

CHAPTER 3

DEMAND AND UNMET LEGAL NEED: THE LACK OF DATA

3.1 This chapter discusses:

- the current lack of data on the level of demand and unmet need for legal aid in Australia; and
- what data needs to be collected to facilitate an equitable and effective distribution of funding for legal aid.

The current lack of data

3.2 In the *Third Report* the Committee lamented the lack of, and deficiencies in, available data in relation to the need for legal aid in Australia.¹ The Committee recommended that:

- the Commonwealth continue to be a clearinghouse for, and publisher of, detailed information on the operation of all aspects of the Australian legal aid system, not just those it directly funds;
- the Commonwealth take steps to collect, analyse and publish more meaningful data on the impact of the changes on the legal aid system and on the continuing operation of the system. This data could be in a standardised form that enables comparisons between jurisdictions and over time; and
- the Attorney-General's Department examine in consultation with National Legal Aid and individual LACs about whether there was a continuing need for all the data contained in its Statistical Yearbooks on legal aid in Australia to be collected and published.²

3.3 The Government's response was that National Legal Aid had indicated:

... that it would like to have a shared role in the management of the national data collection. Accordingly, the Government has authorised the Attorney-General's Department to discuss with National Legal Aid options for a cooperatively managed national legal aid data warehouse."³

1 *Third Report*, para 2.3, p.13.

2 *Third Report*, Recommendation 1, p.23.

3 *Government Response to the Senate Legal and Constitutional References Committee Inquiry into the Australian Legal Aid System, 3rd Report*, p.4.

3.4 The Government response further noted that the Commonwealth:

...intends to approach National Legal Aid to see if agreement can be reached on a meaningful set of case outcome measures."⁴

3.5 The response also stated that the Commonwealth and LACs had been working together for some time to standardise data collection, and that reports using data provided by legal aid commissions to the Commonwealth's Legal Aid Statistical System Information Exchange (LASSIE) were available on request from the Attorney-General's Department.⁵

3.6 Between 1997 and 1999, the Commonwealth conducted a two stage Legal Assistance Needs study.⁶ The purpose of the study was, among other things, to identify needs and gaps in service delivery. The two part study formed the basis of the Rush/Walker funding model discussed in Chapter 2, and based its analysis of demand on the applications for assistance made to state and territory LACs.

Criticism of the Government's response

3.7 National Legal Aid noted in its submission that the Commonwealth's study had no regard to unmet need:

NLA believes that there is a level of need which is not known and not met and which is likely to go well beyond the applications to Legal Aid Commissions for legal assistance that are refused in accordance with the guidelines. Whilst the Commonwealth conducted a study in 1999 which was named the "Legal Needs Study" this study was used as the basis for distributing a finite amount of Commonwealth funds for "Commonwealth matters" across the States and Territories. It used the number of applications received by Commissions as the primary tool for measurement and did not recognise the number of people who never access or receive legal services, and the social and personal factors that define lack of access. As a result of its concern that there is a further level of unknown and unmet need NLA has attempted to obtain non-Government funding for a comprehensive legal needs study. These attempts have unfortunately been unsuccessful.⁷

3.8 This criticism of the Commonwealth's 1999 Legal Assistance Needs study was echoed by the Fitzroy Legal Service:

4 ibid.

5 ibid, p.5.

6 *Legal Assistance Needs Phase I: Estimation of a Basic Needs-Based Planning Model*, Prepared by: Rush Social Research and John Walker Consulting Services, prepared for: Legal Aid and Family Services Division, Attorney General's Department, December 1996; *Legal Assistance Needs Project: Phase Two, Summary Report*, prepared for: Legal Aid and Family Services Division, Attorney General's Department, May 1999.

7 National Legal Aid, *Submission 81*, p.8.

The [Commonwealth's 1999 report] was disappointing as it focused less on an analysis of legal need, and more on distribution of funding between the states and the territories. To date therefore there has not been any adequate study of the extent of unmet legal need throughout Australia. The paucity of such research is astounding! It is vital for the Commonwealth to act, either by commissioning their own study or in concert with the states to conduct a study of need.⁸

3.9 When asked what assessment the Commonwealth has made of unmet need, a representative of the Attorney-General's Department explained that the Department had consulted with state governments and LACs to undertake a series of reviews in relation to CLCs on a state by state basis.⁹ She added:

[T]he review has Commonwealth and state representatives and community legal service representatives. In some cases it also has what we would see as a public interest representative... The review looks at a range of issues, including demographics, and tries to identify areas of need in that way but also takes submissions and is a public process from the point of view of taking submissions.¹⁰

3.10 The Department provided the Committee with copies of such reviews for Queensland, Western Australia and South Australia.¹¹ These reviews did not contain a quantitative assessment of unmet need, but rather involved a consultative or submission-based process to make an assessment.

What data needs to be collected

3.11 The Committee heard various suggestions as to how an assessment of demand and unmet need for legal services should be undertaken.

3.12 For example, the Law Council of Australia suggested that the Government should commission and fund a legal needs survey to be conducted by the Australian Law Reform Commission (ALRC):

The Commonwealth should commission and fund a legal needs survey to be conducted by or at the direction of the Australian Law Reform Commission to determine the context of the need for legal representation and advice in the family, civil and criminal jurisdictions in this country, with the results of the survey to be tabled in the Senate within three months of its receipt by the Attorney-General and with a view to providing sufficient funds to meet the identified need.¹²

8 Fitzroy Legal Service, *Submission 48*, p.11.

9 Ms Sue Pidgeon, *Committee Hansard*, 9 February 2004, p.22.

10 *ibid.*

11 Attorney-General's Department, *Submission 78E*.

12 Law Council of Australia, *Submission 62*, p.2.

3.13 The CCLCG explained to the Committee that in NSW community legal centres (CLCs) together with the NSW Legal Aid Commission and Aboriginal and Torres Strait Islander Legal Services (ATSIS) are "mapping" all existing legal services throughout NSW to determine what new services may be required.¹³ CCLCG also noted the studies being conducted by the NSW Law and Justice Foundation into legal needs and the National Pro Bono Resource Centre study of CLC needs in regional areas.¹⁴ The CCLCG recommended that the Commonwealth fund a study or contribute funding to the study being conducted by the NSW Legal Aid Commission and CCLG to identify what legal needs exist in NSW.¹⁵

3.14 Numerous submissions referred to the survey of legal need that is currently being conducted by the NSW Law and Justice Foundation. On 26 March 2004, the Foundation launched three reports from the first and second stages of its Access to Justice and Legal Needs study. Stage Two of the program included a pilot study comprising a quantitative legal needs survey of the Bega Valley. This pilot is part of a wider assessment which, according to the Law and Justice Foundation, will be the largest quantitative legal needs survey in Australia in over 30 years.¹⁶

3.15 The pilot study was conducted in the Bega Valley in October 2002, and is part of a wider survey planned for South Sydney, Fairfield, Campbelltown, Newcastle, Nambucca and Walgett local government areas.¹⁷ In designing the study, the NSW Law and Justice Foundation drew on both the *Paths to Justice*¹⁸ studies, and on recent legal needs surveys conducted across the United States.¹⁹

3.16 The survey was conducted over the phone and in person. The areas covered by the survey include:

- legal events encountered in the previous 12 months;
- how these were handled;
- how services were accessed;
- barriers in obtaining assistance;

13 NSW Combined Community Legal Centres Group, *Submission 60*, p. 12.

14 *ibid.*

15 *ibid.*, p. 25.

16 <http://www.lawfoundation.net.au/media/260304.html> (accessed 5 April 2004).

17 *Access to Justice and Legal Needs, Stage 2: Quantitative Legal Needs Survey*. Law and Justice Foundation, November 2003, p. 2.

18 Professor H Genn, *Paths to Justice: What People do and think about going to law*, Hart Publishing, Oxford, 1999.

19 *Access to Justice and Legal Needs, Stage 2: Quantitative Legal Needs Survey*, Law and Justice Foundation, 2003, p. 5.

-
- perceptions of outcome; and
 - demographic characteristics of participants.²⁰

3.17 Although this pilot study was limited to a very specific area (the Bega Valley), the survey identified the most common forms of barrier to legal assistance. The most commonly experienced barriers to legal assistance were:

- difficulty getting through or being kept on hold on telephone lines (28 per cent);
- lack of local services (25 per cent);
- difficulty getting an appointment (21 per cent);
- difficulty affording assistance (16 per cent); and
- problems with the opening hours of service providers (15 per cent).²¹

3.18 The report for the pilot survey noted that, although the proportion of residents born in a non-English speaking country is relatively low in the Bega Valley, seven participants (which represented half of all participants born in a non-English speaking country) indicated that they would prefer to speak in a non-English language. The report noted that in an area with a higher proportion of migrants, this might have significant implications for service delivery in terms of the availability of translators.²²

Committee view

3.19 The Committee believes that in order to assess the state of access to justice in Australia, there needs to be a better understanding of the level of demand and unmet need for legal assistance across the country. Despite the Committee's recommendations in the previous report, there is still a lack of data on such demand and unmet need.

3.20 The Committee commends the Law and Justice Foundation for its efforts in assessing the demand and unmet need for legal services in NSW. The Committee believes that similar research should be undertaken nationally. The objectives of the survey should be to assess the levels of such demand and unmet need across the country, as well as assessing what the major obstacles are for the delivery of such services.

20 *ibid*, p. 6.

21 *ibid*, p. 125.

22 *ibid*, p. 126.

3.21 Whilst the NSW Law and Justice Foundation survey model appears to have been successful in its pilot stage, a national survey may benefit from awaiting the outcome of the Law and Justice Foundation statewide survey.

3.22 The Committee believes that the Commonwealth Government should fund a national survey, involving the cooperation of state LACs and CLCs, and that the Law and Justice Foundation study would be a good model on which to base such a survey.

Recommendation 11

3.23 The Committee recommends that the Commonwealth Government should fund a national survey of demand and unmet need for legal services, to be undertaken in cooperation with state legal aid commissions and community legal centres. The objectives of the survey should be to ascertain the demand and unmet need for legal services across the country, and to identify obstacles to the delivery of such services, particularly to the economic and socially disadvantaged.