by reducing the referral roundabout for consumers.
- *Cross-subsidisation models:* where firms will use the commercial arm of their business, to subsidise legal assistance services for often, the most marginalised in society. Salvos Legal, operating in Sydney, is an example of this model, as are all private firms that provide pro bono services.

Alternative approaches to funding of legal assistance

Numerous innovative approaches to funding of legal assistance are outlined in Box 5.7, focusing on models that have potential to increase affordability through enhanced efficiency, loan or insurance schemes or funding for class action. Of particular relevance to the Commonwealth Government are approaches that require government intervention, either by providing additional resources or by changing regulatory arrangements. Given tight fiscal budgets at all levels of government, approaches that focus on sharing legal expenses between government and individuals who currently cannot afford legal assistance and do not qualify for legal assistance services, or make better use of existing funding, may be of particular interest. These include the following approaches,

- No interest loans schemes, with appropriate caps, to fund increased access to private legal services, with costs to the taxpayer justified by the reduction in negative externalities that arise from under consumption of legal services. This extends the approach taken by legal aid commissions who allow recipients to enter into delayed payment contribution arrangements. This involves a different pool of funding beyond existing government funding of legal assistance services, with individuals who receive loans sharing the cost of their legal services with the tax paying community.

- Client directed funding where voucher type funding is provided to recipients of legal assistance services who are able to make decisions regarding legal assistance themselves, or with the assistance of an advocate or case manager. This primarily involves a reallocation of existing government funding, together with new funding for the case manager/advocates. This approach assumes that individuals will be able to purchase legal assistance that is tailored to their needs, which will be more efficient than services provided through existing channels.

Increasing the effectiveness of legal assistance for recipients who require more intensive support

People who require more intensive support face severe disadvantage and/or more complex legal problems. They are more likely to be the most vulnerable recipients of legal assistance and have a range of legal and non-legal needs. Such recipients will require more intensive case management given the complexity of their requirements. Their capacity for self help is likely to be diminished. Here, innovations that are most relevant capture initiatives that seek to better coordinate and offer more integrated solutions for case management of the individual's needs. Possible future issues for consideration are outlined below.

- *Innovations to better integrate services*: with the work of Coumarelos et al. (2012) providing guidance. Services may differ in their levels of integration, with *low level integration* requiring, among other aspects, quality triage of service for initial diagnosis and referral to specialist services as appropriate. *Moderate integration* requires more intensive linkages between separate organisations (e.g. Baylink (NSW)) that brings together Centrelink, Medicare and Child-support services in a single location) or service hubs or one stop shops that co-locate legal and non-legal services (e.g. co-location of a legal facility at a school — the Swan Extended School Hub in Western Australia). *Fully integrated* facilities involve situations where services combine and pool resources (eg the Consumer Credit Legal Centre NSW, which offers integrated financial counselling and consumer credit legal services).
- *More formalised use of gateway models* with budgets allocated to cases and a case manager expected to more effectively manage the costs of legal and other services required to address recipients' legal and non-legal problems. Case managers can potentially come from legal services or from other related (non-legal) support services. Such models may be useful in addressing information asymmetries, where legal practitioners may advocate more costly solutions when a third party (the government) is paying (Bevan 1996 and Gray et al. 1999). Alternatively, examples exist where family lawyers in the United Kingdom, providing services through the *Family Advice and Information Network*, address arising client legal issues, but then refer clients on to other non-legal services for assistance. In this way a multitude of interconnected problems can be addressed — noting that an evaluation of this service found that lawyers may not be the most appropriate gatekeepers to other services (Melville and Laing 2010).

In developing effective case management approaches, more innovative approaches to service delivery are required. In future, services will increasingly need to be more client oriented. For instance as with other remote courts, the Kununurra circuit court, run with services provided by Legal Aid WA, adopts an approach where the justice system travels to the client. Prosecutors and lawyers follow a travelling magistrate, holding court in the most appropriate place they can find — sometimes under a tree (Cantanzaro 2010).

Dealing with legal problems earlier (where appropriate) to avoid escalation

The evidence suggests that prevention and early intervention legal assistance activities have the potential to reduce the escalation of legal issues and associated costs (PwC 2009b). There are also potential ‘spill-over’ or flow on effects such as benefits resulting from lower health care costs which are borne by society, and increases in productivity and employment (Edgerton and Partridge 2006). Some studies, link the benefits to potentially reducing the incidence of poverty (Holzer et al 2007). However, the benefits associated with prevention and early intervention legal assistance activities are difficult to describe and quantify, suggesting that this is an area where longitudinal studies could contribute important evidence.

From an education perspective, there are possible ‘economies’ to be realised in the provision of consistent information, noting in some instances, jurisdiction or locality specific information may be relevant. A central website may be linked to information on legal assistance provided by the four funded legal assistance programs, and by private providers (on a fee paying basis). Potential also exists to establish a new website/helpline that people could contact for appropriate triage of their problem through front line assistance and possible referral (whether they see the problem as legal or non-legal). This would potentially provide a ‘one-stop-shop’ type arrangement or a single portal for access to legal assistance services. It may also be possible in the future, to envisage a single Australia wide telephone number as a contact starting point for accessing legal assistance services.

The use of the internet need not be constrained to passive information provision. ‘Virtual law firms’ now exist (e.g. *Affording Justice* is an Australian firm that provides legal diagnosis, advice and task-related services via email, phone and video-conferencing) and it is becoming increasingly possible to have interactive advisory services for legal assistance. For example, in a Hobart Community Legal Service, pro bono lawyers are available on-line to provide face-to-face legal advice via conferencing facilities through the National Broadband Network (Department of Broadband, Communications and the Digital Economy 2012). In the future, internet facilities may be used for the streamlining and processing of ‘high-volume, low cost’ cases assessing eligibility for legal assistance (Bazely 2009).

A disadvantage with this approach is that there are significant barriers to accessing internet based services for some clients. For instance, 31 per cent of people aged 65 years and older reported using the internet in the last 12 months compared to 74 per cent of people aged 15 years and over (ABS 2011). Bazely (2009) comments that web or paper-based services exclude people with literacy problems, and those individuals whose first language is not English. This means that other information provision strategies (preferably locally based) would be required to complement this type of initiative to overcome such disadvantage.

There are strong reasons for government intervention for people whose legal problem will escalate if they do not receive legal assistance, with the consequences of such under consumption profound both for the individual who may face more serious consequences if the matter is not dealt with early, and for society in meeting the associated escalating costs. Innovations that seek to reduce the cost of private legal services (described earlier in this Section) are relevant to facilitating access to legal services for people who are not eligible for legal assistance apart from prevention and early intervention services.

Establishing closer relationships between legal service providers and non-legal services can be one way of developing initiatives that target clients who have pressing legal issues, but are unaware of them. Such organisations are well placed to have visible entry points (see below) for potential clients, through the range of other services provided by these often not-for-profit organisations (eg drop-in centres, refuges for victims of domestic violence, outreach centres etc).

In the United Kingdom, there are examples of the co-location of a citizen's advice bureau in health settings; with the Community Legal Advice Centres and Networks (CLACs and CLANs) model providing an integrated social welfare and legal service. CLACs use a colocation model, while the CLANs enhance coordination between a network of providers in a local area where population densities do not allow for a single centre. However one evaluation report (Buck et al 2010) reveals that these organisations may not be performing as expected.

In relation to models that trial different 'gateways' or entry points into legal services, significant innovation is occurring in Australia (see discussion above), with evidence suggesting non-legal professionals may provide more effective gateways to legal services, and such entry points should be well established with other human services (Coumarelos et al. 2012).

Evidence examined suggests that under consumption of legal assistance services is an issue with people not taking any action when facing legal issues or not seeking formal help. The consequences for individuals can be unresolved legal problems or unfavourable outcomes. These outcomes are likely to impose additional costs to society. The models suggested above provide a mechanism by which the under consumption of legal services (not just legal assistance services) can be addressed and may prevent additional economic burden on society.

Key points: what kind of interventions?

Evidence suggests unmet demand for legal assistance services is a significant and pressing issue for government.

The following types of interventions are justified as a means of addressing unmet demand: interventions which:

- *increase the capacity of the person to assist themselves (including through reducing the cost of private legal services);*
- *provide alternative funding sources and therefore give people the capacity to help themselves;*
- *increase the effectiveness of legal assistance for recipients who require more intensive support; and*
- *deal with legal problems earlier.*

5.4 Mapping rationales for intervention into actions

This section examines the role that the Commonwealth Government could play in targeting legal assistance service provision to address the identified market failures and achieve social welfare objectives without crowding out private initiatives. The section maps the rationale for public policy interventions (market failure etc) against the service approaches and innovations described above. Table 5.1 maps the various ways that have been proposed and tried to reduce the excess demand for legal services, against the rationales for policy intervention.

Unsurprisingly, there is no simple solution that addresses all problems and each type of solution has particular strengths. Nonetheless, it is possible to draw some conclusions about the types of solutions that appear to have the greatest promise. Without doubt, if the demand gap is going to be reduced, private sector providers will have to play a much larger role than they do now. However, it is very optimistic to expect much larger amounts of pro bono provision than exists currently. Private law firms are businesses that are expected by their owners to make a profit. While there exists a large reservoir of goodwill and predisposition in the legal profession to provide legal services to those who need them and cannot afford them, there are limits to the profession's generosity.

Thus, long term and sustainable solutions will need to involve private providers supplying legal services on commercially acceptable terms. This does not mean at the fee rates charged by major law firms, but it does mean at rates that provide a sufficient marginal rate of return given the costs and risks incurred by the private providers. Indications that law graduate volumes are increasing (discussed in Section 3.3), potentially increasing competition in the supply of legal services, suggests that private firms may start to lower prices of some legal services.

Table 5.2

INTERVENTIONIST ACTIONS AND THEIR RATIONALE

Actions	Major rationale	Comment
Self managed approach models	<i>Merit goods</i> <i>Social welfare</i>	Can increase both accessibility and affordability for those who realise they have a problem. Does not address information failures
Models to overcome cost barriers	<i>Social Welfare</i>	Makes legal services more affordable but not necessarily more accessible
Innovative funding models	<i>Merits goods</i> <i>Social welfare</i>	Improve affordability. By providing the client with greater resources this will improve <i>effective</i> demand (i.e. demand that can be paid for) and so induce a commensurate increase in supply.
Multidisciplinary approach	<i>Externalities</i>	Well placed to deal with clients with multiple problems
Gateway models	<i>Information failure</i>	Helps clients realise they have a problem and directs them to a service that can assist them, but does not solve the problem.
Contract out prevention and early intervention service provision	<i>Merit goods</i>	Makes prevention and early intervention legal services more accessible, but not necessarily more affordable

Source: The Allen Consulting Group analysis

Another important principle is that the clients need to be empowered to be able to realise they have a problem (when it is not apparent to them) and to have the resources to be able to solve that problem.

In these respects, innovative funding models have a lot of promise. By funding the clients directly, there is a stimulus to effective demand (demand that can be paid for), which should (eventually) elicit a response from the supply side of the market. That is, given the existence of clients with the means to pay for legal services, private lawyers should respond to the market signals by making available appropriate supply (e.g. services provided by moderately paid lawyers who have the skills needed to provide the services required).

However, innovative funding, such as interest free loans, still involves a resource cost that needs to be paid for, and it would be unwise for such loans to be offered in an open ended manner and in the absence of other initiatives that improved the efficiency of legal service provision, such as measures that can reduce the complexity of cases and have them resolved earlier. Here, the self managed approaches and the gateway models are promising in that clients are assisted in finding efficient solutions to their problems i.e. a solution that minimises costs which nonetheless leads to the provision of a service at the appropriate level and quality.

Key points

Key points: reasons for government intervention

The reasons for government intervention in the market for legal assistance services remain unchanged over time.

Traditional market failure reasons for intervention include: information failure and externalities. The absence of a legal assistance market (or thin market) in some parts of regional and remote Australia still applies.

The ongoing presence of market failure, despite government intervention, suggests it is worthwhile to explore ways in which current government intervention may be improved.

Other reasons for government intervention covering merit goods and social welfare objectives also remain relevant.

Key points: who should receive services?

Government funded legal assistance should be targeted to meet the needs of the most disadvantaged in the community.

In addition to social welfare considerations, there is significant individual and community benefit arising from appropriate consumption of legal services. This includes consumption of legal services by people who cannot afford to purchase them but are not eligible for legal assistance services.

Triaging of clients according to their capability to help themselves should be considered as a way of determining which individuals receive which types of services funded by government.

Key points: what kind of interventions?

Evidence suggests unmet demand for legal assistance services is a significant and pressing issue for government.

The following types of interventions are justified as a means of addressing unmet demand.

- *Interventions that increase the capacity of the person to assist themselves.*
- *Interventions that reduce the cost of private legal services and therefore contribute to the above.*
- *Interventions that provide alternative funding sources and therefore give people the capacity to help themselves.*
- *Interventions that increase the effectiveness of legal assistance for recipients who require more intensive support.*
- *Interventions that enable people to deal with legal problems earlier.*

Conclusion

The analysis above outlines innovation in the legal assistance and legal market more generally. Such innovations present opportunities for assessing how current services can be improved. For instance, service provider driven innovations (particularly in the area of ‘self-managed approaches’ and multidisciplinary approaches to service delivery) may have an important bearing on future government approaches. Likewise innovations in relation to information provision (specifically internet-based approaches) and funding innovations will also have an important influence.

In identifying opportunities in how services may be better provided, it is important to refer to the evidence base. Many of the innovations summarised in this working paper, are recent and as such, evaluations on their overall effectiveness and efficiency in general have not been completed. This is relevant both in the Australian and overseas context.³ However, there is a body of evidence examining the efficacy of prevention and early intervention, with some relevant analyses summarised in Appendix B.

³ Where evidence is available, this is provided in the following sections of this working paper.

Appendix A

Innovation models of legal aid provision

Table A.1

INNOVATIVE SERVICE DELIVERY MODELS

Innovation	Model Features
Contracting out of service provision	<p>1. Legal process outsourcing</p> <ul style="list-style-type: none"> Legal Process Outsourcing refers to the practice of a law firm outsourcing legal services to an outside law firm or legal support service company. For example, the most routine components (such as document review work) are sent to companies specialising in handling these components at lower costs (driven largely by local labour costs). Unbundling of legal services is most commonly known as legal process outsourcing, and has become particularly prevalent among commercial law firms and large corporations. <p><i>Example</i></p> <p>Overseas:</p> <ul style="list-style-type: none"> India – India houses three of the world’s largest suppliers of these services: Integreon, Pangea3, and CPA Global. More recently, LPO firms have been conducting less-routinised work, including legal research. Microsoft recently announced an agreement with CPA Global to outsource legal support work, including legal research, to India (Rickman and Anderson 2011). <p>2. Outsourcing legal services</p> <ul style="list-style-type: none"> Where some or all casework is outsourced to private legal practitioners by the relevant government agency. <p><i>Examples</i></p> <p>Australian:</p> <ul style="list-style-type: none"> Many legal aid commissions use private practitioners for duty lawyer services and grants of legal assistance in addition to providing these services in-house (Rich 2009). <p>Overseas:</p> <ul style="list-style-type: none"> UK – British ‘judicare’ model where the Legal Services Commission delivers legal aid through commissioning and procuring legal aid services from providers (solicitors, barristers and the not-for-profit sector). Much of the casework for poor and disadvantaged is referred out to lawyers in private practice. Similar models operate in Germany and France. Canada (Quebec) – Client Option Mixed System. Created in 1972, the Quebec program combines a large province-wide network of offices staffed by salaried lawyers with a judicare program. Although all applicants enter the system by going to one of the salaried offices where their eligibility is determined, they have the option of requesting representation by either one of the office’s salaried lawyers or by a private lawyer chosen from a roster of private lawyers interested in participating in the program. Those private lawyers, in turn, are compensated by the government for the services they furnish to the clients who chose them. As of the 2007-2008 fiscal year, 66 per cent of the Quebec Legal Aid budget was expended on representation by salaried staff and 34 per cent on representation by private lawyers. Clients tended to choose salaried lawyers when they have cases involving government benefits, housing, and consumer issues, but they elect to go to private lawyers more often in family law and criminal cases (Johnson 2009). Canada (Ontario) – Subject Matter Mixed System. The Ontario legislature created a province-wide network of “legal clinics” staffed by salaried lawyers. These lawyers were charged with handling only “poverty law” cases, government benefits, housing, consumer law, and the like. Family law and criminal law remained the exclusive province of the private bar (Johnson 2009).

	<ul style="list-style-type: none"> Netherlands – Functions-Based Mixed System. Netherlands has established an array of neighbourhood "law counters" staffed with salaried lawyers and supervised paralegals. The staff will diagnose the applicant's problem, or often, set of problems. The staff then will try to resolve the problem short of litigation, including sending letters, making telephone calls, drafting legal documents, and the like. But if litigation is necessary or becomes necessary later in the process, the client will be referred to a private lawyer who will be compensated by the government for the representation he or she provides. Salaried staff provide all the legal advice and representation short of litigation, while compensated private lawyers handle all the litigation, but only the litigation services that lower income people require (Johnson 2009). Finland – Mix of the Function-Based and Client Option Mixed systems. Finland has established a nation-wide network of legal aid offices staffed by salaried lawyers. When a person in need of legal aid enters the system, a legal aid office must determine their eligibility for government-funded services. The offices diagnose the problem and are the exclusive source of advice and representation short of litigation in the absence of exceptional circumstances. When Finnish residents have problems requiring litigation, the case is not automatically referred out to a compensated private counsel. Clients are given an option. They can ask a salaried lawyer to represent them in court, or they can choose to have a private lawyer take over at the litigation stage (Johnson 2009).
<p>Multidisciplinary approach</p>	<p>1. Recognition of the benefits of co-location of legal services with other services for disadvantaged clients to create a 'multidisciplinary' approach to service delivery</p> <ul style="list-style-type: none"> Different models exist: (i) formalised partnership arrangements (e.g.: a Medical-Legal Partnership (MLP) type model); and/or: (ii) a loose affiliation of services such as co-location of legal services with health care providers. <p><i>Examples</i></p> <p>Australian:</p> <ul style="list-style-type: none"> Some Australian community legal centres indicate that there is some awareness of concepts similar to MLP and of the potential benefits which MLP can bring to legal and health outcomes. There are some notable examples of existing multidisciplinary legal practice in the community legal centre sector, along with some awareness of the potential challenges (practical and ethical) presented by multidisciplinary practice. Examples of existing multidisciplinary legal practice in the community legal centre sector are Victoria's Neighbourhood Justice Centre, featuring a multi-agency collaborative, case-management approach, the New South Wales Cancer Council Legal Referral Service and the Baker & McKenzie Cancer Patients' Legal Clinic at Melbourne's Peter MacCallum Cancer Institute (Noble 2012). Baylink (opened in May 2012) is a facility in the Eurobodalla Shire (NSW) that brings together Centrelink, Medicare, Child Support, Australian and state government agencies and community organisations together in collaborative service delivery, in one single location (Department of Human Services 2012). <ul style="list-style-type: none"> It also houses the Australian Government Departments of Education Employment and Workplace Relations (DEEWR) and Families and Housing, Community Services and Indigenous Affairs (FaHCSIA). State Government agencies included are NSW Family and Community Services (Housing NSW) and NSW Office of Communities (Aboriginal Affairs). Hosts not-for-profit organisations and local community organisations such as Lifeline, Hope House, Eurobodalla Family Support Services, the Women's Domestic Violence Court Advocacy Service and a wide range of other community services. Many other agencies operate from Baylink on a visiting service basis. It builds on the Australian Government's Service Delivery Reform agenda and represents best practice in collaborative service delivery. It provides opportunities to trial innovative new ideas and continues to develop better ways to 'join the dots' for the local people. From inception, the local people have been at the centre of planning for Baylink – it was designed by the community for the community. Coordination between legal services (Coomarelos 2012): <ul style="list-style-type: none"> Legal Assistance Forums (LAFs) established in all states and territories and at the national level typically include representatives from ATSIILS, community legal centres, FVPLS, legal aid commissions, legal professional associations, public interest law clearing houses and law councils to collaborate the planning, design and delivery of public legal assistance. In some cases, LAF-based working groups have been established to address specific legal issues or to meet the needs of certain demographic groups. Coordination between legal and non-legal services (Coomarelos 2012): <ul style="list-style-type: none"> Cooperative Legal Services Program (CLSP) in regional NSW involves government, public legal service providers, private lawyers, non-legal service providers and community groups, working together to deliver services more effectively to disadvantaged people in particular regional areas. NSW: homeless person's legal services and the Regional Outreach Clinic Program, which hosts Legal Aid NSW outreach services. Vic: homeless person's legal services and co-location of West Heidelberg CLC, Banyule Community Health and Seniors Rights Victoria. Qld: homeless person's legal services and Regional Legal Assistance Forums, co-location of Logan Youth Service and Youth and Family Service, relationships between Legal Aid and community organisations to facilitate legal information and referral.

- SA: homeless person's legal services and ongoing relationship between Legal Aid and community organisations to facilitate legal information and referral (e.g. Murray Bridge Outreach).
- WA: multidisciplinary community-based organisations (e.g. citizens advice bureau) that provide information, referrals and mediation services, and the Geraldton Resource Centre, which co-locates the Geraldton CLC with financial, tenancy and other community services.
- Tas: Tasmanian Government's multi-agency Safe at Home family violence initiative and the Migrant Resource Centre of Southern Tasmania provide information about legal and other services.
- NT: co-location of the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council domestic violence services with other health, cultural and social services at the Pitjantjatjara Council Resource Centre.
- ACT: Street Law, ongoing relationship between community legal services and community organisations to provide crisis, child, family, women's, migrant and settlement services.

Overseas:

- US – Medical-Legal Partnership or Advocacy-Health Alliances: Healthcare delivery model that integrates legal assistance as a vital component of healthcare. It is built on the understanding of three key factors: (1) the social, economic and political context in which people live has a fundamental impact on health; (2) these social determinants of health often manifest in the form of legal needs; and (3) lawyers have the special tools and skills to address these needs. MLP brings legal and healthcare teams together to provide high quality, comprehensive care and services to patients who need it most.
MLP in the US: 83 MLP sites incorporating 235 partnerships with hospitals and healthcare services across the US, with lawyers (including legal aid agencies, law schools and pro bono lawyers) and front-line healthcare providers (including doctors, nurses and social workers), serving a range of disadvantaged and vulnerable populations including children, the elderly, patients with cancer, pregnant women, and the formerly incarcerated re- entering the community (Noble 2012).
 - An example is Atlanta's Health Law Partnership (HeLP), a medical-legal collaboration based at Children's Healthcare of Atlanta. The collaboration combines the expertise of physicians and lawyers to improve the overall health and social well-being of low-income children. HeLP has 2 legal offices on the campuses of Children's. There are 4 components to the project: Legal services, Education, Advocacy and Evaluation and Research. Majority of families present with 3-5 legal problems. A thorough legal-check up is conducted. About 50 per cent of patients at the Children's are eligible for the services. Outreach efforts have also played an important role through the development of pro bono partnerships in counties outside of Atlanta (Caley et al. 2007).
- US – Community Law Centres involving collaboration between different professionals. Some involve lawyers being the predominant service providers, while others involve lawyers providing secondary or supportive role to non-legal professionals. There are some collaborations where lawyers work with non-legal professionals in an integrated fashion to meet multiple clients needs (Coumarelos et al. 2012).
- UK:
 - (i) Co-locating citizens advice bureau within health settings.
 - (ii) Introduced CLACs and CLANS to provide integrated social welfare law services by coordinating legal and non-legal services. CLACs involve co-locating services at a single centre while CLANS enhance coordination between a network of services in a local area where population densities do not facilitate a single centre. Both adopt a client-focused, case management approach. They provide seamless, integrated and tailored services. Seamless – from entry through to aftercare via good coordination and referral. Integrated – detects and addresses all problems experienced by the client. Tailored – allow for intensive support for the most vulnerable clients.

2. Adoption of multidisciplinary approaches in other sectors

1. Education: The Swan Extended School Hub (SESH) Project in WA (2012) (Fogarty Foundation 2012)

- This pilot project is a partnership between the Department of Education, Smith Family and Fogarty Foundation involving a cluster of three primary schools and a senior high school.
- The project is designed to improve education and employment outcomes of young people of Middle Swan, Swan View and Koongamia through the development of school-community partnerships. It will identify the needs of the young people and families living in the community and harness the services and resources of the organisations and schools in the surrounding community.
- Smith Family acts as the facilitator between families, schools and the wide variety of additional support services in the community.
- The schools will become centres where families can gain access to a range of services and information. The project will provide and coordinate extended services to the broader community in areas of need, support educational and personal experiences of students, provide and coordinate additional services to students and their families and provide support to teachers.

	<ul style="list-style-type: none"> • Short and long term outcomes expected are, increased engagement and participation of parents and community members within the school, successfully transition students from home to school and from primary to secondary, contribute to improved educational, health and life outcomes, increase number of students advancing to year 12 and from year 12 to further study, training or work. <p>2. Problem Gambling: The Victorian Statewide Problem Gambling and Mental Health Partnership Program (2009-2011) (Program Gambling and Mental Health 2013):</p> <ul style="list-style-type: none"> • People presenting problem gambling issues often have co-occurring disorders including alcohol dependence, other substance abuse, anxiety and depression, schizophrenia, bipolar affective disorder, PTSD and personality disorder. • People with mental illness are 18 times more likely to develop a gambling problem. 46 per cent of problem gamblers experience anxiety compared to 7 per cent of non-gamblers, over 50 per cent suffer depression, 80 per cent think about suicide and 20 per cent have attempted suicide. A person with a gambling problem effects between 5 to 10 people in their immediate personal circle. • This was a project subsidised by the Department of Justice and in conjunction with The Alfred and Gamblers Help to enhance the practice of clinicians by establishing relationships and referral pathways across sectors. • Evidence based education and training, and practical applications for treatment are provided by a multidisciplinary team of clinicians with expertise in mental health and problem gambling.
<p>Integration and collaboration</p>	<p>Collaboration principles in general</p> <ul style="list-style-type: none"> • Working Across Boundaries: What? <ul style="list-style-type: none"> - Type of boundaries include organisational, policy, jurisdictional and sectoral. There are also social boundaries, which are forms of social differences and knowledge boundaries. Boundaries can be physical, social or mental. • Working Across Boundaries: Why? <ul style="list-style-type: none"> - <i>Working across boundaries as modus operandi</i> of governing for the 21st century based on the argument that government must develop 'perpetual collaboration; capabilities that cut across boundaries and that connectedness and cooperation is needed across agencies, governments and with more constituents to meet the challenges. - <i>Working across boundaries as enduring issue of coordination and organisation</i> – a means of dealing with the problems caused by functional separation because the goals of public policy cross boundaries. It is a means of connecting up the different parts of the system that were connected to these goals. - <i>Working across boundaries as corrective to recent disaggregation and fragmentation</i> – the imperative for working across boundaries comes from the dysfunctions of reforms and is a corrective device to swing the pendulum back towards more coordination, especially within the governmental system. - <i>Working across boundaries as response to complexity</i> is the only possibility for addressing complex problems of public policy. Issues shaping societies and government – changing demographics, accelerating globalisation, rising environmental concerns, evolving social relationships, growing threats to social stability and order, and the expanding impact of technology – disrespect boundaries and demand custom-designed, cross-cutting approaches. - <i>Working across boundaries to realise synergies or leverage capabilities</i> from bringing together key stakeholders in a specific area of policy or within a network, or from improving the exchange of information between them. - <i>Working across boundaries to improve efficiency, effectiveness and service delivery.</i> • Working Across Boundaries: Forms and Configurations <ul style="list-style-type: none"> - <i>Collaboration</i> is “a process in which organizations exchange information, alter activities, share resources, and enhance each other’s capacity for mutual benefit and a common purpose by sharing risks, responsibilities, and rewards”. In public policy, it could be an amalgam of public, private and civil society organisations engaged in some joint effort. - <i>Joined-up government (JUG)</i> – range of ways of aligning formally distinct organizations in pursuit of the objectives of the government of the day. Examples: new ways of working across organisations (e.g. shared leadership, pooled budgets); new ways of delivering services (e.g. joint consultations, shared customer interface); new accountabilities and incentives (shared outcome targets; performance measures); and new types of organisations joined in various ways (e.g. training, culture, information, values) - <i>Networks</i> – Examples: (i) service implementation networks which are intergovernmental programs; (ii) information diffusion networks which are networks for sharing information across boundaries; (iii) problem solving networks which set agendas related to important policy areas; and (iv) community capacity building networks built to develop social capital to enable communities to better address a range of problems. - Whole of government – extension of JUG, covers inter-organisational, inter-jurisdictional, and inter- sectoral working.

- Enablers and barriers.
 - Clusters of enablers – For JUG to work: (i) *long-term* relationships to facilitate skill development, trust building, participation; (ii) a *selective* approach to ensure JUG is used where potential benefits outweigh risks and costs, or where issues are significant and specific; and (iii) a *cooperative* approach, not imposed from the top.
 - Formal structures – creating new structures to better deal with cross-cutting issues.
 - Commonality and complexity – a sense of shared goals or outcomes act as an enabler; a lack of commonality can undermine such attempts.
 - People, culture and leadership – *building and sustaining relationships* (communicating and listening; understanding, empathizing and resolving conflict, personality style and trust); *managing through influencing and negotiation* (brokering solutions, diplomacy, persuasion, networking); *managing complexity and interdependencies* (making sense of structures and processes, appreciating connections and interrelationships, interorganisational experiences, transdisciplinary knowledge, cognitive capability); *managing roles, accountabilities and motivations* (managing multiple accountabilities).
 - Power and politics – Working across boundaries may reshape power relations and this may pose a significant barrier to the ability to operationalise this mode of working.
 - Performance, accountability and budget – a failure to reconfigure performance systems, both for individuals and for organisations will create powerful barriers to working across boundaries. Resetting these systems and restructuring incentives within them can better enable cross-boundary work (O’Flynn et al. 2010; O’Flynn 2010).

Multidisciplinary approach challenges within Australia (Coumaleros et al. 2012):

- Integrated service delivery throughout Australia would require considerable thought and careful planning.
- Can pose considerable challenges across sectors, government and within organisations. Challenges include, funding for coordinated activities between agencies, competing priorities, different reporting requirements, ethical obligations and professional duties.
- Choosing the right type of service model to suit local conditions
 - Distance can be an issue given Australia’s vast regional and remote areas. Co-location would work better in major city areas, regional centres of urban jurisdictions e.g. similar to CLACs. Remote areas would have to rely on outreach services e.g. similar to CLANS.
- Using existing infrastructure
 - Infrastructure is not identical across states and territories, or across city, regional, rural or remote areas. It is sensible to build on existing initiatives that coordinate legal and non-legal agencies rather than start afresh. These initiatives could also provide valuable insights on the pros and cons of certain aspects of service integration. Service integration should be tailored to suit local conditions and infrastructure.
- Choosing best entry points
 - (i) high visibility and accessibility – must be well known to the public and convenient to use. Marketing may be required to ensure high awareness of the services offered via particular entry points.
 - (ii) must be able to provide first step towards a comprehensive diagnosis of client’s full range of legal and non-legal needs. At the very least, must be able to provide a preliminary assessment with suitable referral for a more complete diagnosis.
 - (iii) must be well connected to a wide range of legal and other human services.
 - Services that could act as entry points include (i) generalist CLCs because they are linked to local legal and non-legal services, but they are not funded to provide integrated legal and non-legal services, (ii) legal triage hotlines because they operate throughout Australia and particularly suited to providing integrated services in remote areas but they do not have a high public profile, tend to focus only on legal diagnosis and resolution and not funded to provide comprehensive assessment of legal and non-legal needs, and (iii) community organisations (e.g. neighbourhood or community centres, local council offices, family or migrant resource centres) because they are accessed by a wide range of people and therefore suited to act as a gateway to integrated legal and non-legal services. If these organisations are considered, considerable adaptations would be required and therefore additional funding would be needed.

1. Integration of legal services (p. 219) (Coumaleros et al. 2012)

- Disadvantaged people tended to face a wide range of legal problems that cuts across many aspects of their lives e.g. family, finances, employment, health, housing and welfare.
- Law service provision in Australia is fragmented. Service delivery is segregated by type of law, legal jurisdiction, eligibility criteria for public assistance, public versus private agencies, specific type of service (e.g. hotlines, referrals, advice) or for particular demographics (e.g. women, Indigenous, disability). This makes service provision problem focused rather than client-focused. Such a system could mean that only some of the legal problems faced by an individual are detected and addressed. Some research has found that the provision of legal services in Australia is poorly coordinated and provided unsuitable referrals.

- An integrated approach to legal services, capable of handling multiple, complicated, concurrent and interrelated legal problems commonly faced by disadvantaged people is required.
2. Integration of legal and non-legal services (p. 220) (Coumaleros et al. 2012)
- The link between disadvantage and legal problems is dynamic and bidirectional. Socioeconomic disadvantage or social exclusion increases the likelihood of experiencing legal problems and legal problems can create, perpetuate or entrench social exclusion.
 - Disadvantaged groups usually face interrelated or complex legal and non-legal problems. Legal problems can have adverse and severe consequences in other areas such as health, financial strain, relationship breakdown and housing issues. The intertwined nature of legal and non-legal needs indicate that addressing legal problems in isolation will provide inadequate legal resolution.
 - A suggested approach is using non-legal professionals as direct gateways to legal referrals (see section on Advocacy models). In addition, a coordinated response through joined up legal and non-legal human services will be beneficial.
3. Tailoring services for specific demographic groups (Coumaleros et al. 2012)
- Disadvantaged groups
- Disability (p. 232)
 - High prevalence of legal problems, high levels of taking action or seeking advice but low level of finalisation. Client-focused or case management approach will be useful in addressing the wide variety of legal problems.
 - Experience many non-legal needs in addition to legal needs. Coordination of legal and health services have been advocated as well as additional human services e.g. financial, housing, welfare, social and family services.
 - Single parent (p. 234)
 - Experience multiple disadvantages e.g. poverty, poor housing and disability. Susceptible to changes in personal circumstances such as family breakdown or changes in family, economic or housing circumstances. Given their multiple legal and non-legal problems, single parents will benefit from a more holistic or client-focused approach such as a coordinated response from both legal services and other human services.
 - Unemployment (p. 234)
 - Long-term unemployment is linked to multiple disadvantage with legal problems with employment triggering other legal problems e.g. debt and credit problems. Face multiple legal and non-legal needs and will benefit from well-coordinated legal and non-legal services.
 - Disadvantaged housing (p. 235)
 - Unemployed and single parents are more likely to live in disadvantaged housing indicating non-legal needs in addition to legal needs. Co-ordinated legal and non-legal services will benefit people living in disadvantaged housing. Public housing authorities could be gateways to legal services.
 - Indigenous (p. 235)
 - Given their disadvantaged status and tendency to experience multiple legal problems, Indigenous people will benefit from a more holistic or client-focused approach, including a coordinated response across legal and other human services. Lower level of finalisation of legal issues suggest reduced capacity to resolve legal problems and may require considerable legal and non-legal support to do so successfully.
 - Reducing multiple disadvantages for Indigenous people is a whole of government goal in Australia, and initiatives extend to addressing disadvantage in access to justice, it tends to focus on criminal rather than civil justice. Initiatives need to increase legal capability to effectively meet legal needs in all areas of law, including civil and family law.
 - Low education levels (p. 237)
 - Have a tendency to ignore their legal problems because they have other more pressing needs and hence will benefit from broad legal and non-legal support to address all of their needs.
 - Government payments (p. 240)
 - People on government payments may have non-legal needs as a result of their multiple disadvantages. When they experience legal problems, they may benefit from coordinated responses from both legal and non-legal services.

	<p>Other components of holistic justice (Coumaleros et al. 2012)</p> <ul style="list-style-type: none"> When people feel that they did not receive clear or adequate advice, it may reflect low capacity to understand legal information rather than poorly framed advice. Plain language and online legal information may have limited utility for certain legal problems and population groups with low legal capability. More intensive and integrated service provision may be needed for people with low levels of legal capability and for people with complex, serious legal problems. The reach and effectiveness of legal information and education must be carefully evaluated. <p>4. Models of service integration (p. 221) (Coumaleros et al. 2012)</p> <ul style="list-style-type: none"> Slight integration <ul style="list-style-type: none"> Agencies remain completely autonomous but develop some cooperative links through improved networking or referral between private and public legal service providers. (i) Use of quality triage services to provide initial diagnosis of legal needs and referral to specialist legal services as appropriate. (ii) Systematic referral to legal services from non-legal professionals or involve a bidirectional referral process. Moderate integration <ul style="list-style-type: none"> Increasingly intensive linkages between separate agencies e.g. harmonising various activities to reduce duplication and implement more integrated case management or client-focused approach. (Example: baylink) (i) Service hubs or one-stop shops that co-locate different legal services or both legal and non-legal services. This model improves accessibility by providing a convenient entry point. It can also adopt a client-focused or case management approach across services – from a systematic diagnosis of a client’s full range of legal and non-legal needs at entry, followed by a case plan for addressing their needs through coordinated response across services. Full integration: Agencies combining to form new units with pooled resources. <p>5. Key features of an integrated service delivery model (Noone 2012)</p> <ul style="list-style-type: none"> Based on a study of the co-location of West Heidelberg Community Legal Service and Banyule Community Health for over 30 years. Co-location does not necessarily mean integration. Meets a common purpose – common purpose at WHCLS is to address the complex and interconnected legal, health and social needs of the local community. Increases community access to services and support – At WHCLS, this occurs through collocation with BCH. Assists with identifying complex and interconnected needs and developing responses – This occurs at WHCLS through referrals and collaborative case and community work with BCH. Shares common values and understandings – At WHCLS this is illustrated in the trust, respect and confidence between community, staff, management and BCH. Engages the community in problem-solving and solutions – This occurs at WHCLS with, and through, BCH groups and services.
<p>Internet based service provision</p>	<p>1. Virtual Law offices</p> <ul style="list-style-type: none"> Virtual law offices provide legal services via the internet or by phone, and are not always based on face-to-face contact. Virtual law offices provide more than document templates for wills etc., and include options like Skype consultation etc. instead of face-to-face meetings. This model would possibly suit shift workers or others who may not be able to take time off work to meet with a lawyer, people in remote areas, and people with mobility issues (e.g. old age, in hospital, disability). <p><i>Examples</i></p> <p>Australian (AGD and Relationships Australia 2011):</p> <ul style="list-style-type: none"> Plexus Group employs lawyers on a casual basis and connects them with clients. It provides project management, quality control and senior lawyer oversight for an additional fee. It has a network of around 280 lawyers. Affording Justice (http://affordingjustice.com.au/) is a new style of law practice that offers 3 types of affordable legal services to individuals and small businesses: <ul style="list-style-type: none"> legal diagnosis – advice about the law that applies to your situation, and the processes available to solve the problem; legal advice – advice about your best option and how to take the next step; and legal task help – writing documents and letters, negotiating, step-by-step guidance for procedure. they do not offer full legal representation.

The service is designed to remove barriers that stop people from getting legal help. Services are provided on the phone, via videoconference or email, available outside ordinary office hours and at a low cost. Pricing is transparent and service is prompt (same day or next day service).

Affordable Justice is different from traditional legal practice as they are a virtual office and keep overheads low, thus passing on the cost savings to customers. It is different from Legal Aid as they charge a fee and note there's a 17.4 per cent turn away rate for people seeking free legal help from community services. They are different from online legal services because they are not a gateway or referral service – all the people customers talk to work for Affordable Justice, they do not provide advice without speaking to the customer personally, they do not sell DIY kits and do not offer free services to entice customers to use other services.

- Online Family Dispute Resolution (OFDR) project was funded by the Attorney-General's Department (Jul 2009 to Mar 2011) and represented a uniquely accessible, relevant and user-friendly online alternative to traditional forms of mediation. The services offered within the OFDR process included Registration, Intake, Family Dispute Resolution and Pre-FDR education. Key findings from the evaluation of the project include the following:
 - Clients rated online services as more convenient than other forms of FDR, and rated a web based camera service as more appealing than telephone as it was more personal. Face to face FDR remained the preference for most clients.
 - Clients' intentions to adopt OFDR may be influenced by attitudes toward the usefulness of OFDR, the perceived ease of use and security of the system itself, the anticipated time savings of an online process and the influence of others/peers.
 - Staff exhibited positive attitudes toward OFDR implementation.
 - Overall clients reported favourable impressions of using the technology and interacting with the systems; clients reported a high level of satisfaction with the service provided through OFDR and indicated a willingness to use OFDR again. Clients reported building good rapport with their FDRP.
 - Pre-FDR education had an effect of increasing participant knowledge regarding the needs of children around separation, as evidenced across all twelve parental capacity items in our scale.

Overseas:

- US – Bespoke Law (<http://www.bespokelaw.com/Home>)
 - With its virtual platform Bespoke Law significantly reduces client's legal spend by approximately 30-50 per cent.
 - Using technology and online applications, Bespoke Law facilitates communication between clients and lawyers using email, mobile devices, Skype, twitter and instant messenger.
- With devices such as blackberries, iphones and laptops, virtual lawyers no longer need the permanency, or cost, of a formal office environment. Virtual law firms therefore remove unnecessary overheads and provide lower costs to clients for the same services provided by traditional law firms.

2. Provision of legal services using the National Broadband Network (NBN)

Example

Australian:

- Through the NBN Regional Legal Assistance Program, the Australian Government is providing grants to Commonwealth-funded legal assistance services that can identify innovative and collaborative ways of providing legal assistance and sharing knowledge more effectively with regional communities. These trials aim to increase access to legal assistance in regional areas (Department of Broadband, Communications and the Digital Economy 2012):
 - North West Community Legal Centre is utilising the NBN to enable it to provide one-to-one legal advice to the far north west and west coast communities of Tasmania from its offices via Skype and similar technologies. These communities can use the system to receive and transmit legal documents quickly, confidentially and cheaply.
 - Hobart Community Legal Services is facilitating pro bono lawyers to be available online to provide high quality face-to-face legal advice via conferencing using the NBN.
 - Welfare Rights Centre (SA) Inc is connecting volunteer lawyers in the Housing Legal Clinic in Metropolitan Adelaide with people experiencing homelessness and other disadvantage in targeted country towns.
 - Redfern Legal Centre is connecting Sydney volunteers and community lawyers with international students at the University of New England's Armidale Campus via the NBN.

	<p>3. Barriers to accessing internet based services</p> <p>Certain groups in society face difficulties in accessing services provided on the Internet. These include, those who are financially disadvantaged, older people, and those with poor literacy skills.</p> <p>Australian:</p> <p><i>Older people</i></p> <ul style="list-style-type: none"> • ABS 2010 noted 74 per cent of people aged 15 years and over had used the internet in the previous 12 months, but only 31 per cent of people aged 65 years or over had done so • ABS (2001), revealed that 19 per cent of those aged 55 years or over have access to the Internet at home, this figure is significantly lower than all other age group brackets mentioned. <p><i>Financially disadvantaged</i></p> <ul style="list-style-type: none"> • ABS (2001), noted that 21 per cent of people who reside in a household on a low income (\$0-\$49,999) have access to the Internet at home, compared to 57 per cent who reside in a household earning \$50,000 or more • ABS (2001) revealed that 25 per cent of those not employed accessed the internet, compared to 63 per cent of those who were employed <p><i>Remoteness</i></p> <ul style="list-style-type: none"> • ABS (2001), found that 40 per cent of those living in metropolitan cities have access to the Internet at home compared to 32 per cent of those living in 'other areas' <p><i>Literacy</i></p> <ul style="list-style-type: none"> • ABS (2006) revealed that literacy levels tended to decrease with age, with higher proportions of people in older age groups attaining lower skill scores • ABS (2006) found that 36 per cent of those whose first language was not English scored Level 3 or above on the prose scale, compared to 54 per cent for the general population <p>Overseas:</p> <p><i>Remoteness</i></p> <ul style="list-style-type: none"> • Bazley (2009) noted that an emphasis on web-based services works to exclude those in rural and remote communities without broadband as access to the web can be 'frustratingly slow' <p><i>Literacy</i></p> <ul style="list-style-type: none"> • Bazley (2009) mentions that web or paper based services exclude people with literacy problems and those whose first language was not English
<p>Models for overcoming barriers to cost</p>	<p>1. Cross-subsidisation models</p> <p>Cross subsidisation where the profit making arm of a legal practice or other business entity subsidises the provision of legal services to people who are unable to afford a lawyer.</p> <p>Australian:</p> <ul style="list-style-type: none"> • Salvos Legal Humanitarian <ul style="list-style-type: none"> - Provide quality commercial and property law advice on a paid basis via Salvos Legal. Fees (less expenses) from Salvos Legal funds their 'legal aid' sister firm, Salvos Legal Humanitarian, which is a full service free law firm for the disadvantaged and marginalised. Both firms are wholly owned by The Salvation Army. • Salvos Legal specialises in commercial and property law and act for many blue-chip clients from the corporate, government and not-for-profit sectors. This model enables companies to receive top quality legal advice from experienced professionals at competitive rates and get the satisfaction of helping others, without costing them anything extra.

2. Pro Bono models

- Pro bono is the provision of free services by volunteer lawyers to people who are unable to afford a lawyer.

Australian:

- Pro Bono Provisions in Government Tender Arrangements for Legal Services (National Pro Bono Resource Centre 2012; Hilton and De Kretsert 2008)
 - Victorian Government Legal Services Panel Arrangements: In 2002, in an effort to promote and further entrench a pro bono culture in the already active Victorian legal profession, Attorney-General Rob Hulls introduced an innovative scheme that uses the Government's purchasing power of legal services to advance social justice. In 2008, Victorian Government released its Legal Services Annual Report, which shows that law firms on the government panel provided \$7.7 million worth of pro bono services to the community last year. Since 2002, \$18 million worth of free legal work has been provided to some of Victoria's most marginalised and disadvantaged.
 - The scheme requires law firms tendering for government work to commit to providing pro bono legal services to the value of 5-15 per cent of the fees that they derive from that work. The pro bono services must, in general, be free legal services provided to disadvantaged individuals or not-for-profit organisations with public interest objectives.
 - Source: 2. Commonwealth Legal Services Directions: Since 2008, each Commonwealth agency is required, when procuring legal services, to take into account the amount and type of pro bono work the law firm has carried out or will carry out, and whether the firm is a signatory to the National Pro Bono Aspirational Target ('the Target'). The model supports the voluntarist ethic of pro bono by encouraging and promoting pro bono work without creating a contractual obligation to provide it.
- National Pro Bono Resource Centre (<http://www.nationalprobono.org.au>) is an independent, non profit organisation that aims to (i) encourage pro bono legal services, (ii) support lawyers and law firms to make it easier for them to provide high quality pro bono legal services, and (iii) work with the profession and the community sector to match services with the clients and groups most in need of assistance.
 - The Centre promotes and supports pro bono through its independent role as advocate, broker, coordinator, researcher and resource provider. Individual case referrals are directed to pro bono clearing houses and schemes, which exist in many states of Australia.
- Regional, Rural and Remote (RRR) Pro Bono initiatives (Lovric 2007)
 - NSW: National Pro Bono Resource Centre RRR project in New South Wales – Program aims to assist CLCs and their clients in RRR areas of NSW to gain access to pro bono legal services and to strengthen pro bono collaborations in NSW. This included organising a 'relationship building event' between NSW RRR CLCs and law firms, and supporting the development of three pilot partnerships between three firms and three RRR CLCs. The Centre also sought to liaise with regional law societies to develop strategies to engage regional private law firms in pro bono work with CLCs.
 - NSW: The Cooperative Legal Service Delivery Model (CLSDM) in New South Wales – involves government, community groups, private lawyers and quasi-legal service providers working together to deliver services more effectively and efficiently by reducing the 'referral roundabout' for consumers by encouraging a greater awareness of services and to identify gaps in legal service delivery.
 - Qld: The Queensland Public Interest Law Clearing House (QPILCH) project involved, (i) a study by QPILCH and Queensland University of Technology School of Justice Studies to undertake research into the provision of pro bono legal services in Queensland and to identify unmet needs for pro bono legal services, (ii) trialling two pilot projects where two regional/rural firms and two metropolitan firms develop links or 'partnerships' to provide pro bono legal services to rural and remote areas of Queensland; (iii) promoting QPILCH and the project to the profession and the community in RRR areas of Queensland; and (iv) other general facilitation and communication between RRR legal service providers (law firms and CLCs) and Brisbane law firms to enhance pro bono services in rural and regional areas and to determine avenues of assistance from QPILCH.
 - Vic: Public Interest Law Clearing House in Victoria (VPILCH) has (i) established relationships with CLCs and other community based organisations in RRR areas in order to develop awareness of opportunities for assistance, (ii) encouraged city- based members to extend their services to RRR areas, and (iii) Homeless Persons Legal Clinics provides training to assist homeless people outside the city.
 - Law firm / CLC and other RRR initiatives:
 - Clayton Utz and Top End Women's Legal Service – the Darwin office of Clayton Utz provided civil legal advice services to the Indigenous community on Groote Eylandt.
 - Clayton Utz and Geraldton Resource Centre – Geraldton Resource Centre (GRC) is a CLC located 5 hours north of Perth. Clayton Utz's Perth office works with GRC to provide support to the CLC not only to undertake advice and casework assistance but also build the CLC's capacity to meet the needs of its clients.
 - Gilbert + Tobin and various RRR Indigenous organisations – has had a long-standing commitment to assisting Indigenous people and organisations including the Kimberley Land Council, the Yothu Yindi Foundation and the Lingjari Foundation etc. G+T has had a lawyer seconded to the Cape York Land Council for 6 months and was involved in the Cape York Indigenous Enterprise Partnerships (IEP), a not-for-profit organisation established to channel corporate and philanthropic resources into Indigenous business development.

Overseas:

- Canada – Pro Bono Law Ontario (<http://www.pblo.org/>) is a charity that was founded in 2001 as the legal profession's response to unmet legal needs. Promotes access to justice in Ontario by creating and facilitating opportunities for lawyers to provide pro bono (free) legal services to low-income people with civil (non-family) legal problems not covered by legal aid. Connects legal needs to legal resources through four core activities (Lovric 2007)
 - Runs roster projects that serve three streams of clients: at-risk children and youth, unrepresented litigants with civil (non-family) matters and charitable organisations.
 - Brokers partnerships between law firms, law associations, and legal departments on the one hand and charitable organizations on the other.
 - Uses technology to help deliver critical legal information and self-help resources to the public, to connect clients with lawyers and to create environments where lawyers can focus on providing legal assistance instead of on administration.
 - Attempts to facilitate private lawyers to provide free legal services to people who cannot access legal aid. They work with law firms, law associations and legal departments to develop policies that facilitate pro bono participation on an institutional level. They work with LawPRO (the profession's insurer) to promote best practices and extend malpractice coverage to their volunteers. In addition, they also work with the Law Society of Upper Canada to address regulatory barriers to participation and promote pro bono as a professional responsibility.
 - Pro bono services in regional areas: (i) The PBLO also developed the Ontario 'TeleJustice Project' where city-based government lawyers employed by the Ontario Ministry of the Attorney General in partnership with the Nishnawbe-Aski Legal Services (NALS) Corporation, provide pro bono assistance to rural communities within the Nishnawbe-Aski Nation (NAN) in northern Ontario, (ii) the Child Advocacy Project (CAP) involves the provision of free legal services for at-risk children and youth and is a partnership between a number of not-for-profit children and youth advocacy organisations and involves advice, co-counselling, advocacy and representation of young people in school and education matters, (iii) Simcoe Pro Bono Regional Project involves a partnership between regional community legal clinics with members of the Simcoe and York Law Association. It includes lawyers participating in the CAP project outlined above, and the Lawyers for Aboriginal Arts Project and Community Economic Development project that provides corporate law assistance to charitable organisations engaged in developing community capacity such as low-income housing initiatives, food banks, and employment training programs, (iv) Hamilton Pro Bono Regional Project partners the Hamilton community legal clinic system with the Hamilton Law Association. This regional project adopted both the CAP and a Wills & Powers of Attorney Project that targets low-income single parents, people with terminal illnesses and elderly individuals.
- US – Online Tennessee Justice (<http://www.onlinetnjustice.org>) is a joint project (started in 2011) between the Tennessee Alliance for Legal Services and the Tennessee Bar Association to set up a website that provides free legal advice from volunteer lawyers.
 - Has more than 250 volunteer lawyers to provide service to Tennesseans who need civil legal help but are unable to afford a lawyer. Lawyers provide information and basic legal advice without any expectation of long-term representation.
 - Website has eliminated geographic location, work schedule or family obligations barriers that keep those in need from receiving free legal help. It was developed to expand pro bono services in rural areas of the state and to provide an alternative source of assistance for legal aid clients who are eligible for services but turned away due to lack of resources.
- US – The Legal Orientation and Pro Bono Program has been set up to improve access to legal information and counselling and increase rates of representation for aliens appearing before the immigration courts and Board of Immigration Appeals (BIA). The program consists of:
 - the Legal Orientation Program (LOP) is based on private and public cooperation to deliver the most effective and efficient means to educate large numbers of detained aliens while screening for cases with potential relief. Detained individuals who attend the LOP make better informed decisions and are more likely to obtain representation; non-profit organizations reach a wider audience of people with minimal resources; and cases are more likely to be completed faster, resulting in fewer court hearings and less time spent in detention.
 - the Unaccompanied Alien Children's Initiative addresses the special needs of Unaccompanied Alien Children to ensure that unaccompanied alien children in custody have access to basic legal services.
 - the BIA Pro Bono Project is a collaboration between the government and several non-governmental organizations (Catholic Legal Immigration Network, the Capital Area Immigrants' Rights Coalition, the National Immigration Project of the National Lawyers Guild, and the American Immigration Law Foundation). The program has succeeded in providing appellate counsel to 450 detained aliens, who would not have otherwise been represented by counsel, since its inception in 2001. It has now been expanded to serve greater numbers of non-detained indigent individuals.
 - the Model Hearing Program provides practical and relevant hands-on immigration court training in courtroom practice, procedure and advocacy skills to small groups of pro bono lawyers and law students. It is a useful and engaging tool for improving the quality of advocacy before the court, as well as for recruiting new pro bono counsel (Lang 2008)

- US - Judges' Best Practice Pro Bono/CLE projects are initiated by the Rural Law Center of New York, Inc, in recognition of the need for greater pro bono involvement in the rural areas of New York State. They were also aware that rural practitioners who practise alone or in small firms do not have the resources available in urban areas and routinely face difficulties of time and distance when trying to meet their Mandatory Continuing Legal Education (MCLE) requirements. As an accredited MCLE provider (usually a local judge) in New York State, RLCNY now travels to rural counties to deliver on-site, locally specific and credit bearing MCLE presentations. The judges are able to demonstrate their court's specific expectations and thereby elevate the level of practice. Practising lawyers receive useful information and guidance from the local courts. In lieu of paying registration fees to attend, lawyers agree to provide pro bono services that are administered by the local legal services program or the local bar association (Lovric 2007)

3. Low bono assistance

Referrals to lawyers who accept a reduced fee.

Overseas:

- US – The Arizona Modest Means Project was founded in 1995 and consisted of a rotating schedule of volunteer lawyers who met with clients whose incomes fell between 125 per cent and 200 per cent of the federal poverty guidelines. The Project offered thirty- minute interviews and two-hour sessions with lawyers. While the lawyers had the option to accept the cases after these meetings for \$30 per hour, many took the cases pro bono (Ross 2011)
 - In 2001, the volunteer effort subsided and the Project was forced to cut back. In 2008, a similar program was recreated that could assist Arizonans within the legal gap by reducing limited-scope representation, providing brief assistance, or possibly representing them at a reduced rate.
 - The Modest Means Project is now a statewide program with the purpose of providing "low-cost legal assistance" to individuals who cannot afford a lawyer at the standard rate but do not qualify for free legal aid "due to income qualifications or other restrictions." Modest Means clients include those whose income is less than, or equal to, 250 per cent of the Federal Poverty Guidelines and assist clients in the areas of bankruptcy, consumer law, family law, guardianships, housing, wills, family and consumer law appeals; and immigration.
 - Model features: In order to apply for assistance, individuals must contact the Arizona statewide legal services contact center to speak with a staff member who can provide legal resources and information. If the client is eligible for assistance under the Project, the client will receive a Modest Means identification number that must be provided to the lawyer when the lawyer is contacted. The client receives a list of lawyers who have agreed to provide one hour of services for a reduced rate of \$75.00. The client decides which lawyer, from the list provided, to directly contact. While the Project does not anticipate full representation for the client, a lawyer may offer additional assistance and/or representation to the client beyond the one-hour meeting. If the lawyer does assist the client beyond the anticipated one hour, the lawyer continues to provide additional assistance at the reduced fee rate of \$75.00 per hour. In August 2009, the Modest Means Project opened the phone lines for the public to be able to access lawyers for a reduced fee on limited matters.

4. Not-for-profit models

- Where an organisation provides legal services on a not-for-profit basis. Any 'profits' that result are reinvested in the service delivery model to ensure services offered are as low-cost as possible.
- Frequently these organisations are community-based.

Australian:

- National Association of Community Legal Centres (<http://www.communitylawaustralia.org.au>). There are around 200 community legal centres (CLCs) providing Australians with around half a million free legal services each year – including advice, information and representation (NACLC 2012)

Overseas:

- UK – The Co-operative Legal Services offers affordable legal services on a not-for-profit basis. Most services are offered on a fixed fee basis to provide certainty about costs. Some services are offered on a no win no fee basis (e.g. accident compensation).
- US – Community Legal Assistance Services for Saskatoon Inner City (CLASSIC) was founded in 2007 as a community based legal clinic and offers two main legal services programs – "Walk-in Advocacy Clinic" and "Legal Advice Clinic".
 - Walk-in Advocacy Clinic functions on a walk-in basis, with clinical law students conducting initial client intake. If the client's legal matter falls into CLASSIC's areas of practice and the client is eligible financially, the case is assigned to a law student who works closely with one of CLASSIC's supervising lawyers on every aspect of the client's matter.
 - Legal Advice Clinic, where volunteer lawyers assist clients with guided self-representation in family law, civil litigation and criminal law matters (Buhler 2012).

	<p>5. Franchised models Where law firms set up in more accessible locations providing affordable legal services.</p> <p>Overseas:</p> <ul style="list-style-type: none"> UK – Quality Solicitors is a law firm grouping that sets out to build a nationally recognised legal chain to promote uniformed customer-care staff, extended opening hours, free initial consultations and a range of fixed fee services. The next stage will see branches opening in locations such as shopping centres. UK – The 'Tesco law' reforms to allow companies to provide legal services to the public and for lawyers to go more easily into business with non-lawyers. Under the Legal Services Act (LSA) 2007, law firms can take outside capital and companies can provide legal services. The Co-operative Group (retail giant, best known for its supermarket and banking business) set up its Co-operative Legal Services (CLS) division back in 2006 and has applied for an ABS (alternative business structures) license. It is expected to greatly expand the range of legal services it currently offers (Lind 2012). <p>6. Innovative billing arrangements</p> <ul style="list-style-type: none"> A range of innovative billing arrangements are being provided in an attempt to lower the costs of legal service provision <p>Note other examples about how to fund legal assistance are discussed in the following section</p> <p>Rickman (2011) cites examples of provider-led billing innovations including:</p> <ul style="list-style-type: none"> Fixed fee – based on past billing history for comparable services; Capped fee – based on an agreed maximum amount; Retainer billing – where the client pays a fixed retainer for an agreed set of services over a particular period; Contingent fee – where payment of the fee is tied to obtaining particular results; Equity compensation – where the law firm is compensated for legal services by an equity stake in the company that receives legal services; Success fee – where the client pays a pre-specified percentage markup if the case is successful, and a pre-specified downward adjustment if the case fails – alternatively, the client only pays if the case is won; and Blended rates – where an average rate is charged based on the hourly rates of senior and junior lawyers working on the case.
<p>Bringing justice to where it is needed</p>	<p>1. Setting up court and providing legal aid in remote areas where small populations do not justify the permanent presence of a magistrate and is not economical for private practitioners to establish a presence.</p> <p>Australian:</p> <ul style="list-style-type: none"> Kununurra circuit court (Legal Aid WA) <ul style="list-style-type: none"> Every few weeks the prosecutors and lawyers follow a travelling magistrate on a circuit holding court in the most appropriate spot they can find, sometimes under the shade of a big tree. The legal aid lawyers travel with the magistrate and represent the people who are called to stand before the court. Before Legal Aid came to the outback, there were only two public service lawyers in the east Kimberley servicing an area twice the size of Victoria (Cantanzaro 2010).
<p>Self managed approach</p>	<p>1. Do it yourself (DIY) approaches</p> <ul style="list-style-type: none"> Law firms providing advice or self-help kits (e.g. legal documents, forms or templates) that allow clients to complete on their own. <p>It has been suggested that self-help initiatives are more suited for more educated and affluent people and will not benefit disadvantaged groups with poor legal knowledge and capability (Courmarelos et al. 2012).</p> <p>Australian</p> <ul style="list-style-type: none"> Lawmail (http://www.lawstuff.org.au/LawMail) Allows children and young people under the age of 18 to send legal questions to the National Children's and Youth Law Centre. Law Central is an automated legal document provider that enables you to build your own Australian legal documents online. It uses interview technology that asks you questions and provides you with helpful legal hints. Your answers are then used to customise and produce a document to suit you and your needs. Every Law Central legal document is written and maintained by a lawyer and signed-off by the authoring law firm. Only helps with basic documents that are fairly standard. No substantial legal advice is provided.

- Others – Foolkit (www.foolkit.com.au)

Overseas:

- US – World Law Direct — is an organisation that provides: (i) legal forms and documents that can be purchased and downloaded; (ii) legal advice over email; and (iii) recommendations for lawyers if required.
- Others – LegalZoom (US), Legal365.com (UK) – DIY Documents, Aska Professional (UK)

2. Advocacy models

- Using lawyer or non-lawyer advocates may reduce the cost of legal service provision.
- In some circumstances, targeted clients may be funded to seek advice from ‘advocates’ to help them navigate the legal services scheme.

Australian

- Non-legal advisers as gateways to legal services (Courmarelos et al. 2012)
 - It may be the case that non-legal workers are the only contact with professionals for people with legal problems. If so, non-legal professionals are ideally placed to notice or signpost legal problems and to act as gateways to legal services. However qualitative research has cautioned using this approach as non-legal professionals may have limited knowledge of the law, insufficient knowledge to make appropriate legal referrals, possess outdated legal information, incapable of providing legal help in addition to their core functions and do not have well-established links with legal professionals and services.
 - (i) Single point of referral – Non-legal advisers could provide people with a single, well-resourced contact point for legal referral such as generalist legal service or legal triage service. In this way, non-legal advisers are only required to identify potential legal problems and not provide referral to the most suitable specialist legal service may help. (ii) Non-legal professionals could be effective points for disseminating information e.g. advertisement for first ports of call for legal advice. (iii) Non-legal professionals may require training to maximise their ability to identify legal problems that most commonly relate to their fields e.g. doctors and health professionals undertake training regarding mandatory reporting of child abuse and are well placed to identify work-related injury, negligent injury or domestic violence.
- Triage clients based on range of issues they may face via an integrated legal and non-legal service response (see section on multidisciplinary approach).
- Triage clients based on personal capacity – based on experience in other sectors
 - Department of Health’s (Vic) new case management approach involves targeted service responses, where the intensity of assistance provided to clients varies with their support needs and capacity for self-management. Those with highest level of support need and/or lowest capacity for self-management will be provided with managed support. Those with less intensive support needs and a greater capacity for self-management will receive guided support. A range of other individuals and families who have low support needs and a sustained capacity for self- management will be provided with the information and tools to manage their own needs (Department of Health Victoria 2011).

Overseas

- UK – Family Advice and Information Network (FAInS). Family lawyers being gatekeepers to the system. Family lawyers involved in FAInS were encouraged to address a client’s legal problems, and then refer the client to other services for assistance with non-legal issues. In this way, family law clients were to be offered a holistic service, with the lawyer acting as a ‘case manager’ who helped match services to their client’s individual needs.

However, an evaluation found that lawyers did not regularly refer their clients to other services, with referrals largely being limited to mediation. The lawyers tended to take a client-aligned rather than a client-centric approach. The way in which lawyers construct their professional role suggests that family lawyers may not be the most appropriate gateway for clients to access other services. Family lawyers are not necessarily the most appropriate gatekeepers to resolving family issues (Melville and Laing 2010)

- Ireland – Legal Aid Board. In order to reduce waiting times faced by clients who qualify for legal aid services, the Legal Aid Board will provide a ‘triage service’ aimed at offsetting some of the difficulties associated with long wait times. It involves giving clients an initial appointment within a few weeks of application and basic advice on the process they are facing. If they require further services they remain on the waiting list. Triage is being operated at some law centres. Early advice could result in some people being diverted to more appropriate services such as the Money Advice and Budgeting Service or mediation, reducing the stress and pressure on them (Gartland 2013).

3. Self representation

Where an organisation provides advice and information that aids a client self represent in court.

Australian:

- Queensland Public Interest Law Clearing House Incorporated (QPILCH) Self Representation Service offers discrete task legal advice and assistance throughout the progress of the client's civil litigation, including drafting and amending pleadings, advice on disclosure and evidence, settlement negotiation and preparation for trial.
 - Eligible self-represented litigants who approach the Service with proceedings in the appropriate courts are given an initial hour-long appointment, but ongoing assistance is provided only to people who cannot afford private representation.
 - The Service operates with two full-time staff members – a solicitor and paralegal with an annual budget of \$196,000 with the support of volunteers from QPILCH member firms (in 2008-2009 was estimated at \$720,000).
 - The service also operates a pro bono mediation service and encourages clients to seek to resolve their dispute without litigation when possible. Clients who are interested in attempting mediation authorise staff members to contact the opposing party to propose mediation. When both parties are agreeable, staff members draft a mediation agreement and contact the panel of accredited mediators, made up of barristers and solicitors who are prepared to conduct the mediation on a pro bono basis.
- Improvements: Research highlights that many people who seek free legal services experience multiple legal and non-legal problems and, in the first instance, seek help with their problems from non-legal sources. The research also shows that legal problems impact on a person's physical and mental health, reinforcing the need for multiple legal and non-legal responses to their problems, particularly responses that are coordinated and integrated. QPILCH sees the need to further develop this aspect of its work by developing *closer links with appropriate health and welfare agencies* to support clients' non-legal needs.

Overseas:

- US – Self-help Assistance to Unrepresented Litigants (California).
 - The California court system provides assistance to self-represented litigants. Through a combination of group classes and one-on-one assistance, the court's self-help programs seek to allow unrepresented litigants to produce decent written pleadings, give them an idea of what evidence they have to collect and present to the judge, and provide some preview of how the judge will expect them to behave when they enter the courtroom.
 - To foster the self-help assistance programs within the judicial system, it was essential to have 'active' judges. The Administrative Office of the Courts in California has developed a handbook for judges when presiding over family law cases in which unrepresented litigants appear. This approach expects the judge to take an active role in asking most of the questions, not just evaluating the answers witnesses give to questions the parties or their lawyers ask. Also, this approach leaves it to the judge to figure out the law that controls the outcome, without lawyers bringing the applicable statutes and cases to the judge's attention. To the extent these courts and these processes can succeed in doing so, they reduce the need for government to provide lawyers to the litigants and thus contribute to the cost-effectiveness of the entire justice system.
 - There are limitations: Once one of the parties has a lawyer and the other does not, it is difficult, if not impossible, for a judge to make the sides equal. To expect the lawyer on one side to do the questioning of witnesses and otherwise present the client's case, while the judge is doing the same for the unrepresented party, is unlikely to produce either the reality or appearance of impartiality. Yet, if the judge fails to assume that responsibility, the contest will be so unequal it will lack either the reality or appearance of equal justice. Even when both sides are unrepresented, often there will be situations when one or both parties are incapable of even the modest levels of participation the inquisitorial approach requires because of a lack of English language facility, mental capacity, or otherwise (Johnson 2009).

4. Brokerage model

Where an organisation acts as the brokerage for legal services.

Overseas:

- Canada – The Law Society of Manitoba has approved a pilot project to make lawyers affordable for the people who often fall between the cracks of the legal system--the middle class. It will act as the brokerage for legal services for the Family Law Access Centre. It will buy legal services at a discount – approximately two-thirds of what lawyers usually charge--and make them available to the public for family law cases, such as divorce, child custody and spousal support (FLAC 2009).

Table A.2

INFORMATION PROVISION INNOVATIONS - EXAMPLES

Innovations	
Educational	<p><i>Website or organisations providing resources that help people define their problems or information needs, navigate through various options and access the resources that they need (background documents, step-by-step instructions, court forms, contact information).</i></p> <p><i>Australian:</i></p> <ul style="list-style-type: none"> • Victorian Legal Aid 'Legal Information' website (http://www.legalaid.vic.gov.au/legalissues.htm) • Lawstuff (http://www.lawstuff.org.au/lawstuff/) is a website dedicated to providing legal information to children and young people in Australia. The website is run by the National Children's and Youth Law Centre which is an independent, non-profit organisation working for and in support of children and young people, their rights and access to justice. Support is also provided by Federal Attorney General's Department, the University of New South Wales, Mallesons Stephen Jaques, UNICEF, Squiz and the National Youth Advocacy Network and volunteers. • "What's the Law?" is an education toolkit that addresses common legal issues that new immigrants may encounter including driving, tenancy, child protection, contracts and family violence. Its aim is to prevent potential legal issues from arising or escalation and reduce the need for individual casework which in turn saves the government money. The information is provided through each state and territory's legal aid commissions' websites. • Access to justice (http://www.accesstojustice.gov.au/) is a website set up by the Australian Government to help consumers find someone in their area who can provide information, help them understand their options, and decide what to do. <p><i>Overseas:</i></p> <ul style="list-style-type: none"> • Canada – Clicklaw (http://www.clicklaw.bc.ca/) in British Columbia, Canada. Clicklaw is operated by the Courthouse Libraries BC to improve public access to legal information. Courthouse Libraries BC is a non-profit organization providing access to legal information resources and information services to members of the legal community and the public of British Columbia. Clicklaw features legal information and education resources aimed at the public contributed to the site directly by 24 founding contributor organizations. • Canada – Law Information Centres in Alberta (http://www.albertacourts.ab.ca/CourtServices/LInCLawInformationCentres/LegalInformation/tabid/319/Default.aspx) • Northern Ireland – Citizens Advice is the largest advice charity in Northern Ireland, working against poverty, through the provision of information and advice. • UK – Advicenow (http://www.advicenow.org.uk/). Advicenow is an independent, not-for-profit website providing accurate, helpful information on rights and legal issues for the general public. It provides advice on going to court, guides, information on discrimination and rights when living together. • UK – Law for Life (www.lawforlife.org.uk). Law for Life: the Foundation for Public Legal Education is an independent charity set up in 2011 to ensure that ordinary people have the knowledge, confidence and practical skills needed to deal with the law related issues they are likely to encounter in the course of their lives. The website provides public legal education materials such as (i) Going to Court guides, (ii) CASHflow, developed by the Money Advice Trust that is assisted self-help designed to help clients solve their own debt problems, (iii) Dealing with discrimination at work guide, (iv) homelessness guide and (v) divorce guide etc. • US – LawHelp.org (US). LawHelp helps low and moderate income people find free legal aid programs in their communities, answers to questions about their legal rights, and find forms to help with their legal problems. It provides links to 56 individual states websites that provides information on problems related to housing, work, family, bankruptcy, disability, immigration and other topics. LawHelp is the gateway to America's non-profit legal aid providers. •
Targeting educational material	<p><i>Design of information and education material</i></p> <p><i>Generic legal information and education</i></p> <ul style="list-style-type: none"> • Dissemination can be via schools, media, internet, non-legal professionals, government agencies, non-government organisations or consumer groups. • Need to enhance public knowledge about legal services and first port of call for legal advice e.g. generalist legal advice or legal triage service (legal diagnosis). To be effective, they must (i) be able to diagnose legal needs and make appropriate referrals and (ii) have high visibility and adequate resourcing. This will also improve advice obtained from relatives and friends through personal networks.

- Mechanisms used must be clearly signposted gateways to legal services to ensure people are able to seek appropriate expert advice and reduce reliance on handling legal problems alone due to lack of awareness of legal services. This will empower people to act.
- Must promote understanding that resolution can be achieved via non-traditional methods (e.g. use of non-legal advisers or self-help).
- Information provided on the law, legal instruments and guides, via online legal information or face to face must be simple, clear and in plain language so that it can be easily accessed, easily understood and can be translated into practice.

Targeted legal information and education (Coumarelos et al 2012)

- One-size fits all education strategies tend to be less effective. Strategies tailored to address specific issues faced by particular groups of people at particular times are more useful.
- Age – the younger and oldest groups had low levels of taking action.
 - Older people often ignored their legal problems and were reluctant to complain about them. They have poor understanding of their legal rights and avenues for legal redress.
 - Younger people when they do take action, tended to handle problems without seeking advice so they will benefit from information and education strategies that signpost them to advice services.
 - Legal information and education strategies need to empower these groups to help them identify their legal needs and take steps towards resolution. Strategies need to target types of problems that are associated with different ages, communicated in an age-appropriate form and disseminated via age-accessible pathways.
- Gender – males are more likely to take no action and may benefit from campaigns that encourage them to take appropriate action for their legal problems.
- Disadvantaged groups
 - Disability:
 - High prevalence of legal problems (substantial and multiple legal problems) – benefit from well-coordinated legal services with client-focused or case management approach useful in addressing the wide variety of legal issues.
 - Low levels of finalisation indicate reduced capacity to achieve legal resolution due to (i) poor knowledge, (ii) poor literacy, (iii) high rates of substantial legal problems straining personal resources for solving each problem; and (iv) health and other non-legal needs complicate the legal resolution process. May benefit from information and education strategies that help them identify legal problems and direct them to relevant services
 - More likely to seek advice when they took action indicating the value of providing clear directions to appropriate, quality legal and non-legal assistance to achieve legal resolution.
 - Single parenthood:
 - High prevalence of legal problems and most vulnerable to legal problems.
 - Tended to seek advice when they took actions but have lower levels of finalisation indicating reduced capacity for resolving legal problems.
 - Will benefit from information and education strategies that direct single parents to the most suitable services.
 - Unemployment:
 - High prevalence of legal problems, tended to seek advice when they take action with lower levels of finalisation.
 - Will benefit from information and education initiatives that will mobilise them to take action and in directing them to relevant services.
 - Disadvantage housing:
 - High prevalence of legal problems and low level of finalisation. Unemployed and single parents are more likely to live in disadvantaged housing indicating non-legal needs in addition to legal needs.
 - Will benefit from initiatives that help to signpost them to most relevant services. Public housing authorities could also act as gateways to legal services by disseminating basic legal information such as useful first ports of call for legal advice.
 - Indigenous background:
 - High prevalence of multiple legal problems, high level of inaction and low levels of finalisation. Initiatives that will help mobilise them into action and encourage them to access legal and non-legal services would be beneficial.

	<p>Systemic, social, cultural and geographical disadvantages make it difficult to provide effective and culturally appropriate legal services. Information and education initiatives about the potential benefits of legal resolution and initiatives that help ensure Indigenous legal services are culturally appropriate can help overcome social and cultural constraints.</p> <p>There may also be differences in the Indigenous populations across Australia in terms of legal problems experienced, level of disadvantage or other demographic or cultural differences.</p> <ul style="list-style-type: none"> - Low education level: Low prevalence of legal problems, high levels of inaction and low levels of seeking advice when they took actions. Low prevalence may reflect less opportunity to participate in various economic activities but may also indicate failure to recognise legal problems due to poor legal knowledge or unwillingness to admit to legal problems. People with low education levels may benefit from initiatives aimed at increasing their legal literacy so that they can identify legal problems and empower them to obtain relevant legal advice services. - Non-English main language: Similar to the experience of people with low education level. In addition, non-English speaking people will benefit from the provision of culturally sensitive services and the availability of language translation services or services in relevant languages to reduce the barriers to obtaining advice for ethnic minority groups. - Government payments: People whose main income is from government payment experience different types of legal problems e.g. family, government, health and rights (discrimination and unfair treatment by police). They can benefit from the use of government agencies that are frequently accessed (e.g. Centrelink and Department of Veterans' Affairs and Medicare) to disseminate information on first ports of call and types of legal problem typically faced by people on government payments (Coumarelos et al. 2012).
<p>Directories</p>	<p>1. Help in locating lawyers</p> <p>Overseas:</p> <ul style="list-style-type: none"> • US – Total Attorneys is a company that has used IT to sell customer relationship management services to small law offices that enables a potential client's phone call to be returned almost instantly by an employee of Total Attorneys, who collects relevant information and acts as a representative of the lawyer. This is designed to enable a sole practitioner to appear very responsive to the potential client and increase the chance that the client will be retained. The company also provides marketing services that permit lawyers to pay Total Attorneys for providing their name to individuals who are looking for lawyers on the Internet in a particular geographic area. • US – LawHelp.org helps low and moderate income people find free legal aid programs in their communities, answers to questions about their legal rights, and find forms to help with their legal problems. It provides links to 56 individual states websites that provides information on problems related to housing, work, family, bankruptcy, disability, immigration and other topics. LawHelp.org is the gateway to America's nonprofit legal aid providers. • US and international – World Law Direct is an organisation that provides: (i) legal forms and documents that can be purchased and downloaded; (ii) legal advice over email; and (iii) recommendations for lawyers if required (Rickman and Anderson 2011). <p>2. Lawyer rating systems</p> <p>Overseas:</p> <ul style="list-style-type: none"> • US – AVVO, Best Lawyers, Lawdragon, Martindale-Hubbell, and Super Lawyers all offer lawyer rating services that are accessible by Internet and are designed to appeal to individuals, small businesses, and, if necessary, larger corporate clients.

Table A.3

FUNDING ARRANGEMENT INNOVATIONS

Innovations	Model features
Support for client	<p>Implementing an income-contingent interest-free loan scheme akin to the Higher Education Contribution Scheme (HECS).</p> <p>Legal Expenses Contribution Scheme (LECS) – an income-contingent interest-free loan scheme akin to the Higher Education Contribution Scheme (HECS). A scheme of this nature would provide much greater access to justice for middle-income Australians who are currently excluded by the present inadequately funded and restrictive legal aid system. It would also expand the current scheme to cover civil litigation for plaintiffs and defendants.</p> <ul style="list-style-type: none"> • If someone does not qualify for legal aid under a means test, they would have the option of applying for LECS support. • LECS applicants earning below the top-tax bracket (currently \$180,001) would be able to qualify for an income-contingent loan to cover some or all of their reasonable legal expenses, depending on where their income sits in the tax scale. • Applications would continue to be subject to a merit test conducted by qualified lawyers to determine eligibility. Only legal matters with a declared ‘reasonable prospect of success’ would attract LECS funding. • Following the conclusion of a matter the recipient satisfies their obligation by paying to the Commonwealth a percentage of their income over the length of the loan, with payments set at a higher rate for recipients on higher incomes. Recipients would also have the option of repaying the loan immediately in a civil action with an advantageous and sufficient award of damages. • Where a matter ends badly for a LECS recipient who then finds themselves in jail or facing a substantial damages bill, they would be shielded from extreme poverty or bankruptcy and have the opportunity to rebuild and continue to contribute to the community while paying back their loan (Denniss et al. 2012).
Legal insurance scheme	<p>Similar to health insurance, a legal insurance scheme would be a prepaid legal insurance plan to cover the rising costs of legal assistance.</p> <p>Australia:</p> <ul style="list-style-type: none"> • Prepaid Legal Services Pty. Ltd. was established in Australia to introduce the concept of pre-paid legal services into Asia and the Middle East that has operated within the United States for some 45 years and across Europe for over 100 years, where prepaid legal plans are now as common today as motor vehicle insurance or health insurance plans. It offers pre-paid legal plans, which are membership arrangements where groups of individuals (persons or companies) combine their resources to retain legal advisers and benefit from the buying power of a large entity. This allows individuals to effectively compete for legal services with those that can better afford it. Rates are cheaper through volume. <p>Overseas:</p> <ul style="list-style-type: none"> • US – Insurance plans are offered by employers through payroll deductions where individuals and families pay about \$16-\$26 per month in exchange for legal help. Nearly 19 million people nationwide hold such policies. • US – A 2002 survey by the American Bar Association, Chicago, found that nearly 70 per cent of US households had an issue during a typical year that might have led them to hire a lawyer. Another survey by Harris Interactive Inc, Rochester N.Y., found that 88 per cent of all employees experienced at least one legal life event in a typical year and it took on average 7 days off work and 9 hours on the job dealing with the issue. For an employee with an annual salary of \$50,000, the equated to \$225 in lost productivity and \$1,400 in vacation time. Legal insurance as a voluntary employee benefit can help. Paying \$10-\$20 a month for access to legal consultation is a good way to improve employee’s peace of mind and productivity (Kraynik 2005)
Client-directed funding	<p>1. Class action funding</p> <ul style="list-style-type: none"> • Development of innovative activity to fund large (mainly commercial) claims, including some class actions. Such practices have grown in popularity in Australia and have also become accepted in England and Wales. <p>Australia:</p> <ul style="list-style-type: none"> • IMF Limited is a public listed company providing funding of legal claims and other related services, in Australia and in other jurisdictions, where the claim size is over AUD \$5million (Rickman and Anderson 2011).

Innovations	Model features
	<p>2. Direct investment</p> <ul style="list-style-type: none"> • Direct investment in law firms, either by purchasing equity stakes in firms where permitted (e.g., Australia) or by providing loans. This model is also developing in the United States.
	<p>3. Voucher based funding / or client direct funding</p> <ul style="list-style-type: none"> • In certain situations, clients with a greater capacity for 'self-management' could receive funding directly, with the client then determining how that funding should be spent on legal services. This contrasts with arrangements where providers are funded directly. • Case managers or 'advocates' would advise clients on how funding should be spent. • Mixed models are an alternative, with some services funded directly, with clients allocated funding in other areas. • Overseas evidence suggests in the UK and USA, a number of legal services now offer generic 'vouchers' which can be used to purchase legal services.
	<p>Australian</p> <ul style="list-style-type: none"> • These forms of funding are common in the disability sector (e.g. individual client funding models are used in Victoria). <p>Overseas</p> <ul style="list-style-type: none"> • In the UK, Durham Legal Services offers 'vouchers' to be spent on legal services at its facility. • In the USA, legal services vouchers are offered through a daily-deals website (Groupon) with the vouchers available for use at firms that have signed up to offer discounted legal services.
<p>New approaches to funding service delivery</p>	<ul style="list-style-type: none"> • This could draw on examples from other sectors (e.g. health) where a range of funding examples exist, including: capitation payments, budget-holding models, and client-based funding models (as discussed previously).

Appendix B

Evidence relating to preventative and early intervention studies

B.1 Summary of Australian and international experience

A summary of evidence is provided below relating to prevention and early intervention studies in the legal assistance services market, as well as preventative health.

Evidence on legal assistance services

Box B.1

COST BENEFIT ANALYSES OF EARLY LEGAL ASSISTANCE SERVICES

A significant number of studies have demonstrated the economic benefits of legal assistance services. There are three distinct categories of legal assistance services and below we present a number of case studies looking at cost benefit analyses for each.

(i) Preventative legal services such as community legal education, legal information and referral.

NEF Consulting (2009) found that the benefit cost ratio (BCR) of community education and prevention offered by the Southwark Law Centre was about 6:1. That is for every dollar spent on the centre's Public Legal Education program, \$6 was returned to the public.

Greacen (2009) found that court run workshops to reduce the number of court hearings have a BCR of 4.35, and that one-on-one support and information services to litigants have a BCR of 1.81 for Court services in San Joaquin Valley, California. Note that the higher the BCR, the more benefit derived for each dollar invested.

Community legal centres

Much of the work of community legal centres is preventative in that they reduce the need or extent to which individuals are involved with the legal system (Edgerton et al. 2006). These 'invisible' benefits are difficult to isolate and are often not properly accounted for in economic valuations of legal assistance services. Edgerton et al. 2006 found that for a select number of case studies in Australia, the value of community legal centres was more than 100 times greater than the amount that community legal centres are funded per client, however this study does not isolate how much of this is due to prevented/avoided costs.

These findings are supported by the work of Storer et al., (2012) which found a benefit cost ratio of 18:1 for community legal centres in four regions in Australia. One of the key areas in which savings occur is in the efficiency of service provision and the timely resolution of matters, whether or not the case goes to court.

NZIER (2012) found a BCR of 3.3 for community legal centres in Aotearoa (New Zealand). The paper specifically states that this figure includes a significant proportion of costs to the justice system that can be avoided by early intervention.

(ii) Early intervention legal services such as advice, minor assistance and advocacy other than advocacy provided under a grant of legal aid

For early intervention services, the most relevant case studies have looked at the benefits of legal advice.

The UK Citizens Advice Bureau completed research in 2010 into the benefits of providing legal advice in terms of avoiding downstream costs for other public services. The findings of the study were as follows:

- For every £1 of legal aid spent on housing advice, the state potentially saves £2.34.
- For every £1 of legal aid spent on debt advice, the state potentially saves £2.98.
- For every £1 of legal aid spent on benefits advice, the state potentially saves £8.80.
- For every £1 of legal aid spent on employment advice, the state could save £7.13.

Greacen (2009) also found that providing assistance to self-represented litigants to resolve cases at the first court appearance reduces the number of court hearings required in the future. The study calculated a BCR of 2.22.

(iii) Access to legal assistance services: *dispute resolution services, duty lawyer services, litigation services and post resolution support services*

Early provision of legal aid generates efficiency benefits to the justice system in a number of different ways. These include:

- the early resolution of legal issues and streamlining of cases through the system;
- the diversion of cases away from the courts through dispute resolution mechanisms;
- the increased efficiency of court processes by having duty lawyers on hand to help self-represented litigants (SRL); and
- increased efficiency of the court where SRLs choose to have legal representation.

PwC (2009) determined that:

- matters that would normally receive legal representation were self represented and 20 per cent more inefficient;
- matters that would normally receive a duty lawyer were 5 per cent more inefficient; and
- cases that would normally be resolved through the dispute resolution service were taken to court and 20 per cent more inefficient.

The paper found a benefit cost ratio for legal aid services was found to be between 1.6 and 2.25.

Legal aid has consistently been found to return positive economic returns as demonstrated by the following case studies:

- Florida TaxWatch (2010) found that legal aid programs in Florida helped to generate \$4.78 of economic impact for every \$1 spent on legal aid;
- Smith et al. (2011) found that legal aid in Westchester, New York had a CBR of 4.48; and
- Feelhaver and Deichert (2007) found a BCR of 3.97 for legal aid services in Nebraska.

Source: The Allen Consulting Group analysis

Evidence from preventative health

Box B.2

THE ECONOMICS OF PREVENTATIVE HEALTH

Preventative health care focuses primarily on chronic diseases such as cardiovascular disease, diabetes, cancer and obesity that occur as a result of lifestyle choices such as smoking or overeating and lack of exercise. This field has become increasingly relevant for developed nations in particular, as life expectancy increases as a result of past successes in controlling infectious diseases, improving nutrition, and providing widespread access to high quality medical care.

Issues in measuring health outcomes

Health economics generally uses cost-effectiveness analysis as opposed to cost-benefit analysis to measure the outcomes from treatment options. This is due to the fact that it may be inappropriate to monetize health effects. The CEA is expressed in terms of a ratio where the denominator is a gain in health from a measure (years of life, premature births averted, sight years gains) and the numerator is the cost associated with the health gain. Quality-adjusted life years (QALY) or Disability-adjusted life years (DALY) are often used to measure health outcomes.

The other major issue in terms of measuring cost benefit ratios in health programs is the different types of intervention that can be used, and the difficulty of isolating the effects of, for example, a youth non-smoking program with a broad advertising campaign or other direct measures such as taxes or increased enforcement.

Cost-effectiveness

The largest and most rigorous study of preventive health strategies was undertaken in 2010 by the Centre for Burden of Disease and Cost-Effectiveness, University of Queensland and Deakin Health Economics, Deakin University, Victoria. This study sought to test the cost-effectiveness of 100 preventive interventions addressing non-communicable diseases and to benchmark these against a further 50 interventions of treatment or infectious disease control. The study was able to rank preventive health interventions according to their cost-effectiveness. Some of the most effective interventions (>100,000 DALYs prevented per intervention) include: taxation on tobacco, alcohol and unhealthy foods; an intensive Sunsmart campaign and gastric banding for severe obesity.

Benefit cost analysis case studies

Benefit cost analyses can be used to determine the actual value of a program or policy to society as described in the following examples:

- *School-based smoking prevention: Economic costs versus benefits.*⁴ The objective of this study was to conduct a cost-benefit analysis to compare the costs of developing and delivering an effective school-based smoking prevention program with the savings to be expected from reducing the prevalence of smoking in the Canadian population over time. The study assumed that the smoking prevention program meets published criteria for effectiveness, reducing smoking by 6% initially and 4% indefinitely and found lifetime savings on health care would be \$3,400 per person and on productivity, almost \$14,000. The resulting BCR of 15.4:1 is a strong incentive for properly implemented programs.
- *Primary prevention of chronic disease in Australia through interventions in the workplace setting: a rapid review.* This 2008 study was a meta-analysis of the literature concerning preventive health measures in the workplace. The study found that the cost benefit ratios for workplace health programs have doubled over the period from 1995-2005 from 1:3 to 1:6.3.
- *Economic analysis of a school-based obesity prevention program.* A 2003 study of the cost benefit of Planet Health (a school based intervention program to reduce youth obesity) found that an estimated 4.1 QALYs would be saved by the program with a BCR of 1.7 per QALY. Savings to society were estimated to be \$15,887 USD in medical costs and \$25,104 USD in lost productivity costs.

Benefits and costs of prevention and early intervention programs for youth (2004) by the Washington State Institute for Public Policy looked at a number of studies on substance abuse prevention for youth and found a range of BCRs for different programs. For the STAR program (Students Taught Awareness and Resistance) the study found a BCR of 5.29. For the Life Skills Training program, a BCR of 25.61 was calculated.

Source: The Allen Consulting Group analysis

B.2 Legal assistance service preventative and early intervention case studies

Box B.3

COMMUNITY LEGAL CENTRE FAMILY LAW ADVICE

The Family Relationship Centre referred a young pregnant woman to the Women's Legal Centre ACT and Region (WLC) for legal advice. The client and the father of the child had been in a casual relationship but had not lived together. The baby's father threatened to take the baby to live with him or to have equal shared care. The client was stressed by the father's threats and was uncertain whether shared care was his right. The client wanted to be primary carer of her baby and wanted legal advice about whether she needed court orders.

The WLC advised her that the court has no jurisdiction under the Family Law Act until the baby is born. The presumption of equal shared parenting responsibility was discussed and the client advised that there is no presumption that children will live 'week about'. The WLC advised that the child's best interests are paramount and that there are a number of considerations when making the determination about best interests. The solicitor discussed the relevant research about shared parenting and age-appropriate orders. The solicitor advised that young children often live with one parent and have short frequent visits with the other parent until such time as the child is developmentally ready for overnight visits away from his or her primary carer. Other options were also discussed, including having no formal agreements, having a parenting plan and having court orders.

The client was reluctant to put the father's name on the birth certificate. The WLC advised her that the father can bring an application in court to get his name added and that the inclusion of his name would make the process of getting child support more straightforward in the future.

The WLC provided our client with fact sheets on 'Separating when pregnant' and 'Shared parenting guidelines' to further her understanding of the legal concepts involved and referred her back to the Family Relationship Centre to assist her in establishing a workable relationship with the father about contact if possible.

Through the combination of personalised legal advice, education through fact sheets and referrals with the Family Relationship Centre The WLC were able to provide the client with enough information to determine the best outcomes for herself and her child while minimising expensive and complicated legal procedures.

Source: provided by Women's Legal Centre ACT and Region

⁴ <http://www.hc-sc.gc.ca/hc-ps/pubs/tobac-tabac/sbsp-ptms/index-eng.php>

Box B.4

CASE STUDY: FVPLS PREVENTATIVE AND EARLY INTERVENTION ACTIVITY

Jane participated in a Sisters Day Out® wellbeing workshop this year. The Sisters Day Out workshop was previously funded by the Commonwealth Attorney General's Department through the FVPLS Early Intervention and Prevention funding and is now reliant on securing other funding sources. The workshop program engages with Aboriginal and Torres Strait Islander women for the purpose of preventing family violence by facilitating community networks to reduce social isolation, raising awareness of family violence and its underlying cause and impacts, and by providing information and tools to promote community safety. The workshop provides a culturally welcoming and safe space for Aboriginal and Torres Strait Islander women to come together and participate in a range of activities. FVPLS Victoria lawyers are available for any participant requiring advice, and a counsellor is available for participants requiring a personal conversation about their circumstances.

A family violence lawyer from FVPLS spoke at the workshop, providing an outline of the legal remedies available to victims of family violence. Jane felt strengthened by the information provided and the experience of being in a culturally safe environment supported by other Aboriginal and Torres Strait Islander women who understood her situation. She felt confident enough to approach the family violence lawyer to get advice in relation to family violence perpetrated against her by a family member.

Jane was assaulted in Victoria by a family member sustaining injuries in April 2011. Jane returned interstate where she took a Family Violence Protection Order out against the family member. After the protection order was served, Jane and her foster-son were subjected to daily harassment and threats from the family member.

As a result of the ongoing violence, Jane fled to Victoria where she currently lives with her partner and foster-son. The family violence lawyer advised Jane in relation to Victims of Crime Assistance, including lodging her application within the two-year limitation date as she was approaching the deadline. The lawyer quickly filed a Victims Assistance application on Jane's behalf ensuring that the application was filed within the limitation date. The family violence lawyer also linked Jane into a counsellor from an Aboriginal organisation, who is currently providing ongoing counselling assistance to Jane.

It is likely that without FVPLS Victoria's assistance Jane would have not lodged her application within two years from the date of the act of violence. Her attendance at the Sisters Day Out event provided her with information about her right to seek victim's assistance and a safe environment in which to seek support.

Following this experience Jane attended another FVPLS Victoria intensive program called Dilly Bag. The Dilly Bag workshop focus is on Aboriginal culture and identity with the aim of strengthening Koori women's sense of identity and self-esteem. Through reinforcing the cultural role of women and their contribution to the community, personal strength is linked to reducing vulnerability to violence. Jane afterwards remarked how very important for her it was as she "went to the event with her shoulders slumped and walked away standing up tall." She told community members that after the event it was the first time in years that she had slept soundly.

Source: provided by FVPLS Victoria

Box B.5

CASE STUDY: LEGAL AID COMMISSION EARLY INTERVENTION IN PAY DAY DEBTS AND UTILITY ACCOUNTS

J approached a homeless service in the Riverina for financial assistance and was referred to a Legal Aid NSW solicitor who provided regular outreach services at the Centre. J had outstanding debts with a payday lender, a large utility account that she was unable to pay, and a number of other debts. J sought assistance to pay these debts so that she could afford to pay her rent and therefore remain in her tenancy.

The outreach Solicitor obtained documentation from the payday lender and sought to challenge the loan on the basis of maladministration, as it appeared that the client was unable to service the loan at the time of her application. The solicitor negotiated a repayment of \$900 of the loan to the client and a release from further obligations under the loan.

In relation to the utility debt, the outreach solicitor liaised with the utility provider and had her accepted under their hardship program. The Outreach solicitor also discovered that although the client had been paying some money to the utility company through Centrepay, it was insufficient to cover her usage, which would have resulted in the client incurring another large utility bill. This was adjusted. In relation to her debt for past energy use, the solicitor was negotiating with the utility provider to seek a reduction.

In the meantime the client was advised to seek energy financial assistance vouchers from her local charity provider. The client's case worker at the homeless service also arranged for the client's home to be assessed under the Home Saving Program to reduce future energy expenditure. The client was also referred to a financial counsellor for advice and support on budgeting. The outcome for this client was substantially reduced overall debt and an improved awareness of how to appropriately budget in the future.

Source: provided by Legal Aid NSW

Box B.6

CASE STUDY: FVPLS PREVENTATIVE AND EARLY INTERVENTION ACTIVITY

After release from prison, Lena recognised she needed to make a lot of changes in her life. She was partying a lot and fighting all the time with her partner. Lena had a history of experiencing family violence and her three daughters had been placed in care by the Department of Human Services.

Lena was referred to the Real Relationships Anger Management program after she spoke with FVPLS lawyers about her situation. The Real Relationships program is an eight week program, previously funded by the Commonwealth Attorney General's Department through the Early Intervention and Prevention funding and now reliant on securing other funding sources. It is aimed at giving participants a better insight into how they react to situations that can result in negative behaviours. During the eight weeks, the participants learn to recognise the triggers that set the chain of action/reaction in motion. Once they can be recognised, it becomes easier to acknowledge and take responsibility for the outcomes. As the person's self-awareness grows, their negative actions can be controlled and solutions become easier.

Lena has now completed the program. She said the Real Relationships program gave her the tools to use in her relationship and also to be there for her children not just physically but emotionally. She recognised she had been blocking out her feelings and now feels her relationship with her children can improve. Lena has also been attending drug and alcohol counselling and this has helped a great deal in getting her life on track, but it is the Real Relationships program that helped her see how to put everything back together.

Lena is now in the process of getting her children back. She stated that her positive changes are due to the services that assisted her in getting her life back. Lena is due to have another baby in July and will be supported by the FVPLS to obtain a section 90 to get her kids back. Lena and her partner are currently living together preparing for the arrival of their new baby.

Source: provided by Many Rivers Family Violence Prevention Legal Service

Box B.7

CASE STUDY: FVPLS EARLY INTERVENTION IN CHILD PROTECTION CASES

The Queensland Indigenous Family Violence Legal Service (QIFVLS) provides remote service delivery to Central, Western, Northern and Far North Queensland communities. The legal team for QIFVLS consists of a Client Support Officer (Aboriginal and/or Torres Strait Islander person) working alongside a Solicitor.

As the majority of QIFVLS's clients we assist are involved in the child protection system, when clients use the service in the early stages of matters there are opportunities to reduce the overall orders sought, which at times can even extend to dismissal of applications by the Department of Child Safety. Early involvement allows for clarification of concerns and working with the Department to resolve the issues or address concerns, or advise if any 'allegations' are unfounded or inappropriate. QIFVLS has found that when they are involved early, the client is less distressed and more likely to work with the Department even when there are quite lengthy court processes and procedures followed.

The team based approach of a Client Support Officer (Aboriginal and/or Torres Strait Islander person) working alongside a solicitor means that legal needs can be addressed at the same time as clients are worked with holistically. This includes working with quite complex clients, who may have mental health issues including other comorbidity factors and clients who have not had success with other agencies because they merit tested the case and considered that the case was unwinnable.

For example, one client had mental health issues and was quite agitated and often angry with child safety, as well as her own family and even QIFVLS staff. Her mental health issues often went untreated despite an involuntary treatment order. She was seeking custody of her children, which was an untenable request. QIFVLS worked with the client to readjust her expectations of the legal process and also continued to seek to maximise her opportunities to spend time with her children. At hearing it was decided that contact would be increased, leading to an outcome which continued the connections between mother and child without increasing any risk to the child.

Child Safety were seeking that she had limited to no contact with her children despite a strong attachment between the child and mother. With QIFVLS's intervention the matter went to hearing and it was decided that contact would be maintained and increased. Despite what others might have considered an unwinnable case, and despite the complexity of this client QIFVLS continued to work with the client and obtained an outcome which will continue the connections between mother and child, without increasing any risk to the child.

Source: provided by the Queensland Indigenous Family Violence Legal Service

Box B.8

CASE STUDY: EARLY INTERVENTION FOR ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES IN WESTERN AUSTRALIA

Very few early intervention programs are available to Aboriginal and Torres Strait Islander peoples in Western Australia, and the capacity of the Aboriginal Legal Service Western Australia to provide such programs is limited by available resources. A state government focus on being tough on crime leads to criminal proceedings in relation to even the most trivial offending. However, some early intervention programs do exist which have a track record of success.

For example, the Kimberley Aboriginal Law and Culture Centre (KALAC) has run a bail intervention program in the Fitzroy Crossing area since 2009. At one point, the Aboriginal Legal Service of Western Australia was acting for ten male juvenile Aboriginal offenders who were before the Fitzroy Crossing Children's Court in respect of a spate of burglary offences committed around the Fitzroy Crossing town site. The boys were released to bail with a condition that they comply with the directions of KALAC. KALAC then placed the boys in groups for a number of weeks on Aboriginal run cattle stations in the vicinity of Fitzroy Crossing to live, work and learn about station life and Aboriginal culture. The results were outstanding. Most of the boys enthusiastically participated in the program, showed real improvement in their behaviour and attitude and subsequently, either re-engaged in school or accepted transition into the workforce, without re-offending.

The success of the KALAC program shows that investment in early intervention programs has a greater potential to decrease offending than does adversarial law enforcement.

Source: provided by the Aboriginal Legal Service of Western Australia

Box B.9

CASE STUDY: LEGAL AID COMMISSION COLLABORATION ON COMMUNITY LEGAL EDUCATION RESOURCES

Legal aid commissions across Australia collaborated to develop a nationally available legal education kit *What's the law?* aimed at newly arrived migrants. The kit addresses some of the most common legal issues new arrivals may encounter, including driving, tenancy, child protection, contracts and family violence. It includes a DVD with 10 photo stories about common legal problems, teachers' notes, student activity sheets and certificates of attendance. Endorsement from the Department of Immigration and Citizenship means that the kit, now in use in the Adult Migrant English Program, has the potential to reach over 50,000 new arrivals, helping them to identify and address some of the most common legal issues before they escalate.

Legal aid commissions also deliver *What's the Law?* to community workers to build their capacity to assist newly arrived migrants and refugees with information about the Australian legal system.

Source: The Allen Consulting Group

Box B.10

EARLY INTERVENTION: COMMUNITY LEGAL CENTRE LEGAL LITERACY PROGRAM

Launceston Community Legal Centre (LCLC) in Tasmania, has established over the past two years, a new initiative in 'early intervention', the 'LCLC Legal Literacy Program'. This is aimed at assisting clients with document literacy, demystifying legal processes for people who may have no 'literacy' issue at all and generally improving the confidence levels of all members of the community when it comes to dealing with everyday 'legal' issues. We recognise that there are often occasions when people from all walks of life need help to complete a form or have a process explained, and this can seem overwhelming. We have around 50 trained Volunteer Legal Literacy advocates available to see clients across the North and North East of Tasmania and at our Centre In Launceston. The volunteer advocates have the full support of the solicitors at the Centre, so that when a legal matter arises, they can arrange referral to an LCLC solicitor.

The program has shown that using local community volunteers people are more likely to access timely legal support, thereby saving a great deal of financial and emotional cost to everyone concerned. Examples below demonstrate how the LCLC Legal Literacy Program (LLP) provides a positive result through early intervention.

The LLP now receives regular referrals from the Magistrates Court and Centerlink offices among other services. For example, a client who was owed a debt of some \$7000, and had received legal advice to make an application to the Magistrates Court which had subsequently been rejected because the application lacked detail and the annexures were not noted correctly. The Magistrates Court referred him to the LLP at LCLC to complete the forms to a satisfactory standard and arrange the evidence as annexures to court standards. This enabled a positive outcome for the client who had his case heard.

Centerlink clients are also referred to the LLP for assistance to complete forms accurately the first time, ensuring clients understand exactly what documentation is required in support of their claim or review. For example a client on the Newstart allowance had been refused the Disability Support Pension due to insufficient detail. The volunteer advocate ensured the application was completed correctly and an application for the Carer Pension for the client's parent. Both claims were successful. This and other early interventions via the LLP, have reduced the number of clients requesting reviews of Centerlink decisions. The majority of current Welfare Rights Work at the LCLC is from clients who are not within the LLP catchment area and Centerlink continue to be a major source of referral to the LCLC Legal Literacy Program.

Source: provided by the Launceston Community Legal Centre

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