

Response to Draft National Legal Assistance Service Data Strategy 2020-21 to 2021-22

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Thanks for the opportunity to respond to the draft *National Legal Assistance Data Strategy 2020–21 to 2021–22* (Data Strategy) which has a key role in supporting access to justice and equity across Australia.

We fully support development of a Data Strategy to further guide improved quality, availability and use of legal assistance data. We see substantial benefit in setting out a strategy for achieving incremental improvement over the course of the NLAP. This is a critical step for both realising and gauging achievement of the objectives and outcomes of the *National Legal Assistance Partnership 2020–25* (NLAP) and National Strategic Framework for Legal Assistance 2020–25 (Strategic Framework) and also to broaden the data focus beyond the legal assistance service data.

Roadmap

The chart on page three of the draft Data Strategy sets out a sensible roadmap for the next five years. We see merit in splitting the Data Strategy into two phases. While this allows thinking to evolve with change and experience, we urge that consideration, consultation and development of the Phase 2 Data Strategy, to commence 1 July 2022, is started well in advance of that date, particularly given the references to building broader datasets, data matching and linking, an improved national evidence base and a draft legal assistance outcomes framework.

Quality legal assistance service data can undoubtedly provide important empirical insight concerning service provision and use. However, other data, including legal need survey data, and other research and analytical efforts are required for a rigorous evidence-led legal assistance services and justice policy.

The Data Strategy roadmap (p.3) acknowledges that the data picture is bigger than legal assistance service data, and further notes that:

A range of quantitative sources such as legal needs, service delivery, outcomes, courts, prison and broader population data and qualitative sources such as client surveys, data informing collaborative service planning and case studies, are required to build a robust picture of the legal assistance sector.

We agree. To help realise NLAP and Strategic Framework objectives and outcomes, the Data Strategy should, in its next iteration, encompass the other data and analysis needed to inform legal assistance policy.

A comprehensive Data Strategy must include a vision and plans for the improved availability of legal need data. Collaborative service planning and efforts to identify effective and efficient service delivery models risks being entirely frustrated by inaccurate and incomplete understanding of changing legal need and insufficient funding to meet it. The alternative is clear: further tightening of public legal assistance eligibility, and a narrowing of legal assistance service scope. The nett effect of these reductions in legal assistance – particularly for family and civil matters – is an inevitable increase in the *missing middle* – the growing number of people who do not qualify for the legal assistance services they need to effectively resolve matters, yet are unable to afford private lawyers.

Legal assistance data is one piece of the policy puzzle. As with all approaches it has limitations. We suggest once the utility of legal assistance service data is improved, attention should turn to complementary research methods and designs. This includes obtaining an up to date and more comprehensive understanding of how the public experiences legal problems and interacts with the law. A key approach to exploring this is the legal needs survey, the last of which was conducted in Australia more than ten years ago. Much has changed in the intervening period and new legal needs survey work is warranted. In particular, the shift towards client-centric legal assistance policy and services requires investigation: how are people navigating their law-thick world regardless of whether they come into contact with legal assistance services.

Ongoing commitment to monitor legal need should be included as another key pillar of a national legal assistance Data Strategy. Instituting regular public understanding of law and legal need surveys will provide another significant piece of the policy puzzle.

Victoria Law Foundation's research program seeks to build the empirical evidence base for the Victorian justice system and our Public Understanding of Law Survey will provide fresh understanding of legal need, capability and attitudes to justice within the Victorian community. The findings and tools used in this work will be a sound basis for further investigation across the country. In addition, the Federation of Community Legal Centres Victoria has done significant work to standardise data capture and quality amongst Victorian community legal centres. Similar efforts are likely to be required in other states and territories where these supports are not yet available.

Developing a sound national approach, one that will reliably measure legal need and other fundamental legal assistance and access to justice policy issues, cannot be achieved without investment of time and resources. Further details about the role legal need surveys will play should therefore be developed for inclusion for the Phase 2 Data Strategy.

Phase 1: 2020 – June 2022

As per the draft, the first phase of implementation of the Data Strategy is consistent with a prudent approach and addresses a number of matters raised in our report mapping legal sector data in Victoria, [*Apples, Oranges and Lemons: the use and utility of administrative data in the Victorian legal assistance sector*](#). The circumstances revealed in this Victorian work are very likely to be replicated across the country, so identifying and responding to the key issues raised will work at a national level. Consistent with the findings of our report, the draft Data Strategy references central determinants of data quality, accuracy and consistency to improve data utility.

Apples, Oranges and Lemons identified several limitations of existing legal assistance data as well as how service provider data capability is constrained by resourcing. Service data utility is especially limited where it does not adequately capture the complexity of client's circumstances and needs, nor service inputs, quality, and outcomes. Additional and complementary measures and methods are therefore required to fully capture the need for, and the impact and value of legal assistance services. Our report also explained, however, why unlocking the potential legal assistance service data to help better understand and respond to community legal need requires more than collection of legal assistance data.

First, quality data requires supporting standards, protocols and infrastructure. The draft Data Strategy is consistent with this finding. Second, improved data quality and utility requires leadership, collaboration and coordination to marshal and foster sound cross-sector data practice. We see the draft Data Strategy as being another sound step in this direction. However, it needs to go further in its next iteration. For instance, *Apples, Oranges and Lemons* (p.99) concluded that:

Building a quality evidence base needs strategic thinking and commitment to drive improved data culture and practice. It is vital that legal assistance funders and service providers develop a shared understanding and vision for the role of and use of data, and that there is greater clarity about what service data will and will not be used for. Service providers need an agreed direction of travel as well as the realistic means to get there.

As the Data Strategy evolves, we submit that further consideration be given to the realistic means of achieving the Data Strategy aspirations. Third, improved data quality and utility requires investment in both people and data infrastructure. Without funding and support, data capability and practices are unlikely to be improved.

Further clarity on actions to increase legal assistance data utility, along with effort to further improve service provider data capability, is required and must be a focus for the Data Strategy from July 2022. Failing to do so risks wasted effort and resources in collecting, recording and reporting service data that does not meet legal assistance sector data needs and capability.

In particular, the first phase of the Data Strategy would be improved with further information detailing how legal assistance service data can be effectively used. More detail on how new data insights are to be gleaned and shared from the collection of unit-level legal assistance service data will be critical in a sector with widely variable data capability.

Publication of annual statistical reports and a National Services Summary will provide important service information, although our experience is that such statistical summaries also raise myriad further questions and highlight the need for further contextual information to support data interpretation. We therefore urge further consideration of appropriate mechanisms for service providers to raise, investigate and answer such questions, noting the data capability and funding constraints under which some of them operate.

Further guidance concerning the application and interpretation of unit-level service data should also be set out. In our experience there are substantial challenges in making sense of and drawing sound service and policy implications from legal assistance and need data. Sound liaison is especially required between those with data analysis skills and those with legal assistance service practice insight.

Phase 2: July 2022 – June 2025

There are several important issues to tackle in the second phase of the Data Strategy, to ensure continuity with the broad direction established in the NLAP and its predecessor agreements. To engage with issues of service effectiveness, efficiency, quality and value as proposed, input and outcome measures are required. The Data Strategy's next iteration must therefore turn to important data improvement, operationalisation and implementation issues.

The Data Strategy would benefit from clear links with the Strategic Framework. Another way to develop the Strategy for the second phase would be to audit what data is required to assess performance against the NLAP and Strategic Framework objectives and outcomes. This will highlight what and where other data measures are needed. The Data Strategy should then set out a roadmap to marshal that information.

In particular, assessing performance of the NLAP and Strategic Framework appears to require more meaningful measures and data than is likely to be provided through legal assistance data alone. Questions about how legal assistance resources are best targeted, what service models make the biggest difference, how systemic barriers can be removed to increase service accessibility and efficiency are the most pressing and recurrent policy questions. Legal assistance data, regardless of improvements in accuracy, consistency and quality, cannot answer such questions. Effort is also required to develop, operationalise and better gauge what works to most effectively and efficiently meet diverse legal need across the community. Engaging with such questions requires improved information about service inputs and outcomes.

We see development of a Legal Assistance Outcomes Framework as another important step to unlock the utility of legal assistance data and to open up new learning and insight. How many services are currently provided where the client simply does not understand or is unable to action the legal advice they receive? For which type of legal matters and clients do different types of service model work best?

Apples, Oranges and Lemons documented wide interest in measuring service outcomes and learning about the impact and value of legal assistance. Measuring service outcomes, and appropriately capturing the complexity of client needs, however, raised additional data and resource challenges.

We note references in the draft Data Strategy which encourage research in relation to the quality and delivery of legal assistance. Service quality is another important part of the ‘what works’ puzzle, and a key legal assistance funding issue. Unlike some international jurisdictions, service quality remains somewhat underexamined in the Australian legal assistance service context. Investigation and oversight of service quality can be resource intensive and requires appropriate engagement with legal professional and regulatory bodies. Service quality issues are inexorably linked with funding questions, and we see this as another avenue where data can be fruitfully harnessed to learn more about service effectiveness and efficiency. Service quality issues, however, especially with respect to unbundled forms of legal assistance such as legal information, advice and task assistance, are also inexorably linked with the legal need and capability of the user or client as well as service eligibility. For instance, evaluation has shown legal practitioners are commonly concerned that they will be held professionally accountable for providing a level of service that is insufficient to meet client needs due to service eligibility requirements.

Outcomes

We see tremendous value in specifying the outcomes that the Data Strategy seeks to achieve and agree that a ‘data informed’ and ‘data empowered’ legal assistance sector is desirable. We agree that legal assistance data should ideally be accessible and used across governments and the sector, and that it should be consistent, accurate, comparable and outcomes focussed. However, we again submit that outcomes should also include improved and expanded data coverage and utility, particularly when the evaluation and assessment of service delivery models is an aim. Without it, sound evaluation and assessment of service delivery models will remain frustrated and we are no closer to understanding ‘what works’.

As we have said in previous submissions, stronger capability across the sector would have a powerful impact in ‘lifting all boats’, supporting better data collection, analysis and application as well as paving the way for stronger insights on service delivery and outcomes across jurisdictions. Such capacity building should be seen as a key outcome and pillar of a national legal assistance Data Strategy.

Principles

The strategic priorities and principles set out in the Appendix on page four are important and we suggest they are moved into the body of the Data Strategy text.

The strategic priorities and principles are sound. However, we submit that the following principle is misconceived:

Legal assistance service data should contribute to the efficient and effective delivery of legal assistance services, including collaborative service planning and targeted service delivery.

Data in and of itself does not do anything. Rather, it is the analysis and use of the data that is important, provided that the data is fit for purpose. We caution against any assumption that improved data availability will make any difference to the efficiency and effectiveness of legal assistance services, collaborative service planning and targeted service delivery. Data can make an important contribution to these activities, but other leadership, analytical and resource factors will be determinative.