

Policy questions for NLAP Schedule D legal assistance service data

Thank you for the opportunity to respond to the proposed policy questions for legal assistance service data.

We note the intent to 'constantly revisit data needs/focus areas and data quality' 'throughout the life of the NLAP' and would reiterate the importance of maintaining consistency in periodic reporting, both to reveal any gaps, one-off quirks, and to see trends. It is also important that data is analysed and used, and that trust in NLAP legal assistance service data is engendered. This includes responding to policy insights. Policy that ignores data erodes trust.

We welcome wider investigation of NLAP data quality and utility, and the valuable contribution to be made to building the legal assistance evidence base. We also hope that the recent release of the Australian Government's *Australian Data Strategy* may spark interest in investing in quality legal assistance service data to further build the policy evidence base.

However, we acknowledge the challenges of feasibility and quality facing the ABS. Based on research conducted in Victoria that canvassed data quality, we are aware of several challenges and have previously recommended that consideration be given to developing a data quality framework to sit alongside the National Legal Assistance Data Standards Manual to improve data utility - what analyses legal assistance service data can reliably be used for.¹

Data quality goes hand in hand with data utility. Should the ABS encounter data quality limits, it will be timely to engage with the Advisory Group and legal assistance sector to demonstrate the importance of their input and what is lost in not being able to respond to the proposed policy questions in a robust way.

It is also timely for renewed focus on NLAP data collection, reporting and use, particularly given further proposed change to the Data Standards Manual, ramping up NLAP unit record reporting requirements, and development of outcome measures and presumably reporting under an outcomes framework.

We fully support the need for a policy driven approach to NLAP legal assistance service data. The use and utility of the NLAP dataset for policy analysis, however, should also be driven by analytical expertise. Data analysis and policy questions work iteratively: with questions leading to analysis that leads to further questions and analysis etc. In our experience this works best as an ongoing dialog, where datasets are quickly interrogated as questions arise, and the strengths and weaknesses of particular datasets established.

Periodic reporting of NLAP legal assistance data is welcome. We also welcome consideration of how NLAP legal assistance service data can become a more dynamic policy resource.

Proposed policy questions

The intent expressed in the headings appears sound. We see substantial benefit in greater understanding of who accesses legal assistance services, what priority groups are receiving legal assistance services, how legal assistance are being used and how legal assistance service activity is changing over time.

From our experience analysing legal assistance data in various forums and jurisdictions, we expect that legal assistance service provision will vary by legal matter and client group characteristics, and reflect legal assistance policy, funding, priorities, and service eligibility. However, when it comes to community legal needs, research demonstrates how other factors, such as dimensions of legal capability, affect whether and how people try to obtain assistance from public and private legal assistance services. Other data sources, such as legal needs survey data, are needed to understand how legal assistance services are used in response to legal need, and where barriers and

¹ McDonald, H.M., McRae, C., Balmer, N.J., Hagland, T., & Kennedy, C. (2020). *Apples, oranges and lemons: The use and utility of administrative data in the Victorian legal assistance sector*. Melbourne: Victoria Law Foundation, pp.96–97.

gaps lie. These sources of information should also be factored into the picture the NLAP data generates. Indeed, other sources of data may well throw up policy questions where NLAP legal assistance service data may be insightful.

It is critical that there is clarity and shared understanding of the language used in proposed policy questions, in what is being asked, and what legal assistance data can and cannot do. The wording of several of the proposed policy questions could mislead and/or confuse, which would be highly counter-productive at this stage of the process. Some detail on this is set out below.

There is some overlap in the questions detailed under the first three subheadings in *Appendix 1 – Proposed questions*. There is opportunity to both rationalise and more logically structure the specific questions in these sections.

Several issues of language and terminology that would benefit from greater clarity in both what is being asked and how it is to be answered. In this sector, substantial variation across service providers, areas of law, service types and service eligibility, means that legal assistance data tends to be less meaningful and useful in aggregate forms. Larger service providers and more prevalent service types tend to ‘swamp’ aggregate data reporting. Although these are essentially analytical issues, we urge careful consideration as to both the content of the questions and the way in which the data will be used to answer them. With this in mind, we urge that an expansive range of legal assistance policy questions be forwarded to the ABS to explore the limits of National Legal Assistance Data utility and quality. Doing so would help establish the utility of NLAP legal assistance service data and also highlight the value of other data measures and data sources in informing policy.

For example, the questions in *Appendix 1 – Proposed questions* variously ask about numbers and percentages. Our experience has shown that both service numbers and proportions are important and that investigation of one without the other will often be misleading. Because client cohorts vary in size, percentages may be more meaningful in policy terms than service numbers. Alternatively, sometimes service numbers are needed to adequately address the policy issues such as scope or size of demand. We suggest further consideration as to what is being asked and whether numbers, percentages, or both, are needed.

Agencies directly involved with service delivery are better positioned to offer feedback on the specific questions however we offer the following observations addressing each of the subheadings in Appendix 1.

Who accesses legal assistance services?

- *What is the demographic profile of clientele (based on the National Priority Client Groups)*
- *How does this vary by the nature of the service delivered?*

This is useful and informative. It will provide insight on who is receiving NLAP legal assistance services.

NLAP legal assistance data provides a record of service provision, that is, where a service episode is recorded by service providers. We note the change in terminology from ‘accesses’ to ‘receive/experience’ in next subheading and offer further observations on this terminology there.

People frequently ‘access’ public legal assistance services. They do not, however, always receive a service, or a service that will be recorded in NLAP legal assistance service data, or a service that adequately meets their legal need. We are also aware that services are sometimes provided to a group of people, and other forms of service, such as secondary consultations (i.e., legal services provided to a service host or partner etc.) that may be recorded in service data. While unlikely to comprise a substantial proportion of legal assistance services, questions about the composition of ‘clientele’ and what services are consequently included or excluded from reporting should be clarified.

Legal assistance services vary by client demographics and nature of service (legal service type, location, provider type etc.). To avoid confusion, ‘nature of service’ should be explicitly defined. For instance, it may or may not include legal matter type given that research consistently demonstrates that legal matter type (at broad area of law through to fine-grained legal matter type) is a stronger driver of legal problem-solving behaviour.

There is also opportunity to examine the geographic (e.g., ‘service user location’) profile of those receiving legal assistance services as another aspect of the demographic profile of clients. Exploration of how legal assistance services are geographically distributed has been fruitfully used in the past to examine both infrastructure and service

provision gaps. Considering the extent to which NLAP legal assistance service data can be analysed geographically would be useful.

With respect to service type, we are aware that service eligibility varies, both between providers and state and territory jurisdictions. This begs questions about the appropriate use of legal assistance service data and how data can be meaningfully reported. In particular, is the legal assistance data proposed to be reported at a national level (i.e. combining all jurisdictions and reporting service providers), or perhaps by state and territory, by service provider, or by state and territory by service provider. Although data quality affects how data can reliably be combined and used, we suggest clarity in the data reporting framework is an essential first step.

Given legal capability will vary by key demographic characteristics, further consideration should be given as to how National Legal Assistance Data can be used to examine the demographic profile of those receiving legal assistance services beyond National Priority Client Groups. For instance, this could include issues such as how different cohorts of younger and older people vary. Based on our experience intersectional analysis and reporting may also yield substantial insights on important legal assistance policy questions. For example, how many Aboriginal and Torres Strait Islander clients also have a disability? What problem types do they have, and what services do they receive?

Under the next subheading there are examples of more sophisticated questions about patterns of service delivery, namely for those with multiple legal matters, and clusters of matters and services. A similar approach should be adopted to considering what client cohort groups are useful to examine in policy terms. Analysis has previously shown that legal aid commission data is patterned by multiple disadvantage and level of disadvantage. There is opportunity to construct such variables using client demographic information in the NLAP legal assistance service data.

How do certain (National Priority) client groups receive/experience legal assistance services?

As noted above, NLAP legal assistance service data is a record of services provided. We suggest that reference to the word 'experience' is unhelpful and potentially misleading in this context. Questions about how clients experience legal assistance services require other data sources, such as legal needs survey and post-service data collection from the client on issues such as service experience, accessibility, satisfaction, comprehension, utility, next steps etc.

The questions under this subheading are in fact about service provision rather than experience, which is in keeping with the nature of NLAP legal assistance service data. As such, we suggest the wording of the subheading be changed to focus on services.

Further definitional issues concerning clients and services arise in the questions. Again, clarity of the NLAP legal assistance data and reporting frames for these questions would be beneficial.

- *How many services do they receive?*
- *What types of services do they receive?*

These questions about the number and types of services priority client groups receive appear to repeat the questions under the previous subheading. Alternatively, if a distinction was intended, such as between demographic characteristics and client priority groups, that should be clarified.

- *Where are services delivered generally, and for specific service types (i.e. where are certain services concentrated)?*

Clarification as to the meaning and distinction between 'general' and 'specific' would be of assistance here. If this is intended to draw a distinction between provision of services overall (i.e. irrespective of specific service type) and different service types, then the question can be reworded. If the intention is to also examine whether certain service types are more frequently provided to certain client cohorts, then it would be useful to express this clearly in a separate question.

- *What types of legal problems do they receive legal assistance for?*

We assume reporting for this question will be drawn from the 'Problem type' variable in NLAP legal assistance service data. There is a long list of problem types that are recorded. Consequently we suggest consideration of a

classification structure that cascades by broad area of law and is in keeping with access to justice and legal needs research.

- *How long does it take for a service to be delivered to them?*

We question whether NLAP legal assistance service data will be capable of answering this. Assuming it is, the issue of how long it takes to receive a service is potentially very insightful with respect to service accessibility and responsiveness.

We note that matter urgency and severity are factors commonly considered in client assessment and triage, and that neither are systematically recorded in NLAP data. Relative demand, service capacity and service offerings also affect time to service, with clients usually having to wait longer for legal assistance during busier periods (e.g. time of day, time of year etc.). As such, the utility of a time to service measure may be somewhat muted given the importance of other factors for meaningful data interpretation.

This is an example of a policy question that may require additional data or data sources to meaningfully answer.

- *What is the pattern of service delivery? What is the profile of clients with one-off matters and those who have multiple matters? How do different matter types cluster together (where there's one service and another service is often provided as well?)*

These questions will potentially yield important insights about the nature of legal assistance service provision. If 'pattern of service delivery' is meant to encompass the patterned nature of legal assistance service provision by legal matter, demographic and possibly geographic characteristics, then it would provide clarity to express this question in those terms.

We know that different legal assistance services record matter type differently, and there is variation in their capacity to systematically record the multiple matter types that a client or service user may present with. For example, 'primary law type' is likely to include only a single main law type, rather than to record all the matters someone has.

There is a broader issue here of transformation. There is tremendous value in moving from the current output measures to a client-centred approach which analyses and reports service use by client rather than matter or service. This would unlock significant insight and shed empirical light on which kinds of clients experience multiple legal matters, and the level of services they require, which goes directly to policy response. This however raises broader analytical issues and will depend on data structure, quality and utility, and data transformation possibilities.

- *Are service providers providing services to more victims or perpetrators of family domestic violence?*

Given that service providers vary in whether they tend to provide services to victims or perpetrators of family violence (e.g., community legal centres, Aboriginal and Torres Strait Islander legal services, legal aid commissions) this is an example of a question where it would be beneficial to have figures reported by type of service provider.

We further note that this is an example of a question that would benefit from thought and clarification: is this asking about service numbers, percentages, or both numbers and percentages?

- *In particular, what is the proportion of clients living with a mental health condition?*

While there is contemporary policy interest in people living with a mental health condition, we are also aware of policy interest in people with disability more broadly, and in people living with multiple and complex physical, cognitive (e.g., brain injury, foetal alcohol etc.), mental health and drug and alcohol conditions. For example, substantial investigation in health studies have explored the service use of people with dual diagnosis, such as those with one or more diagnosed mental health conditions occurring at the same time as problematic or harmful drug and alcohol use.

From a service adequacy point of view, mental health conditions and other forms of cognitive impairment point to potentially inappropriate or less effective forms of legal assistance service. For example, less intensive forms of unbundled legal assistance, such as legal information and legal advice only services make higher demands on the client's capability to comprehend, apply and effectively action the legal assistance provided. Generally speaking, it might be expected that such clients receive higher proportions of higher levels of legal assistance, such as task and

casework services. This is also an example of how review of legal assistance service data can give rise to further planning and policy questions.

We are also aware of several practical issues concerning how disability and mental health conditions are recorded (or not) in legal assistance service data. A common feature of legal assistance services is clients who present with and appear to have a mental health condition who do not have a formal diagnosis. Indeed, obtaining such a diagnosis may be relevant to and a feature of legal assistance, such as in criminal defence work. A related issue is clients who deny that they have a mental health condition, and object to being seen by services as having a mental health condition, even where other records indicate that they are in receipt of a disability support pension because of a mental health condition.

Unsurprisingly then, responses to sensitive client issues like mental health conditions are varied and inconsistent in terms of data collection and recording practice across legal assistance services. Consequently, we urge careful consideration of what NLAP legal assistance service data can reliably be used for in this respect.

We also see little reason to constrain analysis and reporting of legal assistance service use by those living with a mental health condition and urge consideration of wider consideration of inclusion of other disability cohorts, such as physical disability etc. where the data is sufficient to do so.

This is an example of a question asking about the percentage (proportion) of clients with a particular characteristic and again urge further consideration as to whether numbers, percentages or both numbers and percentages are more useful and informative in policy terms.

The way in which this question is expressed also makes its relationship with the above listed questions unclear. For example, the 'in particular' phrasing can be interpreted as referring to and following on from the above question, such that the question may be asking about the proportion of clients living with a mental health condition who have received a service as a victim or perpetrator of family domestic violence. Again, greater clarity and consistency in how questions are asked would be beneficial and aid reporting and interpretation.

How are legal assistance services used to respond to legal need?

We caution against use of legal need in this context given that the difference between express and latent or unexpressed legal need is frequently confused. The subheading is unduly contorted and invites confusion. Introducing the concept of *legal need* here serves no analytical purpose, however it is critical that all parties in due course have a consistent understanding of key concepts and how to measure them (e.g., legal need, outcomes, impact) is vital.

Measuring the client's perspective is critical to supporting an efficient and effective legal assistance sector, and it will become central to the new NLAP data requirements with the introduction of outcomes measures. To do this with any rigour however will require additional measures and/or sources of data.

NLAP legal assistance service data is administrative data providing a record of express legal need. This should not be equated with community legal need, nor, without outcome measurement, with met legal need. For example, it is common for people to have a legal need that is not expressed or recorded in the administrative records of a legal assistance service, court or tribunal etc. It is also common for those with a legal need that is expressed (e.g., seeking out and receiving a legal assistance service; taking up a legal outreach service; filing or responding to court and tribunal matters etc.) to receive a service that does not meet their legal need.

The framing of the header could imply that this question block is intended to gauge the client's experience – *how are legal services used* - where the questions are in fact about what services are provided. The subheading should simply be *What legal assistance services are provided?*

This set appears to be asking several questions about use of legal services that are similar to those under the previous subheadings. Again, there appears to be opportunity to both rationalise and more logically structure and distinguish the question blocks under each subheading.

- *Which law types do legal assistance providers cater for?*

This is a question that could be answered without recourse to NLAP legal assistance service data. It is a question about service scope and eligibility. There is a distinction between ‘cater for’ and service provision. If the intent is to report what legal issues legal assistance services provide services for, and perhaps the numbers and percentages of each, then the question appears to overlap others listed above, and we question how this question is intended to be different.

Given variation in service scope and eligibility, which varies substantially across service providers, it is likely to be more meaningful to ask questions about ‘problem type’ or ‘primary law type’ matter types where legal assistance has been provided. Because of variation across service provider, and service types, and variation in service scope and eligibility, it is also likely to be more meaningful and useful to break this data down by service provider and service type.

- *What types of services do legal assistance providers provide generally, and for specific legal problems?*

As noted for a question under the previous subheading, this question would benefit from clarity as to the distinction between ‘general’ and ‘specific’. If the intention is to ask about overall provision of services for different types of ‘problem types’, then we suggest clarifying that. We again note that a cascading classification system for ‘problem type’ consistent with access to justice and legal needs research would be beneficial.

- *How do the Courts and Tribunals differ in terms of the law types and legal problems heard?*

This is a very important question for understanding the role played by courts and tribunals, in resolving different types of legal matters. We know from our research that some types of legal matters currently sit within the jurisdiction of multiple courts and tribunals. NLAP legal assistance data, however, is the wrong data to answer this question as it is phrased. Court and tribunal administrative data is the more appropriate dataset.

If the intent is to ask about the type of legal matters where an NLAP service was provided and which resulted in a court or tribunal hearing, then that can be clarified. The meaning of ‘heard’, however, needs further consideration, as does the information available for different service types. For example, does ‘heard’ mean one or more procedural appearances, or does it mean a final adjudication? Is the question asking about court and tribunal hearings where one or more legal assistance services may have been provided before or during court and tribunal proceedings? Or where a legal assistance service is being provided through to court or tribunal adjudication? It should also be noted that civil matters are frequently concluded by negotiation, agreement and withdrawal, even after court and tribunal proceedings have been commenced.

Details of subsequent court and tribunal proceedings are typically not recorded for unbundled levels of legal service. We suggest further consideration concerning what is intended by this question, and clarification as to what insights about court and tribunal proceedings are of interest, and what NLAP legal assistance service data can answer.

It may be that a more specific question, about a particular area of law (e.g., family law) would be more useful.

- *What types of services do legal assistance providers provide in which locations?*

This is an interesting question, although we again see analytical considerations affecting how NLAP legal assistance data can be meaningfully marshalled. If there are specific aspects of this question, such as particular service locations, or service levels, then it may be more useful to ask more targeted questions.

- *How long do legal assistance providers typically take to provide specific services?*
- *How long do legal assistance providers typically take to respond to certain legal problems/law types?*

As per the comments above on the use of ‘specific’, we suggest using other terminology to clarify what is being asked here. Clarification is also needed on the timeframe in question. Is it time to receive a service after contact? Or time from first to last service contact?

- *In particular, how many ICL services are delivered? Where are they delivered and to whom?*

We assume this question is asking about Independent Children’s Lawyer services. If so, this should be clarified. If the question is intended to provide insight as to the demographic and geographic characteristics of children receiving Independent Children’s Lawyer services, then it would also be useful to clarify that in the wording.

Conclusions

NLAP legal assistance service data is an important new source of justice system data. As one of the few organisations in Australia that has particular interest and expertise in justice system data, and whose research agenda includes both building and interrogating the empirical evidence base, we see reporting of NLAP legal assistance service data as a critical step.

There are limits to the utility of NLAP legal assistance service data that reflect investment in data infrastructure and capability. As a consequence, we have concerns about potential next steps, particularly where data quality issues arise, and where limitations of NLAP service data and provision may be revealed. To this end, we are concerned about the direction of travel which has been foreshadowed, in particular, an unduly narrow focus on service data and an overly restrictive National Legal Assistance Data Strategy. We understand the need to agree and establish a set of questions and to bed down the ABS reporting process. We would caution however against locking in a narrow focus which will deny government and the sector the valuable insights a more progressive data approach might deliver.

- **Clarity and structure**

Language and terminology are important - in data terms but also in developing a shared understanding and common direction. As a set of questions that might form the basis of annualised or periodic reporting, the proposed policy questions would benefit from revision for distinction and structure. Questions in different blocks cover the same ground, or are not specific enough to generate sound data.

Consistency and clarity in terminology is also vital and must be broadly consistent with existing legal assistance data usage and broader empirical legal studies. Providing clear guidance will be critical.

NLAP legal assistance service data may be new, but analysis and use of legal assistance service data is not.

- **Data sources**

NLAP legal assistance service data is a subset of DSM data, which is a subset of the administrative and service data held by service providers. Service providers typically have a detailed understanding of the strengths and weaknesses of their own data, and while some face challenges in data collection and use, many are already using their service data in sophisticated ways. The wider service data held by service providers will often be a better source with which to answer many policy questions. Beyond this, other forms are needed for pressing policy questions, such as what service strategies work better for diverse client groups and legal matters.

Put bluntly, further and better data is needed to build the empirical evidence base and appropriately inform policy, service design and service provision. This must include legal needs and service outcome evidence, ideally from a client’s perspective, matching the wider policy shift to client-centred approaches to access to justice and legal need.

- **Expertise**

Legal assistance service data is beset by several known issues. Analytical skill is required to disentangle key features of legal assistance service provision, such as multiple services which may or may not be for the same or multiple legal matters. Change to the DSM to reduce data burden and simplify counting rules have made this task more difficult, particularly with respect to unbundled or discrete forms of legal assistance.

The mixed model of legal assistance, also known as the ‘Australian Model’, is renowned as a flexible legal assistance service approach. Although the practical application of the model varies, in broad terms a mix of public and private agencies provide legal assistance services to a mix of cohorts, in a mix of locations with a mix of legal assistance infrastructure. This is another factor which complicates analysis and interpretation of legal assistance data. NLAP service data will reflect the mixed model of legal assistance and legacy legal assistance infrastructure and funding decisions.

- Aggregation

There is also a tension to be managed between data aggregation and disaggregation. Aggregated data undoubtedly provides a useful perspective, however in our experience aggregation of legal assistance data can mislead, and typically generates questions that require disaggregation to inform service provision and policy.

The level of aggregation in reporting is therefore a critical issue to resolve, particularly given that many legal assistance services have access to a wider set of data points in their administrative data systems and have a sophisticated understanding of what they do and why.

Access to justice issues involve questions and stories about people, legal issues, and places, as do legal assistance service and policy. To inform services and policy, we need to be able to see people, and sub-groups, in the data. NLAP legal assistance service data will be most meaningful and useful to both service provision and policy where it yields empirical insights about people, legal issues, and places.

The main advantage of large, quality datasets is increased ability to reliably and validly disaggregate to further levels. This includes disaggregation by service provider, legal problem, service levels and demographics, as well as aggregation to informative categories or classifications (e.g., classification of legal matter types by area of law) in policy terms. Legal assistance services are structure into civil (and administrative), criminal and family areas of law, which reflect legal practice areas.

- The next phase

We reiterate the opportunity and importance of continuing to build shared understanding of legal assistance service data, data literacy and evidence informed policy. As we have previously advised, we are aware of substantial cynicism and mistrust in the legal assistance sector concerning the potential use of service data. Reporting of NLAP legal assistance data provides opportunity to not only build the empirical evidence base but to build both trust and insight.

Initial reporting of NLAP legal assistance data lays a foundation for constructive relationships between the legal assistance sector, research bodies, AGD, and ABS. As such, it is timely to revisit the National Legal Assistance Data Strategy and what is needed to build the legal assistance evidence base, including the National Strategic Framework for Legal Assistance

Changes in data collection, practice and culture are inherently legal assistance policy issues. Leadership and collaboration are required to unlock a new era of evidence informed legal assistance policy, which supports collaborative service planning and the innovation required to better understand, communicate, and transform access to effective legal assistance.

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