

COVID-19, legal need and access to justice

We offer this paper as a useful summary of experience and evidence from around the world when dealing with some of the issues likely to arise from COVID-19 and its impact on legal need and access to justice. It is written with the benefit of our lengthy experience in legal need research, both in Australia, the UK and elsewhere. Some key references are listed at the back.

Increased legal need and demand

Everything we know about legal need indicates that COVID-19 will have widespread and prolonged social and economic consequences that directly and indirectly increase legal need across the Australian community. This increased need should be expected to continue in the medium to long-term.

Empirical evidence clearly demonstrates that social and economic disadvantage increases vulnerability to legal problems. Many disadvantaged and vulnerable members of the community are likely to face escalated and exacerbated legal need, while others are likely to face legal problems that they would otherwise not have experienced. This includes the full spectrum of civil and family areas of law. Increased demand for legal help concerning family violence have been widely reported in the media. Other issues of particular concern arising from isolation and social distancing reported in the media include child protection, elder abuse and compliance with parenting arrangements and orders. Moreover, significantly increased numbers of legal problems should be expected across a broad range of areas of law.

Change in life circumstances, like those catalysed by the current COVID-19 restrictions and economic fallout, can trigger both direct and indirect legal need. Events increasing vulnerability to legal need include sudden onset illness, loss of employment and housing, and change in family and business circumstances. A large slice of the Australian population has already slid further into financial disadvantage, and others are likely to in the coming months. In many cases, dealing with these changes will result directly in legal problems (e.g. dealing with loss of employment), though they will also indirectly trigger many others (e.g. difficulty accessing welfare benefits, difficulty paying rent).

Small business owners, for example, face heightened legal needs stemming from their business, personal and family affairs and the interplay between them. Economic upheaval can result in increased civil and family legal need, particularly amongst those forced to close their business and upend their lives. Research has demonstrated that legal problems associated with small business ownership are rarely experienced in isolation, and commonly occur together with personal legal problems. Both business and related personal legal issues are likely to grow significantly and the relationship between the two strengthen.

Legal disputes are also more likely where there is confusion surrounding legal rights and responsibilities. Public policy responses to COVID-19 have changed entitlements and obligations creating uncertainty which will prompt greater need for legal information and assistance. Public legal assistance services are therefore likely to experience increased community demand. There is also likely to be an increased need for 'non-legal' routes to legal information and advice, since it is likely that many of the legal problems stemming from COVID-19 will not be recognised as such.

Just like COVID-19, legal problems can spread and cluster. One legal problem can have flow-on consequences that increase susceptibility to additional problems. Increased likelihood of a broad range of problems means an increased likelihood of problem clusters. Like COVID-19, legal need has the potential to rise exponentially.

It is therefore vital that public legal assistance services and the wider justice system plan to meet the immediate, medium and long-term impacts of COVID-19.

Increased number of people eligible for public legal assistance

With more Australians likely to fall into financial disadvantage, the number of people eligible to receive public legal assistance will rise. Any increase in demand will further stretch the resources and capacity of Aboriginal and Torres Strait Islander legal services, community legal centres, family violence prevention legal services and legal aid commissions.

Prior to COVID-19, the public legal assistance sector was already facing pressures. Rising demand associated with COVID-19 will further extend their workloads and financial pressures.

Without sufficient funding and resources, public legal assistance services may be unable to meet escalating community demand. To address this, public legal assistance services may have to tighten service eligibility and/or go into operational deficit. Such circumstances will have consequences for access to justice, compromise the operation of the justice system, and the efficacy of the public policy responses to COVID-19. For example, policy initiatives to relieve financial pressure may be ineffective if people are unaware of or confused by changed rights, entitlements and obligations.

Disrupted accessibility and paths to justice

In response to COVID-19, justice institutions have moved to replace in-person services and contact with telephone and digital. Many public legal assistance services are currently only available online and by telephone. Courts and tribunals have also suspended some functions and moved others online.

Research points to legal and digital capability as important factors affecting access to justice and legal problem-solving. Moving online will have undoubtedly digitally excluded some members of the community experiencing pressing legal needs. Moving online also raises further concerns about what people seeking assistance are expected to do. Victims of family violence, for example, may simply be unable to seek telephone and online legal assistance when confined with a perpetrator.

The leap to digital is also likely to affect capacity to target and integrate legal assistance and tailor legal assistance to client need and capability. It is also likely to undermine capacity for early intervention and prevention. While unavoidable in the circumstances, access to justice consequences must be monitored. Undoubtedly, some people will ably make use of digital, some will face difficulty overcoming access barriers, while others will fall through system cracks. While access to justice research and reports widely caution against over-reliance on digital solutions and their likely impact on more disadvantaged people and groups, COVID-19 provides a unique opportunity to learn more about what works in digital access as well as features of good practice. This would help to inform future service design.

Beyond direct access through digital channels, paths to justice will also be disrupted. For example, Australians commonly rely on health and community services to provide paths to justice (i.e. referral to available and appropriate legal information and assistance). Where health services are overburdened and community services have also moved online, paths to justice will narrow and may close. Again, some will be able to successfully navigate to available legal assistance, but others will not.

Monitoring access to justice and legal need

It is vital that the access to justice and legal need impact of COVID-19 and associated justice system and public policy responses are monitored. This will be valuable directly in assessing their efficacy but will also offer important insights for future reference into what works in times of crisis.

Mechanisms to monitor and review the adequacy of public legal assistance funding is also essential to safeguard access to justice and the rule of law.

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