ENSURING JUSTICE AND ENHANCING HUMAN RIGHTS

A Report on Improving Legal Aid Service Delivery to Reach Vulnerable and Disadvantaged People

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This report is based on research gathered during my study visit to the United Kingdom and South Africa in July, August and September 2007.

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REPORT SUMMARY

> *Knowledge, capacity, capability and understanding are the key prerequisites to access to justice.[1] If legal aid services are to be effective, they need to reach people who are vulnerable, disempowered, poor or marginalised. This requires a holistic, connected service delivery, relationship building, community development and education.*

This report is chiefly aimed at those engaged in the delivery of legal aid services, the development of legal service programs and those involved in public policy. The report aims to bring together key research on the delivery of legal aid services to vulnerable and marginalised groups, most of which is emerging from the United Kingdom but with a brief discussion of recent research in Australia and the United States. At times, the report goes into considerable detail about the research methodologies, findings and their significance in order to bring policy and decision-makers up-to-speed with the often complex research. The report also seeks to draw lessons from these research findings and concludes with recommendations which flow from the empirical findings.

This report, however, is not only of relevance to those engaging in legal aid services but to those who provide advice, treatment and assistance to the community in social services, allied health and health services. Key findings in the report reveal that vulnerable and marginalised people will not always know where to go for help, may not have knowledge, capacity or the confidence to identify their problem as a legal problem and are likely to present to other services first.

The report also finds that many vulnerable and marginalised groups may never seek help at all. These people present the greatest challenge as the research reveals that they are often the most likely to experience serious and escalating problems which can increase their social exclusion.

With a number of Australian jurisdictions adopting legislative human rights frameworks (Victoria and the Australian Capital Territory) and others contemplating their introduction (Western Australia and Tasmania), there are a range of opportunities to enhance human rights and access to justice by insisting on dignified treatment and remedies when unlawful practices are engaged in by government, its agencies and public authorities. Vulnerable and marginalised groups are often required to comply with significant government intervention in their lives by reason of their socioeconomic or cultural position. By virtue of this they can be exposed to significant control over their lives. This control needs to be moderated by the balancing of these peoples' rights. Lessons from the United Kingdom and South Africa reveal that legal aid services can play a significant role in ensuring that the new human rights protections do not only become the domain of those with enough power and influence to enforce them, or those already within the legal system. Legal aid services will need to hold government and its agencies to account under these new laws and will have a role in empowering service providers, advocates and members of the community in accessing human rights protections so that community members can enforce their rights when appropriate.

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[1] See L Curran and M Noone, 'The Challenge of Defining Unmet Legal Need' (2007) 1 *Journal of Law and Social Policy* 63-64.

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The report calls for a dramatic shift in culture both from the legal profession and legal educators in the manner of service delivery, the level of outreach, the fostering of holistic practices, increased and relevant community education and capacity building. All of these are needed in communities who are vulnerable and/or disadvantaged. If inroads are to be made in ensuring access to justice and the adherence to the human rights of all people on Australian shores – not just those with the knowledge confidence and skill to use the legal system – they will require a greater level of understanding and awareness of the complex layers that exist in the causes and manifestations of exclusion and poverty from which clients come. These understandings go beyond stereotypes and require the legal profession to be more adept at problem–solving, rather than restricting itself to narrow technical legal approaches and traditional models of lawyering along hierarchical lines. They will require from the legal profession, a greater willingness to work with other disciplines and to experiment with a range of models for service delivery to reach vulnerable and disadvantaged clients. Such models need to be informed by sound empirical research and evaluation.

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A.   INTRODUCTION

This report is concerned with how legal aid services can be more effectively utilised to improve access to justice and advance the protection of the human rights of vulnerable and marginalised people. This focus is justified by recent research emerging from the United Kingdom where there has been significant survey research undertaken on people with civil law problems (in comparison to other jurisdictions) and which has revealed that:

> overall, those who reported longstanding ill-health or disability, lone-parents, those living in the rented housing sector, those living in high density housing, those aged between 25 and 44 years of age, the unemployed and those on very low incomes were found most likely to experience problems … [I]t appears therefore, that people who are vulnerable to 'social exclusion' are also particularly vulnerable to justiciable problems[2] … [C]ompounding this, vulnerability to justiciable problems is not static, but cumulative. Each time a person experiences a problem the likelihood of experiencing an additional problem increases.[3]

This report will outline research from the United Kingdom and some from Australia, and then informed by this research, it will explore improved ways of providing legal aid services to those who experience disadvantage or who are marginalised. It is hoped that the report will be of relevance, not just in Australia, but beyond this jurisdiction. This is because many of the problems encountered by vulnerable and disadvantaged people in accessing justice are universal. An added impetus for this report was the decision by National Legal Aid in Australia in early 2007 to commission a National Legal Needs Survey, and it is hoped that this report will be useful in informing and assisting this process.

Although the recent research is based on extensive United Kingdom surveys, this author holds the view that similar issues emerge in the Australian context. This is due not only to the author's own practical experience as a lawyer, but also to the findings of the New South Wales Law and Justice Foundation's work in New South Wales, and the findings of a modest trailing of research methodologies by Curran and Noone which will be discussed later in this report.

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[2]   A justiciable problem is defined as a problem which is capable of having a legal solution. Genn conducted early research in the United Kingdom using the term, see H Genn, *Paths to Justice*, Hart Publishing, Oxford (1999).

[3]   P Pleasence, A Buck, N J Balmer, R O'Grady, H Genn and M Smith, 'An Integrated Approach to Social Justice'*, Causes of Action: Civil Law and Social Justice*, Legal Services Commission (2004a) 105-107.

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In this context, it is important to define some of the terms used in this report to avoid misunderstandings that can emerge in different countries which utilise different definitions and have different models of service delivery. In this report, the term 'legal aid services' includes legal aid services provided by the private legal profession for legal aid, salaried legal aid lawyers within legal aid commissions, community legal centres (including neighbourhood law centres and law centres in general) and other services which provide legal information, advice and representation to people on a low income or who are disadvantaged. References to 'vulnerable and disadvantaged groups' are to people who by reason of their socioeconomic circumstances have limited income, limited employment opportunities, have minimal power, live in poverty, have limited education and who often live in communities that are deprived, under-resourced and often lack sufficient infrastructure. It also includes persons who suffer from some form of disadvantage in terms of their state of mental health, intellectual disability, racial or cultural background, their age, or a combination of all these things.

Much of the groundbreaking research in the area of legal aid services has been conducted by the Legal Services Research Centre (LSRC) in London and this research will be the main focus in this report. The LSRC is an independent research division of the Legal Services Commission (LSC) set up in 1996 to inform legal aid policy and reform. In recent years, it has examined advice-seeking behaviour and problem-solving strategies used by people in England and Wales with some further studies in Scotland and Ireland.[4] In addition, other informative research has been conducted by Cardiff Law School and others in the United Kingdom. This report will summarise some of this key research and its findings.

In Australia, research on legal aid services has been somewhat limited due to a lack of funding and governmental interest.[5] There has been some significant research undertaken in New South Wales by the New South Wales Law and Justice Foundation which will be briefly

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[4] See LSRC brochure (2006). This brochure states: 'The LSRC has a broad remit to conduct strategic research in the civil and criminal justice fields. It conducts both qualitative and quantitative research and publishes the findings regularly in journals, papers and books. Alongside this empirical research, it also conducts theoretical analyses of the political, social and philosophical foundations of publicly-funded legal aid and advice services.'

[5] Senate Legal and Constitutional References Committee, *Inquiry into the Australian Legal Aid System: Second Report*, Senate Printing Unit, Canberra (June 1997) and see also Curran and Noone, above n 1, 63 and M Noone, 'Access to Justice Research in Australia' (2006) 31(1) *Alternative Law Journal* 30.

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discussed in this report and there is recent research in New Zealand[6] and Canada.[7] However the main scope of this discussion will be to consider the research developments emerging from the United Kingdom and also how these intersect with and reinforce some of the recent research on disadvantaged people and access to justice conducted by the New South Wales Law and Justice Foundation in New South Wales and by Curran and Noone at La Trobe University in Victoria, Australia.

B.   BACKGROUND

1.   Different contexts in the politics of poverty in the United Kingdom and Australia

One challenging question in the context of emerging human rights legislation in South Africa, New Zealand, the United Kingdom, Canada and recently in some parts of Australia, is how human rights frameworks will apply to the actions of the Executive and its delegates.[8] This report has a particular interest in how human rights frameworks and legal aid services are being used by people who are vulnerable, disempowered, poor and marginalised to improve the treatment and the respect and dignity that is accorded to them.

One of the difficulties for people who are in this position is that government and its departments often play a significant part in their lives. Poor and disadvantaged people rely on government services to a greater degree than the rest of society. They rely on governments for income support, public housing and health care, and are accordingly subject to significant government scrutiny over how they lead their lives and how accountable they are given the services that are provided to them.[9] Such a scenario sets up a situation of dependency because people can be so frightened of challenging their treatment by government agencies,

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6   *National Survey of Unmet Legal Needs and Access to Services*, Legal Services Agency (2006).

7   A Currie, 'Civil Justice Problems and the Disability and Health Status of Canadians' in P Pleasence, A Buck and N J Balmer (eds)*Transforming Lives: Law and Social Process* (Papers for the Legal Services Research Centre's International Research Conference, Transforming Lives, Queen's University, Belfast, April 2006) Legal Services Commission (2007) 44-66.

8   This report can be read in conjunction with a planned article by Curran entitled 'Human Rights: Is there a Place for Vulnerable and Disadvantaged People?'

9   D Fleming, 'Legal Aid and Human Rights' (Paper presented at the International Legal Aid Group Conference, Antwerp, 6-8 June 2007) 20.

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in fear of losing their benefits[10] and where they are also often unaware of their rights,[11] that they will tolerate inappropriate intrusion and sometimes poor treatment. For this reason, the extent to which the actions of civil servants and their agents are required to conform to human rights standards, the levels of understanding of these standards (both within the civil service, its agencies, community organisations and the affected community), and access to services for vulnerable or marginalised people, become critical factors in whether they can have their rights adhered to and can seek remedies to protect their rights. Legal aid services have a pivotal role to play in facilitating both access and awareness within vulnerable communities of human rights and also in holding government and its agencies to account for unlawful or inappropriate treatment of these people. In addition, in any analysis of how legal aid services are provided – given that many who use such services are required to have low incomes on means tests applied by legal aid commissions – it is important to have an understanding of the factors affecting poverty, who it affects and its impact upon their lives. The discussion will now turn to a brief overview of different approaches to the issue of poverty.

In a recent report entitled *Australia Fair* by the Australian Council of Social Services (ACOSS) released in October 2007,[12] the number of Australians living below the poverty line was estimated to be 2.2 million. ACOSS urged the government to take action on poverty, noting that an estimated one in ten Australians live in poverty yet both the major political parties had failed to respond. In a survey in Britain one in six children were found to experience deprivation and poverty, 9.5 million people could not afford to keep their houses adequately heated or free from damp, and 4 million people were found not to be properly fed when measured against standards.[13]

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10   M Noone and L Curran, 'Access to Justice and Human Rights: An Exploration of the Experiences of Social Security Recipients in Postcode 3081' (Conference paper delivered to the W G Hart Legal Workshop, Access to Justice, London, June 2007).

11   A Buck, N Balmer and P Pleasence, 'Social Exclusion and Civil Law: Experience of Civil Justice Problems Among Vulnerable Groups' (June 2005) 39 (3) *Journal of Social Policy and Administration* 302, 318-320 and see C Cournarelous, Z Wei and A Zhou, *Justice Made to Measure: New South Wales Legal Needs Survey in Disadvantaged Areas*, New South Wales Law and Justice Foundation <http://www.lawfoundation.net au/report/survey2006>.

12   See Australian Council of Social Services <http://www.acoss.org.au>.

13   J Bradshaw, D Gordon, *Poverty and Social Exclusion Survey of Britain*, Office of National Statistics (2002) <http://www.bris.ac.uk/poverty/pse/pres_rel.htm>.

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As stated, many people susceptible to justiciable problems (those problems for which there is a potential legal remedy)[14] are on a low-income. It is well-understood that poverty and deprivation also lead to poor education, poor health outcomes, alienation and disempowerment[15] and subsequently limits people's capability and capacity to achieve improved outcomes in terms of well-being and public participation in civic life.[16] It is the author's view that any attempts to improve legal services to the vulnerable and disadvantaged must take into account the implications of poverty and inequitable income distribution, and the systemic inequities that occur in a justice system that has been historically modeled on the protection of property interests, highly complex and technical legal language and expensive charges for legal services.[17]

In the last decade England and Australia have taken dramatically different policy approaches to this issue of poverty. In England there has been a conscious effort by the British Government to reduce social exclusion. In Australia, there has not been such a concerted strategic long-term endeavour to address poverty by the Federal Government. This divergence is well-illustrated in the following quotes concerning the approach of the two governments to poverty, although it is noted that the comments were made in the context of global poverty.

In 2005, Gordon Brown, the then Chancellor of the Exchequer and now Prime Minister of the United Kingdom stated:

> I believe there is now a sense amongst peoples of this world that when some are poor, all are impoverished. When many are deprived, all are diminished, and I believe there's a sense that when some are suffering, all of us suffer, and it's to build on that new common sense that I see in every continent of the world that we must now make 2005 not just a year when we move discussion forward, but where action actually happens.[18]

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[14]   Genn, above n 2.

[15]   D G Smith, D Dorling and M Shaw, *Poverty Inequality and Health in Britain 1800-2000*, The Policy Press (2001).

[16]   A Sen, *Development as Freedom*, Anchor, New York (1999).

[17]   I Duncanson, 'Out of the Enlightenment's Shadow' (1994) 12(1) *Law in Context* 20-51and B Abel-Smith and R Stevens, *Lawyers and the Courts: A Sociological Study of the English System 1750-1965*, Heinemann Educational Books Ltd, London (1967).

[18]   ABC Radio National, 'WEF turns its focus to poverty', *AM*, Saturday 29 January 2005 <http://www.abc.net.au/am/content/2005/s1291689.htm>.

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In the same radio program, the Australian Prime Minister, Mr John Howard stated:

> Well, I think the biggest thing that the developed world can do to alleviate poverty is to remove trade barriers. The benefits of that are infinitely greater than benefits from direct aid. Direct aid works well in some cases. In many other cases, because of poor governance, it works very badly.[19]

Brown clearly adopts a more interventionist policy whereas Howard reveals a faith in freeing up market forces and then improvements will follow. In the United Kingdom there has been an active and systematic policy approach to combating poverty.[20]

In 2004 the Australian Senate Community Affairs Committee released a report entitled 'A hand-up not a hand out: renewing the fight against poverty'.[21] It was the most significant inquiry on poverty since the Sir Ronald Henderson Poverty Inquiry in the 1970s. The Senate took over one and a half years to consider the issue of poverty in Australia. It took 350 submissions, received research on levels of poverty and the gap between rich and poor in Australia and heard evidence at Committee hearings around Australia. It found that depending on the measure of poverty used between two to four million Australians were living in poverty. It concluded that poverty most effected children and sole parents. It made 95 recommendations and suggested that an anti-poverty strategy should be adopted by Federal Government. In a telling response by the Federal Government it dismissed the majority report of the Senate. It stated that the report contained a 'grab bag of ideas', 'lacked cohesiveness or coherence' and did not identify the costs or how the proposals were to be funded. In the Federal Government's response to the report, it did not acknowledge the extent of the problem nor did it indicate any concrete measures it was prepared to adopt other than to suggest that the solution is to 'build a strong and resilient economy' and that an 'overview of government policies … highlighting the government's achievements to date' be undertaken. The Government stated that the policies suggested by the recommendations of the Senate Committee, if implemented, could only be funded by major tax increases and by major reductions in expenditure'.[22]

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[19]   Ibid.

[20]   Social Exclusion Unit, *Preventing Social Exclusion,* London, Cabinet Office (2001) 10.

[21]   See <http://www.aph.gov.au/hansard/senate/committee/clac-cttee/completedinquiries/2002-2004/ poverty/report/boi.html>

[22]   See <http://www.aph.gov.au/SENATE/COMMITTEE/CLAC_CTTEE/completed_inquiries/2002-04/ poverty/gov_response.pdf>

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Stilwell has observed that the correlation between economic growth and improvements in well-being, particularly of those vulnerable to poverty, is weak and that systematic programs are necessary to overcome economic inequality.[23] Although at times the present report may highlight some of the limitations of policy in the United Kingdom it acknowledges that poverty is at least on the political agenda there.[24]

By contrast the English Labour Government has tried to tackle poverty through policy interventions. It adopted the use of the phrase 'social exclusion' following the recognition of its importance in the European Union. It established a Social Exclusion Unit in 1997 which now resides in the Office of the Deputy Prime Minister. There is considerable debate as to how effective the policy has been with a significant economic and social divide still in existence in the United Kingdom and, in the view of some, it is still growing. One can argue that at least in the United Kingdom there is an acknowledgement of social exclusion and the need to do something about it (rather than a denial of social exclusion as exists at the highest level of government in Australia).[25] The Social Exclusion Unit describes 'social exclusion' as "a shorthand term for what can happen when people or areas suffer from a combination of linked problems involving unemployment, poor skills, low incomes, poor housing, high crime, bad health and family breakdown.'[26] There has been some criticism of this definition as being too broad or too narrow, and that it negatively labels people as being outside the system. Some critics, including the present author, argue that the government should have adopted a term such as 'social inclusion' which imposes a positive obligation on government to do something and forces the issue from the broader systemic issues which bring about poverty. Nevertheless, the use of the term social exclusion has been a popular tool in the United Kingdom in linking the relevance of the provision of legal aid services with other departments and other areas such as social services and public health.[27]

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[23]   F Stilwell, 'Processes of Globalisation: The Generation of Wealth and Poverty' in K Serr (ed),
        Thinking About Poverty (3rd ed 2006),The Federation Press, 8, 20.
[24]   See *The Guardian* (London), (17 August 2007), 3.
[25]   See Senate Committee (2002-2004), above note 21 on the Government's response to the Senate
        Committee's report on poverty.
[26]   See Social Exclusion Unit, above n 20, 10.
[27]   See discussion of the term 'social exclusion' and the preference for references to 'poverty' in A
        Walker, 'Introduction: The Strategy of Inequality' in A Walker and C Walker (eds), *Britain Divided:
        The Growth of Social Exclusion in the 1980s and 1990s*, CPAG Ltd (1997) and T Burchardt, J Le
        Grand and D Piachaud, 'Introduction' in J Hill, J Le Grand, D Piachaud (eds),*Understanding Social
        Exclusions*, Oxford University Press, New York (2002) 1.

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2. A background to the legal aid systems and the research climate

In the United Kingdom the research approach taken by various organisations in the Legal Aid
Board era pre-1996 had been tightly linked to governmental objectives. For example, in one
research paper the researchers indicated that their methodology was to answer questions
such as whether the legal services approach is the best way of "meeting of the Lord
Chancellor's objectives for legal aid".[28] Often the research tended to neglect the experience of
the people who were receiving legal aid services and to be more concerned with cost-cutting
and efficiency factors in order to meet governmental imperatives. This does not necessarily
result in quality or effective legal aid service delivery. Such an approach can mean that
services, in fact, miss the point as they lack a sense of realism about what is actually
happening on the ground. Some people involved in legal aid service delivery raised concerns
that even today, the LSC was unduly concerned with what government wanted and with
spreading the limited amount of money that they have more thinly. [29]

By way of background, the legal aid systems in the United Kingdom and Australia are
differently constructed. The LSC in the United Kingdom is responsible for funding private
lawyers to provide legal aid services. In the United Kingdom, much of the legal aid work is
conducted by agencies or the private profession through contractual arrangements with the
LSC. The LSC manages and monitors these contracts. The LSC is also involved in the funding
of other legal aid services, but unlike its equivalents in Australia, does not engage in direct
service delivery itself nor does it employ salaried lawyers who do so. In the author's view, this
creates a disjuncture and disconnect between the realities of people on the ground and those
that make the policies that affect the people on the ground. As a result, the author is
concerned that what can emerge is an overly bureaucratic approach to legal aid service
delivery which can tend to be about control and administrative ease and cost efficiency (though
in fairness to the LSC the latter is the overriding concern of the government which provides the
imperatives).

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[28] G Bull and J Seargeant, *Alternative Methods of Delivering Legal Services*, Policy Studies Institute,
     London (1996).
[29] Discussions by the author with people involved in direct service delivery in the United Kingdom from
     July to September 2007.

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Within the LSC model there is a new initiative which makes provision for what is described as 'tolerance work.'[30] This allows contracted solicitors to do limited work outside their specialisation. The situation in the United Kingdom is markedly different to that in Australia where, on the whole, the salaried lawyers within the legal aid commissions, legal centres and the private profession are given much more discretion and flexibility in how they provide services to their clients. In other words, they are given far more latitude to respond to client need based on the circumstances of each individual client. In the author's view, the extensive contracting and detailing of the parameters in which services can be provided in the United Kingdom constrains the innovativeness and responsiveness of service provision.

The 'mixed model' of legal aid service in Australia, which comprises the mix of salaried in-house lawyers and legal aid commissions undertaking casework alongside the private profession, has the led to greater accountability in the private profession. As the legal aid commissions themselves have direct client experience they can hold the private profession to account based on this experience. In the United Kingdom, the private profession holds a virtual monopoly over how legal services are to be provided and is a very strong interest group. This can make it very difficult when the LSC tries to organise services differently based on this research but also leads to, in the author's opinion, greater mistrust about some of the motives of the profession when they are delivering services to the client. In some cases this may be justified but in other instances it can thwart responsiveness to clients. The LSC has therefore held tight control over contract management. This does not always lead to better outcomes for clients. One can argue that the private profession in the United Kingdom needs to be trusted more by the LSC. However, the private profession needs to demonstrate less self-interest and be prepared to recognise what is best for the client, rather than what works for the profession. This author is of the view that the mixed model in Australia achieves such a balance.

A good understanding of the complexities, barriers and difficulties that can be faced in direct service delivery needs to be central for any agency that does not engage in legal service delivery itself. For example, the more complex a client's personal circumstances and legal case, the more time and increased number of attendances and support through the legal maze they require. Yet there seems to be a growing concern in the United Kingdom about ensuring

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[30]   See R Moorhead and R Harding, *Quality and Access: Specialist and Tolerance Work under Civil Contracts*, Stationary Office, Norwich (2004).

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that high numbers of people are being seen by legal aid services, rather than concern about the actual quality or effectiveness of the services being provided to the people seeking help. It is noted this is the view of this author only and should not be attributed to any other agency or personnel of any other agency.

However, there are signs that the LSC is, in fact, heeding the results of the research being discussed in this report particularly the useful and constructive research of the LSRC. The LSC developed a community legal service strategy in 2006 which tries to implement 'an integrated and seamless service' as recommended by the LSRC using Community Legal Advice Centres (CLACs) and community legal and welfare advice networks (CLAWs) as models for delivery of combined social welfare services. The aim is to draw on specialisations and advice agencies in regions that are jointly-funded as one single entity to provide for social welfare, family and other services. The networks will rely on groups of organisations to provide collectively rather than individually.[31] This is a good idea in that it brings different service agencies and multi-disciplinary skills together as the research suggests ought happen.[32]

Moorhead highlights however, that the new CLACs and CLAWs are using a competitive model which may jeopardise LSC funding for other providers that have been historically successful in working with communities but may lack the wherewithal to compete with well-coordinated, funded tender bids, and may accordingly face their services being reduced or withdrawn. The present author notes that many of these agencies have strong historical links with their local community and have worked for improved outcomes beyond immediate service delivery. For example, in some regions law centres provide services beyond casework and include community legal education or campaign work aimed at resolving the systemic reasons for social exclusion or at rectifying imperfect laws.[33] It will be interesting to see whether the CLACs

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[31] Legal Services Commission, *The Legal Services Commission Strategy for the Community Legal Service*, 2006-2011(2006) 3.

[32] R Moorhead, M Robinson, and Matrix Research and Consultancy, *A Trouble Shared - Legal Problems Clusters in Solicitors and Advice-agencies*, Cardiff Law School, Cardiff University (November 2006).

[33] For a discussion of the important role in improving access to justice and increasing the efficiency and responsiveness of the legal system of community legal education and law reform see L Curran, *Making the Legal System More Responsive: A Report on the Impact of Community Legal Centre Law Reform Initiatives*, West Heidelberg Community Legal Service (May 2007) and M Rix and S Burrows, 'The Foundations of Legal Citizenship: Community Law, Access to Justice and the Community Legal Sector', (2005) 30(3) *Alternative Law Journal* 126,130 and J Giddings, 'Casework, bloody casework (1992) 17(6) *Alternative Law Journal* .

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and CLAWs require agencies to merely meet contract requirements in the narrow sense of service delivery, and therefore limit the capacity to address broader issues around inappropriate, unjust, inefficient or discriminatory laws, administration or practice. This would be very unfortunate. Moorhead further observes that the LSC needs to recognise the need for latitude in developing best practice.[34] The LSC also may need to be cautious and trial and evaluate the new model before embracing it. For in using the competitive model they may squeeze out agencies that do good work.

The LSRC in the United Kingdom is, refreshingly, a research-based organisation that draws its conclusions from empirical findings. It receives funding to conduct large-scale periodic national surveys across England and Wales. It examines the nature, incidence, experience and advice-seeking behaviour of the population in relation to justiciable problems. The survey is funded by the Department for Constitutional Affairs (now the Ministry of Justice) and the LSC. The survey is now known as the English and Welsh Civil and Social Justice Survey (CSJS). The first national survey was conducted in the summer of 2001 followed by a second survey in 2004. The survey is now continuous and some data is collected every month.

This information is of great benefit and relevance in the Australian context as there has never been such a nation-wide comprehensive or intensive survey conducted here in relation to civil law matters, social justice and understanding how people receive or do not receive legal aid services, because it has never been a priority of the Australian government. In Australia there has been some survey research undertaken in New South Wales by the Law and Justice Foundation, based on the earlier survey of material developed by Hazel Genn.[35] This research has up until recently been conducted in New South Wales only, and will be discussed later in this report.

In a recent development, National Legal Aid[36] (comprising all of the statutory legal aid commissions around Australia) has commissioned a nationwide legal needs survey which is

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[34]   See Moorhead and Harding, (2004) above n 30.
[35]   Law and Justice Foundation of New South Wales, *Access to Justice and Legal Needs*: *Stage 1, Data Digest and Stage 2: Quantitative Legal Needs Survey Bega Valley – Pilot* (2003).
[36]   For more information see <http://www.nla.aust.net.au/>

now underway.[37]   The extensive surveys of the nature undertaken in the United Kingdom may
now occur in Australia even in the absence of the extensive government resources that
facilitated the United Kingdom research. National Legal Aid is endeavouring to fill the
information vacuum that has been identified in Australia on legal aid services.[38]

3. Some key principles in legal aid service delivery

In 1997 Smith outlined ten useful principles that could guide legal aid policy.[39] They are as
follows:

(i)   Access to justice is the constitutional right of each citizen.

(ii)   The interests of the citizen should predominate in policies on access to justice and not
        the interests of the providers of services. For example, they should not be determined by
        the lawyers or the legal aid agencies' self-interests.

(iii)   The goal is not only procedural justice but substantive justice.

(iv)   People have a need for legal assistance both in relation to civil and criminal law and civil
        justice should not be the 'poor relation'.

(v)   Access to justice requires policies which deploy every possible means toward attaining
        their goal including reform of substantive law, precedent, education, information and legal
        services.

(vi)   Policies on legal services need to deploy a portfolio approach involving a wide range of
        provisions, some publicly-funded and some not, some provided by lawyers and some
        not. Integration of approach is key and in a range of ways in which the citizen may
        receive assistance. It is critical for it to be realistic.

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[37]   National Legal Aid is in the process of retaining the New South Wales Law and Justice Foundation to
       conduct the survey as the software and instruments developed for the New South Wales survey will
       save considerable money in what would be an otherwise expensive exercise. A nationwide telephone
       survey is scheduled for September – December 2007. See <http://www.lawfoundation.net.au/
       ljf/app/&id=OC3F58OCF6A16017CA2572D600394431>. Victoria Legal Aid is hoping to complement
       this research with further studies on vulnerable and marginalised groups in 2008-2009. The author is
       on an Advisory Committee set up by Victoria Legal Aid in relation to this project and it is planned that
       the LSRC will be involved given its expertise.

[38]   In 2004, the Australian Senate Legal and Constitutional Affairs Committee in its Final Report on
       Legal Aid Services lamented the lack of empirical data in Australia in relation to legal need. See
       <http://www.aph.gov.au/Senate/committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/
       report/b01.htm>.

[39]   R Smith, *Justice: Redressing the Balance,* Legal Action Group, London (1997).

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(vii)   Programs offered must take account of the realistic levels of resources but these should be seen as limiting policies rather than defining them. Smith states that concentration on limiting the cost must not exclude consideration of the fundamental purpose of the expenditure. Limited resources must be regarded as a restriction on the means not the ends of the policy.

(viii) Within civil law, more attention should be given to the particular legal needs of poor people.

(ix)   The full potential of technical advances must be harnessed.

(x)   The constitutional right to be presumed as innocent until proven guilty should be respected as a cardinal principle of criminal law.

These principles form useful yardsticks in any discussion, a decade later, on improving the effectiveness of legal aid services to the community.[40] Much of the research that is discussed in this report touches on these principles and so they are useful as gauges in discussing where the research might take services into the future.

This report will now discuss some of the findings of research in the United Kingdom. There are a number of United Kingdom studies discussed but one of the main sources for the LSRC's research is based on data from the LSRC's English and Welsh Civil and Social Justice Surveys in 2001 and 2004, which has informed further studies on:

- Research on Vulnerable Groups
- Multiple problems and the clustering of problems
- Co-located Services
- Issues linking justiciable problems with ill health and well-being

C.   WHAT THE RESEARCH SAYS

Building on earlier research by Genn in 1999,[41] the LSRC conducted the CSJC of 5015 adults from 338 households randomly selected from over 73 postcode sectors, to produce a sample representative of the population of England and Wales. A parallel temporary accommodation

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[40]   Pleasence et al, above n 3.
[41]   Genn, above n 2.

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survey was also conducted on 197 adults in 170 households. The questionnaire was in two parts: the screen component which involved all respondents and the main component where those respondents reporting problems were individually interviewed for an average of 30 minutes. Eighteen categories were used in the survey to describe justiciable problems. These included clinical negligence, children, consumer problems, mental health problems, discrimination, divorce, domestic violence, money or debt problems, rented housing, relationship background, owned housing, neighbours, unfair police treatment and welfare benefits.[42]

The screen component reported the incidence of problems and the basic advice strategies adopted together with detailed sociodemographic information from each respondent. The main component focused on one problem and recorded in-depth data relating to advice-seeking behaviour. This included what the respondents did or did not do, where they went for help and their level of awareness of the availability and location of advice services. The main component also covered the type of funding the respondents obtained, the costs incurred, objectives in trying to resolve the problem and the perceived impact on their lives of dealing with the problem.[43]

In the most recent survey in 2004, the LSRC conducted a more detailed analysis of the experiences of vulnerable groups including children and young people, the homeless and lone-parents. By conducting ongoing periodic surveys, the researchers have been able to refine and target their questions to gain a deeper understanding of the knowledge and advice-seeking behaviour of vulnerable people. Their research is commendable and builds awareness in what would otherwise be a worldwide vacuum in relation to understanding people's civil law problems, which can inform public policy decision-making.

This discussion will now outline some of the findings of this research that can effectively inform how legal aid services could be better positioned to reach the vulnerable and the marginalised.

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[42]   Pleasence et al, n 3.

[43]   Ibid.

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1. Vulnerable Groups

In an article outlining the results of the CSJS, the LSRC examined the civil justice problems of vulnerable groups – identified as those with long-term illness or disability, young and elderly respondents, low-income respondents and those living in temporary accommodation.[44] These are the groups of people who are especially likely to have justiciable problems.[45] The other grouping which experienced particular vulnerability was the lone-parent population, whose needs will be discussed in greater detail later in this section.[46]

The LSRC analysis of the survey data revealed the following characteristics of the respondents in these vulnerable groups (compared with the national population):

- **Low Income**

    - slightly more of them were female
    - they were slightly more likely to be black or of minority ethnic background
    - they were more likely to live in flats
    - they were far more likely to be lone-parents (compared with people who had an income over £10,000)
    - far more of them were without the use of motorised transport
    - far more of them suffered from long-term illness or disability
    - a higher proportion of them lived in publicly-rented accommodation and fewer of them had mortgages
    - far more were retired and fewer were in full-time employment
    - they were slightly older than respondents earning over £10,000
    - they were significantly more likely to report rented housing, homelessness and discrimination problems

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[44] A Buck, N Balmer and P Pleasence, 'Social Exclusion and Civil Law: Experience of Civil Justice Problems among Vulnerable Groups' (June 2005) 39(3) *Journal of Social Policy and Administration* 302, 318-320.

[45] Pleasance et al, above n 3.

[46] See R Moorhead, M Sefton and G F Douglas, 'The Advice Needs of Lone-parents' (2004) 34 *Family Law* 667 and A Buck, P Pleasence, N Balmer, A O'Grady and H Genn, 'Lone-parents and Civil Law: An Experience of Problems and Advice-seeking Behaviour' (2004) 38(3) *Journal of Social Policy and Administration* 253-269.

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- they reported significantly more welfare problems and family relationship problems, such as divorce, domestic violence and child delinquency.

Respondents with low incomes were less likely to handle the problem alone. They were also slightly more likely to obtain advice and twice as likely as other respondents to try and find help and fail and then handle the problem alone. The surveys found that the rates of inaction and trying and failing to obtain advice and giving up were approximately the same for low-income and other respondents.[47]

- **Temporary accommodation**

  - more likely to be younger
  - more likely to have a longstanding illness or disability
  - more likely to be single or a lone-parent
  - more likely to be black or minority ethnic
  - more likely to be on lower incomes
  - less likely to have educational qualifications
  - far more likely to experience one or more problems

Of the 197 respondents to the temporary accommodation survey, 165 (83%) experienced one or more problems in the period from January 1998 to summer 2001. This compared with the national survey where 2,087 (37%) out of the 5,611 respondents reported one or more justiciable problems. This means that temporary accommodation survey respondents were more likely to experience one or more problems than the rest of the population. Some of the problems experienced by vulnerable groups were more pronounced and specific than those experienced in the general population, for example, problems with immigration and discrimination and rental problems. People in rental accommodation reported problems fourteen times more frequently.

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[47] Buck et al, above n 44, 313-314.

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There was also a tendency for temporary accommodation respondents not to do anything about their problem/s. However if they did act, they were more likely to obtain advice for their problem instead of dealing with the problem through self-help.[48]

- **Illness or disability**

The results also showed that people with long-term illness or disability suffer a range of justiciable problems. This seems to suggest a link between people's health and being more prone to having justiciable problems as well. In the author's view an awareness of this relationship can inform the delivery of health services and legal services. It suggests that if people are unaware of how to deal with their civil problems, this may impact on their health and lead them to present to health services. Consequently, if health services are better-equipped to identify such problems and the sources of information exist and linkages to other services occur, patients may have better outcomes for their health *and* justiciable problems. Further observations on the link between health and justiciable problems are offered later in this discussion (see Section C part 6).

- **Young people**

Similarly, young people have their own distinctive problems, for example, it emerged that they are prone to homelessness and that when they report a problem it is often of a serious nature. Young people and people in temporary accommodation experience higher rates of justiciable problems. Delivering legal services at or through the accommodation service may therefore better target such potential clients, many of whom were not gaining assistance.

- **Elderly people**

There was a low level of problem reporting amongst elderly people however this does not mean that elderly people are not potentially vulnerable to justiciable problems. It has been shown that extreme forms of social exclusion do occur amongst the elderly, for example,

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[48]   Ibid 315-316.

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with homelessness.[49] The LSRC note that the lower level of reporting by elderly respondents may be a reflection of a greater life experience and practice in dealing with problems, which makes problems less likely to be difficult to solve and hence less likely to be reported. The researchers also observe that older people are more likely to put up with problems as part of life and have higher levels of stoicism.[50] These conclusions from the research in the United Kingdom may be developed by the research conducted in Australia.[51] The research of the New South Wales Law and Justice Foundation on older people concluded that older people find it difficult to identify what they need or want to know about their rights. The research found that older people needed legal information on accommodation and housing, health, financial and consumer issues, and discrimination in employment and services. It found that older people lack confidence and had perceptions of the law as disempowering and that it could not solve their problems. Respondents had a fear of lawyers acting against their interest with barriers of high costs, a lack of interest from practitioners in issues of older people, a lack of knowledge of older people about legal issues they were facing, a reluctance to complain and a lack of awareness of how to complain.

The incidence of problems focussed on by the LSRC reflected the variation in incomes between respondents on a low income and those on higher incomes of over £10,000. For example, low-income people had problems involving benefits and rented accommodation and also faced discrimination. It was also noted that a larger proportion of vulnerable groups experienced long-term illness or some form of disability.

The research reveals that those who are vulnerable or marginalised have many problems rather than one or two over a significant period. There is clearly a connection between the types of justiciable problems, the demographic characteristics of the people and also their exclusion. The LSRC states that:

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[49] See in Australia the Human Rights and Equal Opportunity Commission, *Report into Homelessness* (1991). Also see Commission of Inquiry into Poverty (1975) *Poverty in Australia, First Main Report*, Australian Government Publishing Service, Canberra and M Crane and A M Warnes, 'Policy and Service Responses to Rough Sleeping Among Older People' *Journal of Social Policy* 29, 21-36.

[50] Buck et al, above n 44, 302, 317

[51] See S Ellison, L Schetzer, J Mullins and K Wang, *The Legal Needs of Older People*, New South Wales Law and Justice Foundation, New South Wales (2004). See also The New South Wales Law and Justice Foundation <http://www.lawfoundation.net.au/report/older>.

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> There is a clear overlap between those demographic characteristics associated with social exclusion and vulnerability, such as living in temporary accommodation or being on a low income and the experience of justiciable problems. Some justiciable problems may be a consequence, others a precursor to social exclusion.[52]

The researchers also note that these figures revealed patterns of advice-seeking behaviour amongst low-income people which demonstrate the important role legal and more general advice services can play in tackling social exclusion and helping vulnerable groups with their problems. The greater integration of legal and other advice services in providing suitable legal advice and assistance might play a crucial role in helping people move out of some of the worst experiences of social exclusion by, for example, preventing the clustering of civil problems and life crises such as debt or homelessness which lead to more extreme situations.[53]

2. Multiple Problems as Clusters

Identifying the clusters

Further research on the nature of problems by the LSRC revealed that justiciable problems do not occur in isolation but often come in clusters and that there are distinct areas when this can occur.[54] One such cluster was family problems such as domestic violence, divorce and relationship breakdown which also led to childhood problems. Another cluster involved homelessness, unfair police treatment and action being taken against the respondent. Further clusters emerged regarding medical negligence and mental health problems, and those involving consumer transactions and or connected with money, debt, employment, neighbors, rented housing and social housing[55] and welfare benefits.[56]

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[52] Ibid 302, 318
[53] Ibid 302, 319.
[54] P Pleasence, N J Balmer, A Buck. A O'Grady and H Genn, 'Multiple Justiciable Problems: Common Clusters and their Social and Demographic Indicators' (July 2004) 1(2) *Journal of Empirical Legal Studies*, 301-29.
[55] In Australia, this is termed public housing.
[56] Pleasance et al, above n 54, 301, 314-315.

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The likelihood of respondents taking action to resolve particular types of problems

The LSRC found that respondents with mental health, medical negligence, personal injury and domestic violence problems were comparatively more likely to do nothing to resolve the problems. In a majority of cases this was a consequence of having a feeling that nothing could be done.[57] Consumer and money or debt problems had high proportions of respondents handling the problems alone. Divorce had a high proportion of respondents obtaining advice (this could be accounted for by the fact that people are linked into a process already in order to gain a divorce). Surprisingly, despite the usual advertising campaigns by law firms on personal injury, this area of law saw a low rate of respondents acting to resolve personal injury matters.[58]

People's perception of their problems impacts on what they will do about them

The above findings verify the concern that people's perception of their problem and whether it can be solved is a factor in their advice-seeking behaviour. It also poses the question as to how well-informed people are about their options before they make the choice to do nothing, and what their actual capacity to become informed and take action is given their level of education and health. Notably, the LSRC research revealed that fear is one of the reasons for inaction.

In research that will be discussed later in this report (see Sections D and E), it was also found that those with lower income and less educational qualifications and those who report less about their problems and have less knowledge about how to deal with their problems, do worse in terms of their outcomes.[59] In the author's view this is a significant argument in itself for improving the delivery, targeting and approach of legal aid services to vulnerable and marginalised groups. For if better ways of reaching these groups are not found, the outcomes can only continue to worsen and deeply entrench the social exclusion, poor health outcomes and reduced well-being of these groups.

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[57] Ibid 301, 311

[58] Ibid.

[59] A Buck, P Pleasance and N J Balmer, Annex to the PLEAS Taskforce Report, 'Education Implications from the English and Welsh Civil and Social Justice Survey' (July 2007).

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The Cardiff research

The above observations regarding clusters are consistent with findings from research undertaken by Cardiff Law School in Wales which also found that problems tend to come in clusters.[60] Moorhead et al (the Cardiff researchers) conducted research examining the incidence and recurrence of legal problems.[61] They examined how clients of 12 law firms and advice agencies presented with multiple problems (clusters) and how these problems were dealt with. A mix of solicitors in Citizens Advice Bureaux, law centres, specialist advice agencies and local authority providers in South Wales and South-west England were considered. The focus was on three areas, namely social housing, benefits and debt. The research used a number of methods which included:

- the structured observation of 178 interviews between the advisers and clients
- structured interviews with advisers on 487 additional places
- 35 semi-structured interviews with advisers about clients with multiple problems and surrounding service delivery issues
- 58 clients were also interviewed about their experience after the interview with their adviser
- a further 36 clients were interviewed about the case three to four months later in order to get a sense of how the case had developed
- two workshops were also held with the advisers and stakeholders to discuss the interim research findings.

The Cardiff research found that 40 to 50% of clients had problems that appeared in clusters. The most common clusters were housing, benefits, debt and relationship breakdown. These findings are consistent with findings by the New South Wales Law and Justice Foundation which will be discussed in Section D. The Cardiff researchers noted that there was a tendency for a broad range of different problems to occur in unpredictable ways. The Cardiff researchers conclude that in designing legal aid service delivery responses, there should be a capacity to recognise that unpredictability in problems which can occur should be factored into a flexible model. The Cardiff research found that problems involving relationship breakdown, children, home ownership, mental health, domestic violence, employment and homelessness give rise

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[60]   Moorhead et al, above n 32.
[61]   Ibid.

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to the most complex and arguably the most serious problems. Given the interrelated nature of
clusters, the researchers suggest that a degree of coordinated management of the problems
rather than dealing with them in isolation would be of benefit. The researchers state:

> Certain clients suffer more problems because they are linked but also these clients are
> some of the most vulnerable in the society. These clients' legal and social needs are
> complex and intersectional: their social and legal problems interrelate and amplify. Here the
> need for coordinated management of solutions to justiciable and other problems is strong.[62]

The Cardiff research revealed that justiciable problems were all were accompanied by
considerable stress, anxiety and physical and mental health problems thus leaving clients with
little energy to solve their justiciable problems. The Cardiff research is consistent not only with
the research discussed earlier by the LSRC but also with the research conducted by Curran,
Noone and by Sandefur which will be discussed later in this report (see Section D).

Legal skill and an holistic approach

The Cardiff researchers in the cluster research discussed above state that professional help
and representation for vulnerable and marginalised clients generally leaves them feeling more
informed, and calmer with reported reductions in stress levels and associated health
problems.[63] So there is clearly a public health and public policy reason for ensuring that the
vulnerable and disadvantaged gain access to this assistance.

The follow-up interview phase of the Cardiff cluster research revealed some concerning
features, as far as this author is concerned, about the lack of detail extracted by lawyers in
client interviews. The research suggested poor and incomplete information gathering by
lawyers from clients about their problems and the extent of their problems. This raised
questions, in view of the gaps in information obtained, about how effectively trained lawyers
are in interviewing clients and whether there are gaps in the information obtained which might
effect the quality of assistance, capacity for appropriate responses and the relevance of
solutions offered to clients. For example, the research revealed that of the clients who were
followed-up 50% had additional problems not dealt with in the initial advice interview with their
legal adviser. These were generally significant problems and about half were linked to the

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[62] Ibid ii.
[63] Ibid.

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presenting problems in some way.[64] Analysis of the data suggested that the structure and organisation of the advice made a difference as to whether clients were able to present with multiple problems.

It is of some concern, therefore, that the Cardiff research tended to reveal that not all of the legal advisers displayed the requisite skills needed to explore and expose the client's more complex problems, many of which were actually interrelated with the initial problem for which the client was seeking help. This demonstrates the critical role in the training of lawyers to go beyond the narrow technical analysis of a client's situation. Legal training needs to skill lawyers to use appropriate questioning in order to expose the true extent of a client's problems during an interview so that the client can receive a more holistic service which may be more long-lasting. This aspect of the Cardiff research will receive further attention in a planned future article by Curran and Moorhead which will explore this in a context of legal professionalism and training.

A holistic approach to problem-solving can potentially relieve some of the burden and consequent stress on clients freeing them up to concentrate on other aspects of their life. The Cardiff researchers concluded that many advisers, when faced with a series of problems, are not dealing with them seamlessly, especially if they lack skills. Moorhead et al state:

> Practitioners' understandings of holistic provision appeared confined to notions such as putting the clients' problems in context and trying, with mixed success, to ensure clients can be sign-posted to appropriate providers when the initial adviser cannot deal with a particular problem. Broader notions of holistic practice such as tackling social as well as legal problems were not accorded much attention by practitioners to whom we spoke. [65]

The researchers identified the barriers to holistic provision as: funding arrangements, organisational capacities, and skills and information deficits that prevent joint working.

The Cardiff research concluded that although many advisers believe they empower clients and give them confidence and information necessary to take more control, in reality, clients were often confused by the instructions they were given and left problems to fester or escalate as a result. They note that clients coping with many years of social exclusion or a dramatic

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[64]   Ibid.
[65]   Moorhead et al, above n 32.

worsening off their health or lifestyle and poor levels of educational attainment and self-esteem, are often ill-equipped to deal with complex bureaucracies or hostile opponents.[66]

3. 'Lone-Parent' Research

The LSRC survey research suggested that lone-parent families were particularly vulnerable to clusters of problems which are often linked and mutually reinforcing.[67] The LSRC concluded that early intervention and advice at an appropriate time may prevent multiple problems. They argue for better defining of vulnerable populations so that they can be better targeted in terms of social programs and public legal services. They stressed the importance of joined up interdisciplinary and cross-departmental approaches to problems.[68] These conclusions are again borne out by positive findings by the LSRC in its most recent report on outreach services, as discussed below in Part 4 of this section.

In addition to the LSRC research on lone-parent families, Moorhead et al also conducted research in 2004 into the advice needs of lone parents, which they defined as single parents with residential care of one child or more under the age of eighteen years. [69] Their research was based on a survey of 200 callers to a 'One Parent Families / Lone-Parent Helpline'. They also conducted five focus groups with lone-parents and advisers. The research found that lone-parent families were a vulnerable and marginalised group in that they had high needs, often have problems which are longstanding, their problems involve both legal and non legal problems, that they use a high number and diverse range of advice sources for help, that the quality of service that they receive is variable, and a large number of lone-parents do not seek help or struggle to find help they need.[70] Lone-parents were not only likely to have more justiciable problems (a mean of 3.4 compared to 1.9 in the general population[71]) and these problems predominantly related to benefits and debt. Benefit issues accounted for 69% of the problems for a third of those interviewed. This rate was higher than that which was recorded in the LSRC research.

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[66]   Ibid iii.
[67]   Pleasance et al, above n 54, 301, 325.
[68]   Ibid 301, 326.
[69]   R Moorhead, M Sefton and G Douglas, *The Advice Needs of Lone-parents*, One Parent Families, Cardiff University (2004).
[70]   Ibid 9.
[71]   Ibid 18.

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In addition, benefit problems formed part of a cluster of problems for lone parents. Debt was the most prevalent issue after benefits. 48% dealt with debt issues and for 32% debt was a significant problem which they had difficulty resolving.[72] The most likely clustering with debt problems were problems with benefits, child support and housing. Although only 6% reported significant problems with domestic violence and harassment, when these were reported, those people experienced an increase of 81% in their other justiciable problems.

The researchers concluded that lone-parents:

- were more likely to suffer social exclusion than the rest of the population
- were more likely to be young
- were more likely to have left school at sixteen years of age
- were more likely not to have qualifications and to be tenants
- experienced problems across a wide range of areas, and
- experienced problems that predominantly (75%) went up to twelve months or longer after the initial relationship breakdown.

Critically, the researchers questioned whether solicitors ought to have a dominant role in providing advice, in view of the number of lone-parent families using other non-legal entry points into the system. This finding correlates with findings of the New South Wales Law and Justice Foundation discussed in section D of this report. For instance, many lone-parents in the Moorhead research did not approach solicitors and obtained more substantial advice elsewhere. 30% contacted lawyers but did not perceive them as providing substantial help with their problem. The lone-parents surveyed struggled to find the help that they needed.[73] In 20% – 50% of cases they were unable to secure assistance; 41% wanted face-to-face advice but were unable to find it; 32% wanted to find advice on an issue but could not get it; and 12% were unable to find anyone to provide legal aid for their problem/s with benefits, contact and child support.[74]

This Moorhead research on lone-parents highlights that a significant group of people who are in need of and want help, are not able to find it. It also highlights the presumption that people

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[72]   Ibid 26.
[73]   Ibid 36.
[74]   Ibid 79.

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with a legal problem will present to a lawyer is a fallacy in relation to this group. There is clearly a need for different approaches to providing legal services, acknowledging that people with legal problems may not seek out lawyers but seek their advice elsewhere.

4. Research into Outreach Services for People Susceptible to Debt

Further research examining how to target specific groups such as people at risk of debt was released in 2007 by the LSRC with a report into a number of pilot outreach services.[75]

By way of background, in the United Kingdom, Gordon Brown (when he was Chancellor of the Exchequer) determined that it would be a Treasury priority to assist people in debt and also to divert people from taking out onerous loans. The reason the issue of debt is a United Kingdom government priority is that there is spiralling and unmanageable debt in the United Kingdom, with an estimated 3 million households (12%) operating on a current account debt.[76] To this end, Treasury announced a £120,000,000 strategy, £6 million of which was dedicated to the LSC to pilot outreach services to people who are socially and financially excluded. The aim of the pilot was to foster new partnerships between agencies, for example, a Citizens Advice Bureau and a prison.

The LSRC examined and evaluated the number of outreach services in different locations that provided services to people in debt or with financial problems. Its report details the context of financial exclusion in the United Kingdom, stating that financial exclusion refers to people who have no access or limited access to mainstream financial services and products such as banks and building societies. These people turned to less regulated, high interest and sometimes illegal sources for credit. This is also a problem in Australia.[77] The people more likely to be financially excluded include the unemployed, those on low incomes, lone-parents, those experiencing long-term illness or disability, people living in social housing and people on social

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[75] A Buck, T Tam, and C Fisher, 'Putting Money Advice Where the Need is: Evaluating the Potential for Advice provision in the Different Outreach Locations' (LSRC Research paper No 16, Legal Services Agency, 2007) 1.

[76] HM Treasury (2004a) *Promoting Financial Inclusion*, London.

[77] See 'The Push is on to Pull Bad Loans', *The Age* (Melbourne), 30 August 2003, *Consumer Rights Journal*, (1998), May-June, 1-10 and '*He that Goes a Borrowing Goes a Sorrowing': A Report of La Trobe Law Students and the West Heidelberg Legal Service into Debt* (2004). See also 'More Predators in Lending Market, Say Legal Aid Bodies', *The Age* (Melbourne), 6 October 2007, 5.

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security benefits. The LSRC notes that being in one of these categories does not mean people are in debt but it does mean that they are more vulnerable to falling into debt.[78]

The LSRC research indicates that the new outreach pilots are aimed at areas or groups with high levels of deprivation and financial exclusion. The LSRC states that what is novel and effective about these outreach services is that they take the advice to the locations already accessed by potential clients. The report notes that many of the centres did not normally provide financial advice but due to the new pilots this advice was being delivered. The LSRC findings observed that outreach services were reaching those who would not normally seek mainstream advice services, and that they were providing advice through new methods and with new partnerships. The services examined were urban and rural, and a mix of new and pre-existing partnerships. Most were fixed point projects in an institutional setting but there were also some 'roaming' advice services.[79]

The evaluation undertaken by the LSRC had three phases. Firstly, 563 face-to-face interviews with people attending family and children centres, prisons, community centres, housing offices and credit unions occurred between March and June 2006. The report noted that the levels of social exclusion and clustering of justiciable problems were extremely high amongst the prison population, who also had low levels of understanding of how the legal system and its process operated or how it could assist them. In addition, the people interviewed at credit unions were particularly unaware of advice services that could be provided to them, and were taking out loans nevertheless.

The second phase of the report was qualitative interviews with advisers involved in the partnership outreach services. This revealed that people working in the outreach services were making new partnerships and were discussing how they could improve the referring of people on the spot. The early impact of their evaluation of the pilots indicated that they were focused on a provider perspective. There was some uncertainty about the future of the outreach services and retention of staff as funding is only secured until March 2008.

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[78] Buck et al, above n 75, 1.
[79] Ibid 2.

The third phase of the research on the outreach services was a qualitative impact evaluation focusing on target and client groups. 40 in-depth interviews with clients took place exploring what made people decide to seek help, whether they were likely to access mainstream services and what the outreach service meant for them. The aim was to understand the thought processes of the people attending the outreach service.

Sociodemographic information was also gathered from the survey and interview recipients. The interviews in the prisons and credit unions and in the housing offices revealed low educational qualifications of the participants. In the case of the prison interviewees 40% had no qualifications. Many of the other people interviewed were unemployed or in rental accommodation. Many had a longstanding illnesses or disabilities (31% in the case of those interviewed in credit unions).

The LSRC evaluation research was difficult as many of the outreach centres had not been in operation for a substantial period of time.[80] The outreach centres examined were mainly in fixed locations. They included 'Surestart' – a service for low-income families, prisons, credit unions and housing centres. The report concluded that delivering services at the locations where people with their problems were likely to be ensured that the services were being provided to the right people. Many of the people surveyed had limited or no access to mainstream services and were at risk of being taken advantage of by loan companies because they could not secure normal lines of credit through banks as they had no assets or income. Clearly, being poorer and having less access to mainstream banking services meant many of the people were more vulnerable to entering into 'the lions den' of high rates of interest that they could not service on the basis of their income. This exposed them to debt, foreclosure, and a loss of security.

People interviewed felt that it was a good idea to deliver services in a place where people trusted what happened and where they felt comfortable and welcome. The LSRC report noted the people that were interviewed were clearly in need but that they displayed a low level of awareness of services that were on offer. The LSRC also found that the impact of debt on people's lives was higher than that revealed in the CSJS national survey.

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80   Ibid.

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The prisons and credit unions had the highest proportion of interviewees with the lowest household incomes, the least educational qualifications and the highest unemployment rates. The family and children's centre had the highest proportion of female visitors (87%) with a high percentage looking after the whole family. They were also ethnically-diverse (39%). The housing officers in the community centres and the interviewees tend to be older, with an average age of 45 years.

The interviewees tended to live in deprived areas. 75% lived in the top 20% of deprived areas and 47% lived in the top 10% of deprived areas.[81] Significant numbers of outreach location users reported experiencing financial exclusion. In terms of the interviewees' budgetary awareness and money management experience, the housing offices and prisoners represented the highest proportion of people falling behind with bills and credit commitments. Most of the interviewees at all of the locations were frequently behind with their household bills. 52% of the prison interviewees were behind in bills and credit but they were also behind in their payment of fines. Those prisoners with serious financial problems before prison reported they had become worse since they had been imprisoned as a result of their inability to manage interest rises and to cancel direct debits and mobile phone contracts. 30% of the prisoners indicated that money problems had caused difficulties for their partner or family member outside prison. The highest percentage of people with serious financial difficulties occurred in the credit unions (41%) and in community centers (28%).

In terms of levels of anxiety caused due to money issues, a significant 67% of interviewees from non-prison locations reported spending most or all of their time worrying about their money problems.[82] Elsewhere the LSRC has underlined the significant connections between people's state of health and well-being and the incidence of justiciable problems (see discussion in Part 6 of this section).[83] The level of anxiety and stress in people with problems means that the impact of their justiciable problems goes well beyond merely finding a legal solution. Stress and anxiety can only make client lifestyle issues compound and create further problems for health and social services at great cost.

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[81] Ibid 6-7.

[82] Ibid 9.

[83] P Pleasence, NJ Balmer, A Buck, A O'Grady and H Genn, 'Civil Law Problems and Morbidity', (July 2004) 58 (7) *Journal of Epidemiology and Community Health*, 552 and N J Balmer, P Pleasence, A Buck and H L Walker,' Worried Sick: The Experience of Debt Problems and their Relationship with Health, Illness and Disability, (2006) 5(1) *Journal of Social Policy and Society* 39.

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79% of the people interviewed were within two miles of the Citizens Advice Bureaux and yet 55% of them were not aware it existed. 90% of those interviewed were within two miles of the solicitor's office and yet 51% were not aware of this. In all of the outreach locations only a small proportion of interviewees (10% or less) were receiving advice at the time on how to manage their money,[84] which is concerning given that so many revealed that they were having money problems. Clearly, thought needs to be given to ways in which clients can be encouraged to make connections between their own personal dilemmas, possible solutions and where they might go for help to determine and implement the best solution.

It is also interesting to note that the interviewees' attitudes in the outreach evaluation by the LSRC revealed that people did not know that they needed help all, did not know that it was available and often acted on the basis that they did not feel they needed help or that they could not get advice, or that there would be no point anyway. There is a clear need for community legal education and an increased awareness of how and where people can get help, but it must be in an environment where they feel comfortable. This will be elaborated on in Section J part 3. Another interesting observation emerging from the evaluation research is that the most of the people interviewed (82%) thought that the interview location was a good place to receive advice. Those services that were non-prison locations were considered to be places where people would go because they were accessible, familiar, convenient and friendly and were already being used by people of limited means. Many said that when they are in need they felt the benefits of drop-in multiple advice services.[85]

In terms of the success of outreach as a model, the report found that 82% of the non-prison interviewees said they were very likely to use services that operated under the pilot. Accordingly, the report finds that the financial advice pilot outreach services were having a significant and positive impact. The LSRC note that there were variations between the centres but concludes that:

> Financial exclusion exists on a continuum, with the boundaries between financial exclusion and financial inclusion being fuzzy. Even if vulnerable people are not experiencing financial exclusion at any given point in time, they could be financially excluded in future in the absence of adequate policies to avoid a downward spiral …[G]iven the continuum … it is

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[84]   Buck et al above n 77, 8.
[85]   Ibid 12.

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important pilots do not have to adhere to a tight definition of whom they are allowed to provide advice to.[86]

The LSRC Outreach Report found that accessibility was frequently a factor when people were seeking advice and that familiarity, trust and friendliness were important. The report found that disadvantaged people are likely to need advice on a number of issues and being able to address these needs in the same location at the same time would be invaluable.[87] It would also enable more people who are vulnerable to be helped. For service providers, this means they have to be more proactive and develop and maintain good relationships with allied services and may need to provide advice in other locations.

5. Desirability of the co-location of services

In view of the findings of the desirability of co-located and outreach services by the LSRC[88] it is relevant to note an earlier study conducted in 2002 by Sherr and others.[89] It examined the provision of welfare advice in medical surgeries. It is noted in the report that there are a number of service providers who offer advice on multiple issues but that little information is available about their operations or how their experiences could inform best practice for co-location service models. The study tried to fill the information vacuum by collecting data from four stakeholder groups: practice managers, primary health care practitioners, welfare rights advises and end-users of health funded advice services in Lambeth, Southwark and Lewisham areas of London. The researchers noted that there is extensive research literature linking poverty and poor health. They noted that primary care was ill-placed to tackle poverty in its entirety. However, the idea of providing welfare advice in general practice medical surgeries had the capacity to contribute to welfare take-up and other problems such as unfair dismissal. The proposition was whether such service provision can ameliorate or remedy the problems associated with poor health, notably homelessness, housing disrepair and community care help.

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[86]   Ibid 15.
[87]   Ibid 16.
[88]   Ibid 16
[89]   Dr L Sherr, A Sherr, R Harding, R Moorhead, Dr S Singh, 'Reducing Poverty: Welfare Rights and Health Inequalities: An Evaluation of Primary Care-based Specialist Welfare Rights Advice-Provision in Lambeth, Southwark and Lewisham', *A Stitch in Time – Accessing and Funding Welfare Rights through Health Service Primary Care,* Department of Primary Care and Population Sciences, Institute of Advanced Legal Studies, School of Medicine, University of London, (February 2002), 9.

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The practitioners in the study revealed $^1/_7$ (15%) of their consultations involved welfare rights
issues. 50% of practitioners felt the welfare rights issues were urgent and 71% reported
elements of mental health in their most recent cases where welfare was at issue (for example,
anxiety or emotional turmoil).[90] The need for welfare benefits was prevalent, pressing and
impacted upon client mental health.

The Sherr research found that the benefits of co-located services were for patients, advisers
and doctors. Patients found consultations with general practitioners were often pressured and
that the provision of other services in a comfortable environment went some way to resolving
anxieties and sorting out problems, either before the doctors were seen or after referral by the
doctor. The trust and confidence that patients had in the doctors reduced their anxiety in
presenting to welfare advice that was located on site. The quality of the skills of the advice-
workers was strongly valued as patients could receive help in filling out forms and advocacy at
appeal cases. The advisers discussed a number of health welfare synergies including the
forming of working relationships with health practitioners. The doctors reported reciprocal
experience. 86% of respondents felt that their patients were less able to access the advice
they needed because of language difficulties, mental health issues, and issues related being
ethnic minorities or elderly. The researchers noted concerns from the advisers and
practitioners that there was little evidence that the services were targeting these groups of
highest need, and that waiting lists had increased which created time and work pressures for
staff[91]

The Sherr research noted the range of barriers in the multiple advice arrangements examined.
These included: some geographical areas were not covered at all; levels of demand were high
(waiting lists were booked sometimes up to six weeks in advance); there was pressure on
services and many felt that the most needy were not being reached; there was a need for
creativity in targeting the most needy; there was a feeling that inadequate provision could
backfire causing backlogs; and there were differences in the way that levels of management
handled different issues between the advisers.

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[90]   Ibid 6-7.
[91]   Ibid 9.

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The Sherr report found that training was important between professionals, that complaints systems needed to be implemented, and that quality management procedures needed to be evident and enhanced. The report noted that confidentiality was important and specified the need for separate rooms to collect private details in rather than shared waiting rooms. It concluded that the relationships that can be developed through co-locating services were critical to the success of the service and to the outcomes for the end-users.

What is also interesting about this research, from the point of view of the delivery of legal aid services, was that the types of problems identified as social welfare problems were mostly also justiciable problems. For example, they included 47.1% people with housing problems; 28% of people with family problems; 19% of people with employment problems; 11.8% of people with debt problems; 9.8% of people with harassment problems; 9.2% of people with immigration problems; 5.9% of people with injury problems; 4.6% of people with discrimination problems; and 4.6% with problems involving criminal law.[92] Conceivably, it might also have been beneficial for legal advice services to be co-located within the medical practice, as per the West Heidelberg model discussed later in this report (see Section H).

6. The link between justiciable problems and issues around health and well-being

When one connects issues of vulnerability with the barriers to accessing justice and examines how disadvantaged people can have a multiplicity of problems, it is not surprising that such factors increase people's stress levels.[93] There is a very strong link between maintaining people's health and well-being and having an absence of justiciable problems in their lives. The LSRC have written a number of articles highlighting links between health services and the provision of legal services.[94] The LSRC argues that improving legal services by appropriately targeting them in the context of other services, such as social welfare and health, assists in the reduction of such justiciable problems through earlier intervention which prevents those problems from escalating. This in turn can reduce the clients' or patients' stress and anxiety levels, creating the potential for improved health outcomes.

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[92] Ibid 67.
[93] Moorhead et al, above n 32.
[94] Pleasance et al above n 83 and Balmer et al, above n 83.

The LSRC states that the relationship between types of justiciable problems and ill-health is readily apparent. They cite examples of negligent accidents and domestic violence research finding that these issues can result in personal injury, death (or miscarriage). They refer to research that justiciable problems can have serious psychological effects manifesting in such ways as post-traumatic stress disorder and battered wife syndrome.[95] They also point to evidence that non-violent family problems can cause long-term psychological health problems, as well as can be brought about by them. This applies to both the children and the adults who are involved in the family law problems.[96] In addition, the LSRC points to research that states that the poor state of repair of rented housing and the crowding of social housing have health implications. Living conditions such as mould growing in houses can cause symptomatic health responses.[97] Further, they offer a secondary analysis of data from the British household panel survey which found that mortgage and indebtedness adversely affected health. Mortgage repossession also causes health issues[98] as can employment problems[99] and the flow-on effects of road traffic accidents.[100]

The LSRC states that there is a significant association between an individual's experience of justiciable problems and their health status. They noted that accidents, domestic violence, relationship breakdown, and poor quality housing, all have related multiple issues, such as mental health problems. They also note that these can form the basis for discrimination, problems in employment and welfare benefit problems.

The LSRC, on further analysing its survey data from the 2004 CSJS, concludes that there is a clear link between justiciable problems and health and that this has health policy

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[95] L Walker, *The Battered Woman*, Harper and Row, New York (1979) and the British Medical Association, *Domestic Violence: a Healthcare Issue?*, London (1998).

[96] See G R Kitson and L A Morgan, 'The Multiple Consequences of Divorce: A Decade Review' (1990) 52 *Journal Marriage and Family* 913-924; R C Kessler, E E Walters and M S Forthoyer, 'The Social Consequences of Psychiatric Disorders III: Probability and Marital Stability (1998) 155,*American Journal of Psychiatry* 1092 -1096 and P R Amato, 'The Consequences of Divorce for Adults and Children' (2000) 62 *Journal Marriage and Family* 1269-1287.

[97] S D Platt, C J Martin and S M Hunt, 'Housing, Mould Growth and Symptomatic Health State' (1989) *British Medical Journal* 1643–1648 and S Hunt, J Charlton and M Murphy (eds), *Housing Related Disorders in the Health of Adult Britain 1841 to 1994*, The Stationary Office, London (1997).

[98] S Nettleton and R Burrows, 'Which Test, Insecure Homeownership and Health: An Exploratory Analysis' (1998) 20 *Social Health* 731-735.

[99] S H Wilson, G M Walker, 'Unemployment and Health: A Review' (1993) 107 *Public Health* 153-162.

[100] R Mayou, B Bryant and R Duttie, 'Psychiatric Consequences of Road Traffic Accidents' (1993) *British Medical Journal* 647-651.

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implications.[101] Accordingly, the LSRC argues for the promotion of public awareness of a broad range of legal rights and obligations which should be incorporated into both the justice and public health agendas. There is the ability for legal services to mitigate the stresses of clients by resolving the justiciable problems and that this should be recognised as one way of contributing to improved public health. They suggest the forging and development of partnerships between health centres and advice-agencies and in health centres. The LSRC suggest training of health professionals in problem identification and appropriate referral and linkages upon the problem being identified, so as to provide a means of getting earlier advice to clients and patients to prevent ill-health. They also note that this could have the potential to address health inequalities and that such further integration of services could lead to a reduction in social exclusion.[102] Later in this report (see Section H), the model operating in West Heidelberg in Victoria which co-locates legal services with health services, allied health services and social services will be discussed. This model has been operating for 30 years.[103]

D.   KNOWLEDGE, CAPACITY, CAPABILITY AND ACCESS TO JUSTICE – RECENT RESEARCH IN AUSTRALIA, THE UNITED KINGDOM AND THE UNITED STATES

This section will mainly focus on research in Australia. The New South Wales Law and Justice Foundation is a statutory body and one of its aims is to conduct research on identifying legal needs as part of its 'Access to Justice and Legal Needs Program'. It has conducted a series of surveys in New South Wales, most notably the 'Justice Made to Measure: New South Wales

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[101]   Pleasence et al, above n 83, 552, 555.

[102]   Ibid 552, 556.

[103]   M Noone, 'They all come in one door' – The Transformative potential of an integrated service model: A study of the West Heidelberg Community Legal Service' in *Transforming Lives: Law and Social Process: Papers from the Legal Services Research Centre's International Research Conference, April 2006* (eds) P Pleasence, A Buck and N J Balmer, Legal Services Commission (2007), 93-111 and see L Curran, 'Making Connections: The Benefits of Working Holistically to Resolve People's Legal Problems' (2005) 12 (1, 2) *E-law Murdoch University Electronic Journal of Law* <http://www.murdoch.edu.au/elaw/issues/v12n1_2/Curran12_1.html>.

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(NSW) Legal Needs Survey in Disadvantaged Areas' (JMTM) [104] which will be the focus of the following discussion.[105]

In the JMTM, residents in six disadvantaged areas were surveyed by telephone. These included three suburban areas (Campbelltown, Fairfield and South Sydney), one provincial area (Newcastle) and two rural areas (Nambucca and Walgett). The survey was conducted on 2,431 residents over 15 years of age with a response rate of between 24-34% and was a random sample.

The findings were that in the disadvantaged areas surveyed people had a high incidence of legal events over a one year period. Some individuals with disabilities or chronic illness experienced a wide range of legal events. There were substantial rates of inaction amongst those surveyed. It was also found (consistent with the Moorhead research on lone-parents in the United Kingdom)[106] that traditional legal advisers such as private lawyers, legal aid services and courts were rarely used and that the substantial proportion of people experienced barriers in seeking help. When they did seek help two-thirds found it from non-legal advisers. Sources of this advice included family and friends, local councils, trade unions, government, insurance companies, accountants, health and social services and schools. Two-thirds reported one or more legal events in the previous twelve months which ranged from crime (27%), housing (23%), consumer (22%) government (20%) and accident/injury (19%). The problems were of a nature that they tended to re-occur or co-occur. This is consistent with the United Kingdom research by the LSRC[107] and the Cardifff research discussed in Section C.[108]

The JMTM surveys revealed that people experienced delays in telephone advice (17%), difficulty with appointments (11%), a lack of accessible service (8%). The conclusions drawn from these empirical findings were that services need to be more accessible, more community

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[104] Other reports of the New South Wales Law and Justice Foundation in NSW include 'On the Edge of Justice: the legal needs of people with a mental illness in New South Wales (2006); 'No Home, No Justice? The legal needs of homeless people in New South Wales (2005) and 'The Legal Needs of Older People in New South Wales (2004); "Access to Justice and Legal Needs, Stage 1, Public Consultations (2003) and Qualitative Legal needs Survey: Bega Valley (Pilot) (2003). See <https://www.lawfoundation.net.au/publications>.

[105] Counarelous et al, above n 11.

[106] Moorhead et al, above n 69.

[107] Pleasence et al, above n 54.

[108] Moorhead et al, above n 32.

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legal education is needed (and that such education should also be tailored where appropriate), non-legal professionals should be seen as gateways, and that there was a need for more co-ordination between legal services and non-legal services. The JMTM report authors also conclude that more client-focused responses and multi-dimensional responses are needed, with greater co-ordination and co-operation between services.[109]

In research in Victoria, Australia Curran and Noone have taken a new and novel approach to measuring access to justice. They commenced their research in 2003 after considerable struggle with the use of term 'legal need' and its limitations.[110] The approach involved using internationally recognised human rights standards as benchmarks against which to measure whether or not access to justice was realised. Indicators were developed to ascertain what would need to occur to reach the benchmarks. These were then tested against people's actual experience of their human rights.

Due to limited funding for the project, Curran and Noone decided that a human right that would be selected that was of importance and relevance to the people in the area of West Heidelberg. The project was a modest trial to pilot the methodology and is consequently not statistically definitive.[111] Nonetheless, the findings are relevant in the absence of research in Australia, such as that conducted in the United Kingdom around vulnerable and marginalised groups.[112] A significant number of people living in the West Heidelberg area are reliant on social security for their income support.[113] In addition, data at the time of the project from the West Heidelberg Community Legal Service indicated that issues around social security affect a high number of clients of the legal service.[114]

Consequently, the human right focused on was that everyone has the right to social security, contained in Article 22 of the *Universal Declaration of Human Rights.* This right is amplified in Article 9 of the 1966 *International Covenant on Economic Social and Cultural Rights* (ICESCR)

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[109] Ibid.
[110] Curran and Noone, above n 1, 63.
[111] Thanks to Kate Digney for her research assistance in this project.
[112] In 2003 the New South Wales Law and Justice Foundation (NSWLJF) conducted an Access to Justice and Legal Needs project in six regions of New South Wales. This project was New South Wales specific and findings were released in 2003 – 2006 (NSWLJF, 2003).
[113] See data on the City of Banyule <http://www.id.com.au/banyule/commprofile/Default.asp?bhcp=1>
[114] CLSIS data for the last yearly quarter of 2005 which is maintained by the legal service revealed that, a high percentage of clients of the legal service were on social security.

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(operative 10 March 1976 for Australia) that provides "the right of everyone to social security, including social insurance". The ICESCR norms must be recognised in appropriate ways within the domestic legal order and the appropriate means of redress, or remedies, must be available to any aggrieved individual or group. The Australian Government has signed and ratified this Covenant.

The duty to give effect to the Covenant in the domestic legal order has been outlined by the Committee on Economic, Social and Cultural Rights which has helped to evolve jurisprudence in this area, both through its reaction to reports by individual states and through its general comments. It declares that States have the obligation to take steps in areas which are deliberate, concrete, targeted and appropriate.[115] It has also noted that certain rights are immediately justiciable. The Committee describes the role of legal/judicial remedies as follows:

> The right to an effective remedy need not be interpreted as always requiring a judicial remedy. Administrative remedies will, in many cases, be adequate and those living within the jurisdiction of a State party have a legitimate expectation, based on the principle of good faith, that all administrative authorities will take account of the requirements of the Covenant in their decision-making. *Any such administrative remedies should be accessible, affordable, timely and effective. An ultimate right of judicial appeal from administrative procedures of this type would also often be appropriate* [emphasis added]. [116]

The premise of the research was that if the right to social security were fully implemented, then any administrative remedies would be *accessible, affordable, timely and effective*[117] and an ultimate right of judicial appeal from administrative procedures of this type would also often be appropriate.

In addition, if the right to social security were fully implemented then the following conditions would need to exist:

- knowledge of the right by the person affected
- capacity of the person affected to pursue the right

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[115] C Chinkin, 'Can International Law Provide Effective Sanctions for Violations of Economic and Social Rights? Lessons from the Creation of the International Criminal Court' (Speech delivered at the Overseas Development Institute, London, 10 March 1999) see <www.odi.org.uk/speeches/chinkin.html>

[116] Comment 9, The domestic application of the Covenant, (Nineteenth session, 1998), U.N. Doc. E/C.12/1998/24 (1998), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 54 (2003) Paragraph 9.

[117] Ibid.

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- confidence of the person affected to pursue the right

- availability of processes that are accessible, affordable, timely and effective for the person affected.

The primary focus of the research was to examine whether these conditions exist for the people living in the West Heidelberg area. How are they treated by the Australian social security system? How does this compare with how they should expect to be treated if there was enjoyment of the human right to social security? What do the findings reveal about the level of access to justice?

As this research focused on a disadvantaged community, the aim was to develop an inclusive research approach to ensure that it reached those who are on the margins and who are more likely to experience difficulty in accessing justice.[118]

The triangulated methodology included the benchmarking of standards, and comparing the practical reality with the benchmark. The benchmarks were tested through the establishment of a community advisory panel, a mapping exercise of existing services (both legal and non-legal, formal and informal), two focus groups (one with service providers and the other with people who have had experience of the social security system) and a small survey.

In developing the indicators, Curran and Noone established that if a right to social security existed in Australia the following would be expected:

- the right is enshrined in legislation and administrative procedures
- the right is universal and not categorical or based on discretions
- there is provision by government of information about entitlement to the right
- there is provision by government of information about the administrative system and procedures
- that people have knowledge and understanding about and confidence in the right and how to claim it

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[118] Buck et al, above n 44, 302-322. As an example, of the difficulties for vulnerable people in the community in accessing legal services see Balmer N, Tam T. Pleasance P, *Young People and Civil Justice: Findings from the 2004 English and Welsh Civil and Social Justice Survey*, Legal Services Research Centre (February 2007).

- that people have knowledge and understanding about and confidence in the administrative system of social security (*Centrelink*)

- the government would establish an administrative system of social security that is fair, transparent, simple, consistent and predictable, accessible, customer-focused (eg simple forms, suitable physical surrounds, good communication processes), accommodates individual capacity (eg literacy, mobility, incapacity, homelessness), non discriminatory, respects an individual's privacy, and promotes quality primary decision making

- that people who have a dispute with the administration system (*Centrelink*) have access to an appeal process that is fair, timely, free, accessible, and effective

- that people who have a dispute with the administration system (*Centrelink*) have access to information about all levels of the appeal process that is timely, appropriate and sufficient

- that people who have a dispute with the administration system (*Centrelink*) have access to legal advice and assistance about their dispute that is timely, appropriate and sufficient and assistance in pursuing their dispute that is timely, appropriate and sufficient.[119]

The research revealed that service providers as well as service users had very little knowledge or understanding of social security as a human right or their rights at law. The overwhelming majority of participants, in the modest trial of the research methodology, had little information or knowledge or understanding of the methods by which such treatment could be addressed, including that there were legal aspects to the problem and that legal advice could be sought. Few people were aware of their rights or their remedies when their right to social security was infringed or when they were treated inappropriately by *Centrelink* officers.

Participants expressed a high level of fear about reprisals for complaining about their treatment as many service users believed that if they challenged a decision or their treatment they might jeopardise their remaining payments.

Without information, knowledge about the right to social security and the norms of what was appropriate treatment and, in the absence of a capacity or confidence to pursue the right, it was unlikely that the right was going to be realised and hence the international benchmarks for the right were not met.

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[119] These elements could be described as the indicators of whether the human right to social security exists or not.

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In order to have a right to an effective remedy, knowledge of that right and a capacity and the confidence to be prepared to exercise that right when it is threatened or curtailed, are necessary pre-conditions. The administrative remedies for the participants in the Curran and Noone research were not accessible or effective as a result of this pre-condition not being met. The question of whether the administrative remedies were timely and affordable was not tested in terms of the actual experience of the research participants as their remedies were so rarely exercised – even though, on the basis of the experiences presented by the participants, it was revealed that the curtailment or reduction in their benefits may have been challenged.

The experience of the social security recipients and their service providers who participated in the research, when benchmarked, revealed little knowledge and information about their rights, often due to limited literacy and English skills, and the following factors:

- confusing documentation and requirements of *Centrelink* for these people
- limited knowledge and experience about where to go for help and limited help being sought
- questions around accountability of decision-makers for their mistakes and treatment of participants
- discriminatory practices revealed in relation to people with a difference eg indigenous or disability
- complexity of documentation sent and required
- lack of privacy both in terms of physical layout and queues and the manner in which information was kept
- requests made for the same documentation already provided over and over again at a financial cost to the recipient
- ad hoc and inconsistent treatment, misinformation and a lack of quality choices by decision-makers.

The conclusion is that "the right of everyone to social security" is inappropriately curtailed. If the right to social security was a human right and enshrined in domestic legislation, then for those people surveyed and those people in both of the focus groups, it was not capable of being realised in practice as people, including service providers in the West Heidelberg area, had little knowledge, capacity or confidence and were unable to exercise the right. The LSRC findings around people's fear of reprisals and subsequent inaction were also features of the

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focus group findings in the Curran and Noone research. The LSRC notes that the results from the 2004 CSJS provided a more detailed picture as to why people chose a particular advice strategy. Often people thought the advice would make little difference, they were uncertain about what to do and where to get help or they often felt that nothing could be done. Self-esteem affected their ability as well as entrenched avoidance behaviour that was often linked to previous experience, life circumstances and the availability of support networks. All of these factors were found to come into play in why people behaved in the way that they did and it was noted that these factors were often accompanied by anxiety.[120] This is consistent with the feedback from the focus groups in the Curran and Noone research.

Also recent research findings in the United States by Sandefur come to similar conclusions.[121] Sandefur ran focus groups with low and moderate-income residents in a mid-western American city exploring problems involving money and housing and found five rationales for inaction amongst the respondents. These included shame, a sense of insufficient power, fear, gratitude due to previous experiences and frustrated resignation.

The 2004 CSJS analysis by the LSRC revealed that that people in vulnerable groupings tended to handle their own problems and highlighted a mismatch between respondents' perception of local advice-provision and its actual provision.[122] This is consistent with the research in Australia (albeit more limited to date than the extensive research in the United Kingdom) outlined in this section.

When combined with the identified lack of knowledge, lack of confidence and capacity of vulnerable and disadvantaged groups in the community it is noted that people were more likely to do nothing or handle the problem alone. Consistently, the research summarised in this report highlights the critical importance of service providers reaching out to the community and

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[120] P Pleasence, NJ Balmer, A Buck, M Smith and A Patel, 'Mounting Problems: Further Evidence of the Social, Economic and Health Consequences of Civil Justice Problems,' in P Pleasence, A Buck and N J Balmer (eds) *Transforming Lives: Law and Social Process* (Papers for the Legal Services Research Centre's International Research Conference, Transforming Lives, Queen's University, Belfast, April 2006) Legal Services Commission (2007) and Buck et al, above n 59, 32-34.

[121] See R L Sandefur, 'The Importance of Doing Nothing: Everyday Problems and Responses of Inaction', in P Pleasence, A Buck and N J Balmer (eds) *Transforming Lives: Law and Social Process* (Papers for the Legal Services Research Centre's International Research Conference, Transforming Lives, Queen's University, Belfast, April 2006) Legal Services Commission (2007) 112.

[122] Pleasence and Balmer, above n 120.

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letting people know they exist, rather than just having their offices open to passively take appointments. It also suggests that more community legal education should be available and available at times when people will be most receptive and responsive to that education according to their immediate needs and life circumstances.

E.   RAMIFICATIONS OF THE RESEARCH FOR COMMUNITY LEGAL EDUCATION

The LSRC CSJS found that 62% of respondents did not know at the time of their problem what their legal rights were in relation to that problem. 69% reported that they did not know of formal processes, for example, courts and tribunals. Respondents on lower incomes and those with fewer academic qualifications had higher rates of reporting that they did not know their legal rights or the processes at the time of the problem. Those who were in a more advantaged position knew more about their rights, the processes by which they could resolve them and what services were available. Interestingly, respondents who did not know their legal rights were significantly more likely than other respondents to report one or more adverse consequences on their life as a result of their civil justice problem.[123]

The research conducted by Sandefur into money and housing problems in the United States came to similar conclusions:

> The implication of this body of research is that people whose social position is near the bottom of an unequal structure will be the less likely to take actions that might protect and further their own interests.[124]

People's state of knowledge about their rights, and whether they have the capability, the wherewithal and the confidence to access their rights, can influence their ability to have their rights enforced. The Curran and Noone research also highlights the impediments for the people in West Heidelberg in accessing their legal rights in a context of a lack of knowledge and where the administrative system itself seems to compound these impediments.

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[123] Buck et al, above n 120, 2-3.
[124] Sandefur, above n 121, 112, 117.

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In terms of the awareness, usage and attitudes to using mainstream services, the conclusion in the LSRC's outreach report[125] was that the mere fact that mainstream services exist, does not necessarily mean people are aware of them, even when branches are located nearby.

This points to the need for legal services to be more proactive, holistic, multidisciplinary and outreach–based, and importantly it suggests that community legal education is critical. Improved strategies to deliver relevant information to vulnerable and disadvantaged groups in an accessible, timely and digestible form are necessary. The LSRC has stated that:

> not doing anything about the problem points to the lack of knowledge about the seriousness of the problem and what action to take, and being able to handle a problem alone requires expertise, confidence and also monetary resources. It is certainly the case that sometimes people are more than able to deal with problems alone, and sometimes it might be reasonable to make no attempt to resolve the problem. No one strategy to deal with problems can be universally prescribed. However, particularly for those people who face problems of social exclusion, and may be the least able to solve problems themselves, clear information and assistance may be vital to enable them to escape from civil justice problems that might well act to entrench or even worsen their predicament.'[126]

F.   HUMAN RIGHTS PROTECTION AND THE ROLE OF LEGAL AID SERVICES IN MAKING THEM A REALITY FOR VULNERABLE AND MARGINALISED GROUPS

In the course of this research the author examined the United Kingdom's *Human Rights Act 1998* which contains protection for civil and political rights, and the South African Constitution (Chapter 2) which contains provisions for the protection of civil, political, economic, social and cultural rights, to ascertain how effectively they have been used by vulnerable and disadvantaged groups. In Australia, Victoria now has a *Charter of Human Rights and Responsibilities 2006*. Many of its provisions will take force in January 2008. In addition, the Australian Capital Territory (ACT) has a *Human Rights Act 2004* and Western Australia and Tasmania have been considering similar enactments in the absence of a national impetus to do so. It seems timely to also examine human rights adherence and its potential in curtailing social exclusion and the role that legal aid services can have to ensure such protection is a reality for vulnerable and marginalised groups. [127]

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[125]   Buck et al, above n 75.
[126]   Buck et al, above n 44, 302, 320.
[127]   D Fleming, 'Legal Aid and Human Rights' (Paper presented at the International Legal Aid Group Conference, Antwerp, 6-8 June 2007).

There are some key differences between the human rights provisions in the United Kingdom and those in Australia. The United Kingdom also applies the *European Convention on Human Rights* in its Act but is also subject to rulings of the broader European court, namely the European Court of Human Rights in Strasburg. Australia has no such superior regional court to utilise.

The United Kingdom Act enables victims of a human rights infringement to bring a cause of action in its own right and to claim compensation. The ACT and Victorian legislation does not provide avenues for claims on their own nor for compensation. A claim under the human rights legislation can only be raised where there is another cause of action on foot. Similar to the United Kingdom legislation, there is capacity for Supreme Courts to issue a Declaration of 'inconsistency' (Victoria) or 'incompatibility' (ACT). Such Declarations do not invalidate the legislation in question, but allow the Parliament to consider it, in light of the Declaration with requirements for response from the Attorneys-General within timeframes, as to how they will respond to the Court's ruling. Accordingly, an immediate benefit for any litigant bringing their case does not result. In addition, the likelihood of an indigent person being able to afford the costs of a Supreme Court case[128] (which are significant) are doubtful, unless a matter is legally aided. A further question is whether the Legal Aid Commission budgets will reflect this new demand for their services.

Where the new legislation presents a real opportunity for human rights protection is in the area of civil service and its agents' activities which affect people on the ground. There is an argument that with human rights training and awareness, State Departments and their agents will improve their practice in how they draft, implement and administer policies and legislation because the legislation forces them to think about human rights implications. Ensuring compliance by a substantive rather than procedural approach from civil servants is critical. Legal aid services and other agencies will play a key role in ensuring public authorities are

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[128] An illustration of this is contained in a letter to the author dated 9 August 2006 from Civil Law and Policy, Department of Justice in response to a query by the author in a letter dated 17 July 2006 about the legal costs in the process for seeking a Declaration of Inconsistent Interpretation under the *Charter of Human Rights and Responsibilities 2006 (Vic)* from the Supreme Court. The Department of Justice indicated that the procedure would be the same as under the *Supreme Court Act 1986* and the *Supreme Court (General Civil Procedure) Rules 2005* as in any other action as the Charter 'is silent on the question of costs'.

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held to account in a more substantive way by being vigilant about how their clients are being
treated and in highlighting where treatment does not accord with human rights standards.

In order to make the new human rights frameworks a reality for vulnerable and marginalised
groups there must be an effective monitoring of performance including research about people's
actual experience of their human rights at the hands of agencies, rather than allowing claims
by the government and its agents to claim compliance without substantiation. In addition,
strong advocacy, empowerment of communities and education of vulnerable and marginalised
groups by non-government agencies about what constitutes inappropriate or unlawful
treatment is necessary, so that where it arises these groups know how to rectify the situation
or seek changes. This will involve commitments in funding and additional resources. It may
also cause some embarrassment for government and its agencies but, in the interests of
accountability and good governance in the area of human rights, it is critical.

As discussed in this report, vulnerable and disadvantaged groups have significant lack of
knowledge and capability to litigate and/or enforce their rights (see Section C). Addressing this
is necessary if human rights are to become a reality for people on the ground. The barriers for
vulnerable and disadvantaged people in obtaining advice in general for their problems are
significant, even before these new human rights laws come into operation. As the LSRC,
Curran and Noone, Sandefeur, New South Wales Law and Justice Foundation and Cardiff
research demonstrates, knowledge, capacity, capability, confidence and access to legal aid
services are all currently problematic. With the new human rights protections these could again
add another potential layer of laws that are less likely to be enforced by vulnerable and
marginalised groups. This additional burden may come to pass unless significant effort, energy
and resources are committed by the State and Territory governments to equip those in service
delivery and infrastructure support to make the laws enforceable, and unless community
capacity-building and empowerment – in a respectful and sensitive manner – of vulnerable and
marginalised communities can occur.

The real opportunities in giving improved outcomes in human rights may reside in awareness-
raising, training of both members of community and advocacy agencies enabling them to

better negotiate and mediate, and improved treatment by agencies[129] who control much of their lives in terms of housing, health, human services and income support[130] and so on. Examples of some successes in the United Kingdom that highlight the vital role of training and community advocacy will be discussed later in this section. Strong local advocacy, support on the ground that is linked into and (where appropriate) located in neglected communities so as to assist in identifying and responding to inappropriate conduct or practices and positioned to educate and empower people to negotiate better outcomes and treatment, identify abuses and respond proactively to them, are not as prevalent as they could be. The AIDS Law Project in South Africa offers a model and is discussed in Section H part 3.

As vulnerable and disadvantaged groups are reliant on government agencies for support and subsistence they are more susceptible to infringements of their rights. It is often stated that human rights belong to everyone. The United Kingdom experience of their *Human Rights Act* reveals that although the Act has improved many facets of life for many people, it has also been used as a public 'whipping boy' and is often being blamed for decisions that do not actually pertain to the *Human Rights Act*.[131] Some examples involved the case of an escapee from prison who was given Kentucky Fried Chicken on a roof-top. The media portrayed the case as one where the *Human Rights Act* gave luxury items to a convicted felon. The reality was that police officers were trying to capture the man and keep him calm and protect themselves and so obeyed the escapee's specific request for Kentucky Fried Chicken. In a lot of other cases where the *Human Rights Act* has been criticised by the British press, the court rulings have arisen more to correct administrative ineptitude rather than from the *Human Rights Act* itself. Rather than criticise the poor administration that led to the prisoner's release, the media prefer to target the *Human Rights Act*. For example, the release of paedophiles due to a failure of the relevant officers to consider all the material reports pertaining to offenders being an ongoing risk to community were also blamed on the Human Rights Act. The *Human Rights Act* presents more sensational coverage than reportage of the actual facts in the press

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[129] See *The Human Rights Act – Changing Lives*, The British Institute of Human Rights (2006), 7-14.

[130] It is noted that income support is a Federal sphere of responsibility and that minimal legislative human rights frameworks govern the Federal sphere, however the State governments do deliver some emergency relief to the community.

[131] For a further discussion of this tabloid treatment and absence of the facts see Sir S Sedley, 'The Rocks on the Open Sea: Where is the Human Rights Act Heading?' (March 2005) 32(1) *Journal of Law and Society* 3-15.

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in the United Kingdom which exacerbates the perception that the rights belong to others and not everyone.

In the United Kingdom the *Human Rights Act* has so far tended to be seen publicly as being utilised by people who are already engaged in the legal system in some way. This has implications for those groups of people who have been discussed in this report who have very little contact with service provision. The people in the United Kingdom who have made most use of the 1998 laws have included defendants, prisoners, and asylum-seekers, in addition to powerful and well-educated lobby groups.[132] While there is nothing wrong with this, if human rights are perceived to be owned only by these groups they will never be supported publicly unless they are considered to be accessible by all.[133]

The Audit Committee in the United Kingdom has indicated that there is still a lot of work to be done to equip government agencies and change entrenched culture.[134] There is a lesson in this recommendation for Australian jurisdictions as each State and Territory rolls out its human rights frameworks. In Victoria, as the civil service was heavily engaged in the process of devising a Charter some of the cultural shift required is already underway, but if training of civil servants and their agencies on human rights is to be effective, it must be regular and sustained, especially in view of staff turnover and it must transcend a formulaic response.

In the United Kingdom, largely unnoticed but significant in the public arena, has been the use of the human rights framework, by members of the public, services and advocates. This has only occurred after such groups have been empowered and trained to do so.[135] In a recent report on the impact of the *Human Rights Act 1998 (UK)* the critical role of strong advocacy reach into disadvantaged communities was highlighted. Success for vulnerable and disadvantaged groups in the United Kingdom has occurred in areas where there is strong advocacy such as in mental health and in disability, where huge strides have been made

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[132] *Disability Now* (June 2006) 14.
[133] L Clements, 'Winners and Losers' (March 2005) 32 (1) *Journal of Law and Society*, 36; R Costigan and P A Thomas, 'The Human Rights Act: A View from Below', (March 2005) March 32(1) *Journal of Law and Society* 51.
[134] See Joint Committee on Human Rights, Sixth Report, <http://www.parliament.the-stationery-office.com/pa/jt200203/jtselect/jtrights/67/67ap14.htm>.
[135] The British Institute of Human Rights, *The Human Rights Act – Changing Lives'* (2006) 5.

particularly around the appropriateness of the detention of mentally ill people.[136] As stated earlier in this report and affirmed by the Audit Committee, public authorities need to take human rights seriously in their day-to-day operations as they can affect so many lives in the manner in which they make decisions and administer policies. Recent case studies by the British Institute on Human Rights highlight the crucial role of effective training of people who work in services, advocacy groups and also members of the public themselves. These case studies provide useful insights for Australian jurisdictions embarking on legislative human rights with accountability frameworks for public authorities, government and its agencies.

The case studies show that people (when sufficiently armed with correct information about their rights, remedies and where they can go to seek help in a non-alienating environment and with support) have been able to generate change using the standards within the human rights frameworks to argue for improved conditions and treatment.[137] This highlights that ensuring human rights compliance does not have to be litigation led and that resolutions can be negotiated by people without resort to the courts, using the language and culture of human rights. These cases include:

i. a child with learning disabilities who had been told to travel to her special school by two buses, was given easier access

ii. a single mother served with a notice of eviction while in hospital giving birth to her second child. The notice was varied, support offered and accommodation found after intervention by an advocate

iii. an elderly couple who had been married for sixty-five years were to be separated after the husband fell ill. The argument was made to the local authority that it was in breach of the right to family and the wife (who was blind and used her husband's eyes) was permitted to go into residential care with her husband

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[136] L Clements, 'Winners and Losers' (March 2005) 32(1) *Journal of Law and Society* 36; P Fennell, 'Convention Compliance, Public Safety and the (March 2005) 32(1) *Journal of Law and Society* 10; A Lawson, 'The Human Rights Act 1998 and Disabled People: A Right to be Human?' in C Harvey (ed) *Human Rights Law in Perspective: Human Rights in the Community (vol 15 Human Rights: Agents for Change)*, British Institute of Human Rights, Hart Publishing (2005), 135 and T Harding, 'Older People' in C Harvey (ed) *Human Rights Law in Perspective: Human Rights in the Community (vol 15 Human Rights: Agents for Change)*, British Institute of Human Rights, Hart Publishing (2005), 113. This latter article by Harding laments the lack of use of the Human Rights Act by the elderly and sets out some of the reasons why.

[137] Ibid.

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iv.   a victim of extreme domestic violence and her children were refused accommodation. After human rights standards were raised and the extreme risk they were facing were noted the authority changed its mind

v.   a man in seclusion in a mental hospital who soiled himself. The staff refused to clean it up and place him in another room. The man's advocate noted that he had a right not to be treated in an inhumane and degrading manner and the next time he soiled himself it was cleaned up and a new room found for him

vi.   parents who were banned from seeing their son who was temporarily in residential care after complaining about bruising. The authority responded by banning the parents from visiting their son. After training on human rights, the parents approached the residential care unit and the ban on their visits was lifted and their complaint about their son's bruising was investigated

vii.   children were not allowed to see their mother who suffered mental health problems after the death of her husband, due to a lack of staff to supervise the children according to the authority. An advocate raised human rights concerns and suggested that children's services be bought in. After negotiation, the staff allowed supervised three weekly visits by the children to their mother.

If local action by individuals and groups affected can occur, then the benefits for those people and for others in the future who use the services can be enhanced and their human rights heeded. Again, the case studies of the British Institute are evidence of this.

As long as human rights are seen as the domain of only a few, then the newspapers and opponents of human rights will succeed in pulling them down. If society is to improve human rights protection for all, extreme effort must be made by governments, their agencies, community members, businesses and individuals to ensure that its provisions apply to *all* people, not only select groups who are best placed to use the provisions. As this research highlights, ensuring advocacy on the ground, education, infrastructure and proper resources for those who are socially excluded is a key to fundamental human rights being attained.

G. WHY THE RESEARCH IS IMPORTANT

In the author's view, if problems can be resolved earlier this can improve people's well-being, health and capability. The West Heidelberg model that is discussed later in this report (Section H part 2) highlights the benefits of the co-location of health, legal and social services, and the more integrated approach between justiciable and health problems that can be taken.[138] One significant impediment to vulnerable and disadvantaged people accessing the legal system is the fact that their problems are often cumulative. This means that if people are unaware their problem is legal in nature or if no-one they seek help from can identify the issues as legal issues, then often they will never be empowered or free to seek appropriate assistance. The clusters and multiplicity of problems suggests also that the vulnerable and marginalised people may have so many problems to deal with that they are overwhelmed or need to prioritise what they can deal with. They may have what they consider to be pressing health or social welfare problems to address, so their legal needs may never get examined or will only be revealed when they have escalated due to neglect. All of these things point to a need to provide information and education to members of the community about what their legal rights are, where they can go for help and how they can move through and navigate a complex legal system and services that ought to be designed to meet their needs.

Traditional legal aid services continue to operate on an appointment basis and with the expectation that the clients have sufficient wherewithal to be able to identify that they have a legal problem. Traditional models of delivering legal services presume that people can overcome their fear, and that even if they have no money or power that they can still seek advice and that they will in fact walk into a legal office. The research reveals that such a traditional model continues to miss a section of the community who may be in desperate need of legal assistance. One way of reaching them is to bring the legal service to places where they are most likely to find the people who need it, rather than always expecting people to come to the legal aid services. Later in this report (Section H part 1), the Homelessness Clinic in Victoria will be discussed. This is a model where the legal service goes to the most likely place where they will find the homeless client, for example, soup kitchens.

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[138] Curran, above n 103 and M Noone above n 103, 93-111.

If the legal profession is serious about delivering legal aid services to the vulnerable and disadvantaged in an effective way, it needs to undergo a cultural and educational shift by not only addressing the narrow technical issues that present at the initial interview (as discussed earlier in the Cardiff cluster research) and as the case proceeds. The legal profession may need to make the extra effort to think laterally about how they might link client services in other fields to improve the access of their clients to legal services and how they can get the clients linked into other allied services for help with other problems. In the author's legal practice experience, it does not involve much extra effort for lawyers to become conversant in the range of other services that exist in their local area, but it can make a significant difference to how they handle and represent their client's case. Making suggestions to clients as to how they can unload some of the problems so that the client can actually deal effectively and with a minimum of anxiety with their legal issues has many benefits. Similarly, non-lawyers should be trained so they are able to identify possible issues and can appropriately refer and support clients who come to them with additional problems. Given what the research undertaken by the LSRC, Moorehead and others demonstrates about problems often being cumulative and coming in clusters and causing anxiety and stress, this makes sense as it will improve problem identification, resolutions and outcomes for clients.

Genn's studies on justiciable problems in 1999[139] followed by the LSRC's work, since its first major report on legal need in 2001 and the other subsequent research discussed in this report, have provided the empirical data and information on advice-seeking behaviour which are critical to addressing access to justice and social exclusion.

In 2003 a *United Kingdom National Action Plan on Social Inclusion* was announced. This gave access to justice a similar priority to health care and education. This recognises that access to justice is a basic right and is important in policymaking. Without this provision of empirical research supporting the integral connections between problems of a legal nature, ill-health, well-being and educational deficits and their connection to further social exclusion, it may well be that such priority in the United Kingdom would not have been given to access to justice.

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[139] P Pleasence, A Buck, T Goriely, J Taylor, H Perkins and H Quick, *Local Legal Need* (Research, Paper No 7), Legal Services Research Centre (January 2001) and Genn, above n 2.

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The LSRC continues to argue for the mobilisation of a wide range of policies and services to combat social exclusion with an interdisciplinary and cross-departmental approach, stating:

> however, in order to develop successful policies it is vital to understand the causes and manifestation of social exclusion. While causation and associations may be complex and multidimensional, the chances of developing effective policy will be greater with an understanding of such processes.[140]

It could be argued that in Australia, such a longstanding absence of empirical research has led to inertia and a lack of imperative on a policy front, especially federally in terms of understanding access to justice issues, particularly for those on the margins. This too may also explain the difference of approach to poverty and social exclusion in the United Kingdom and Australia discussed in Section B. It is hoped that the new methodologies being developed by National Legal Aid with the New South Wales Law and Justice Foundation and by Curran and Noone on vulnerable and marginalised groups, together with this report which summarises key relevant findings in other jurisdictions, may partly fill this vacuum and inform improved public policy-making and service delivery both legal and non-legal in Australia.

Kennrick has argued that without greater coherence in planning and funding and delivery of services, there is a danger that (young) people will remain marginalised from access to quality advice services.[141]

H.   SOME INNOVATIVE MODELS FOR DELIVERING LEGAL AID SERVICES AND REACHING OUT TO THE VULNERABLE AND MARGINALISED GROUPS

This report will now discuss some very different models of services delivery in the United Kingdom, South Africa and in Australia which foster some of the approaches suggested by the research discussed in Sections C, D and E. This includes the use of co-location of services, holistic problem-solving, outreach, community engagement, and training in disadvantaged communities. The South African model highlights a service that has done much, in a context of significant poverty and social exclusion and with limited resources and personnel, to build-up capacity of other linked community agencies and has then been able to focus on public interest litigation and law reform.

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[140]   Pleasence et al, above n 3, 302, 303.
[141]   J Kenrick, *Rights to Access: Meeting Young People's Needs for Advice'* Youth Access, London, (2002).

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1. Homelessness Clinic, Public Interest Law Clearing House (PILCH), Victoria

The Homelessness Persons' Legal Clinic was established in October 2001. It emerged from a study by the Managing Solicitor of the Public Interest Law Clearing House who examined models of services delivery to the disadvantaged in the United States as part of a Churchill Fellowship.[142] Her ideas were examined and a proposed model for a homelessness legal service was proposed after consultation with a broad range of accommodation, welfare and legal services. Their ideas formed a discussion paper from which the project was initiated. The project is auspiced by the Public Interest Law Clearing House and receives funding from a range of sources including government and non-government funding. As with many such agencies, finding sources of funding was initially quite difficult but with time and clear success the Homelessness Clinic has now received government funding.

The project now provides free legal assistance and advocacy on behalf of people who are homeless or at risk of being homeless. Services are provided by pro bono lawyers from participating law firms and legal departments. Each firm is responsible for the provision of services at one or two host agencies on a weekly basis. The clinic also engages in analysing systemic issues around how policies and legislation impact upon the homeless in order to promote human rights, and seeks to identify any gaps in services and conducts advocacy on behalf of the homeless.[143]

What makes this model innovative is that the lawyers at the clinic provide civil and administrative legal services at crisis accommodation centres and welfare agencies where the clients are most likely to go to seek other services, food or emergency accommodation. In line with the suggestions of the LSRC (although this clinic predates their research) the legal advice is proffered at the locations where the clients, in this case the homeless, are likely to be rather than expecting the homeless to find the legal service and make appointments. Some of the agencies which participate include *Melbourne Citymission*, *The Big Issue*, *St Vincent de Paul Society*, *The Salvation Army, Anglicare*, *Urban Seed*, *Hanover*, *Vacro*[144] and *Homeground*

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[142] This research for a Churchill Fellowship was conducted by Caitlin English who was then the Managing Solicitor of the Public Interest Law Clearing House.

[143] P Lynch,' Human Rights Lawyering for People Experiencing Homelessness' (2004) *Australian Journal of Human Rights* 4.

[144] The Victorian Association for the Care and Resettlement of Offenders.

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Housing. The Clinic also consults with a Consumer Advisory Group made up of people who have experienced homelessness or who are currently homeless.[145] In the past year this group, after training, have been providing workshops for lawyers to improve their interviewing skills and about what it is like to be homeless. The project sees its lawyers as 'crossing the gap' requiring that lawyers acquire some exposure to and understanding of clients' social, cultural and economic perspectives and lives.[146]

A further strength of this model is that it takes a non-hierarchical and client-focused approach to lawyering. This approach together with the Community Advisory Panel guide the clinic thereby guarding against the "paternalistic substitution of perceived 'best interests' for what the client says he or she wants (which)[147] is the antithesis of empathy and is profoundly disempowering".[148]

The clinic also takes an approach consistent with the recommendations made in the research of the LSRC and the Cardiff research discussed above in that:

> an important aspect of human rights lawyering involves identifying and assisting to address clients' non-legal needs, that is not to say that lawyers should become social workers. It is to say, however, that lawyers operating in a human rights paradigm will get to know their clients and their non-legal needs better, get to know the social service providers that can assist clients with their needs, develop strong collaborative relationships with those providers, and develop effective and integrated intake and referral procedures to ensure that clients' needs are met in a real and positive way.[149]

In terms of client empowerment, the clinic's processes require that homeless people with whom they engage are "supported to speak and be listened to, to organise locally, to come together to articulate their needs, concerns and problems and to be involved in the delivery of solutions".[150]

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[145] See <http://www.pilch.org.au/html/s02_article/article_view.asp?id=133&nav_cat_id=172& nav_top_id=60&dsb=531>
[146] Lynch, above n 143, 4, 8.
[147] Brackets inserted by author to clarify.
[148] Lynch, above n 143, 4, 9.
[149] Ibid.
[150] C Goldie, 'Rights versus Welfare' (2003) 28 *Alternative Law Journal* 132-135.

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2. The West Heidelberg Community Legal Service/ Banyule Community Health Service/ La Trobe University Partnership (WHCLS/BCHS/LT), Victoria

The West Heidelberg Community Legal Service (WHCLS) commenced operation in 1975 with the volunteer legal services of John Cain, the former Premier of Victoria. Informed of the high levels of legal need in the area[151] he offered his services to the newly established West Heidelberg Health Service on a Monday night. The health service would refer clients who had legal problems. After discussion with the nearby university, La Trobe University, a lecturer in Legal Aid, Phil Molan was appointed (in addition to his lecturing role at the university) to deliver legal services to clients along with the students at the West Heidelberg Legal Service. This was the commencement of the three-way partnership between the legal service, the health service and the university. In 1979 the legal service received its first government funding and now employs staff alongside the La Trobe Law Lecturer/Solicitor[152] who still delivers legal services to the community through the student law clinic.

The legal service operates on a holistic model of problem-solving, appropriate referral, representation and advice, and active involvement in law reform and community education emerging out of identified client problems and emerging systemic issues. It is co-located with the health service. Where resources permit, the legal service may take on test cases to improve outcomes for community members. The WHCLS sees clients mainly from the West Heidelberg area but extends its catchment to include referrals made from other areas. It has to limit its coverage as it receives very modest funding and there are high levels of need. West Heidelberg is one of the most disadvantaged communities in Victoria, Australia. In research into social disadvantage in Victoria conducted in 2006, West Heidelberg was ranked twentieth in the 40 highest-ranking postcodes (out of a total of 726) for general disadvantage. This level of disadvantage was similar in 1999 and 2004. This research looked at 24 indicators, the major ones being computer use, internet access, low-income families, post-school qualifications,

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[151] M Cass, R Sackville, *Legal Needs of the Poor*, Australian Government Printing service (1975); M Noone and S Tomsen, *Lawyers in Conflict: Australian Lawyers and Legal Aid* (2006) 216 and J Dickson, '25 Years of Clinical Legal Education at La Trobe University' (2004) 29(1), *Alternative Law Journal*.

[152] The present incumbent is the author of this report, Liz Curran.

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disability/sickness support, interventions by State child protection agencies, early school leavers, low work skills, year 12 incomplete, dependency ratio and criminal convictions. [153]

Integral to the legal services approach is its ongoing relationship and co-location with the health service. To use the language of the health sphere, the legal service along with the health centre has endeavoured to implement an 'integrated care approach' whilst adhering to privacy laws and lawyer client privilege through a separate filing system and strict client consent regime within the legal service. The health service also provides allied health and social welfare services. It employs doctors, nurses, nutritionists, dentists, psychiatrists and psychologists and also broader professionals including drug and alcohol counsellors, problem gambling support services, financial counsellors and neighbourhood renewal personnel. The health service "promotes a multidisciplinary approach to community health through team work and cooperation with other health and welfare providers." It "encourages those in necessitous circumstances to have access to the range of health and welfare services provided, providing health and welfare services promoting a preventative and educative approach".[154]

It is the legal service's experience that many people fall through the cracks, and that interlinked services on one site, such as those that the West Heidelberg Community Legal Service and the array of professionals in health and social service disciplines at the BCHS has provided, have enabled access for people who might not otherwise have received help so they can address their problems more effectively. The main areas of assistance relate to criminal law with some representation, debt, fines, social security law and domestic violence. The legal service however does not perhaps do as much outreach as is needed but this is mainly due to limitations on staff and resources. Such extended outreach to people in need would certainly assist a great number of people who are currently being missed. The legal service used to have an outreach in a suburb of Greensborough from 2001- 2006 but this is currently under review.

What enables the service to access people who otherwise would not seek out help and to resolve legal and a range of problems, is the heavy reliance it places on the relationships built on trust and contact between the onsite workers of the health and welfare services. Legal

[153] Vinson T, *Dropping off the Edge: The Distribution of Disadvantage in Australia*, Jesuit Social Services Australia (2007) 66-70.
[154] Banyule Community Health Service Inc, *Your Health Service* (brochure) (2003).

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issues are often seen as part of a complicated web of other associated problems that might include mental health, health generally, financial issues and so on.[155] The health service works on a case management basis and hence does not focus on problems in isolation but works on the array of issues that the client faces which can often paralyse or overwhelm them. The client feels they are not alone and can take action with support.[156] The legal service, like the homelessness clinic discussed above, also has as its approach regular community advisory opportunities to ensure that it reflects community need. This occurs through a community based Committee of Management but it also regularly holds forums to involve clients in finding solutions to issues that affect them and to seek their advice on how law reform projects might proceed. This is consistent with both an empowerment model but also a regular conferral model.[157]

By working within a broader context of the realities of the clients' lives and making appropriate referrals and obtaining back referrals, the legal service works closely with experts in other fields. This has led to better legal outcomes for the clients, extended beyond those which would have occurred by taking a strict legal approach isolated from the other problems in the clients' lives.

The cross-referrals also avoid the client having to navigate the complex labyrinth of social, health and support services that they may have no hope or stamina of engaging with (as the discussion in Section C of this report highlighted). Not only does this improve the prospect of the client making modest strides forward in their personal life, but a range of people who otherwise may not have the patience or capacity to seek help or even identify that they need help, can be linked into such help. From the legal perspective, it may mean that at court there is evidence of strong improvement in a client's prospects as they have been linked into services and treatment and this can result in a lesser sentence for the client whose offending may relate to their disconnection. One difficulty for the health service and the legal service, and a note of warning, is that as government departments for different areas require different 'inputs' or 'outputs', agencies in trying to meet these can find the delivery of a holistic service to clients in constant tension with their obligations under the government contracts.

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[155]   See M Noone, above n 105, 93-111 and L Curran, above n 105.
[156]   Comment made to a student lawyer at the legal service by a client, May 2007.
[157]   An illustration of this is the formation by the health service of a Public Tenants Users Association. The Chair of the legal service is actively involved in this community action group.

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3. The AIDS Law Project, Johannesburg, South Africa

The AIDS Law Project (ALP) takes on strategic test cases, lobbies and undertakes law reform where there is considered to be an imperative. In its early days, the ALP would do considerable client casework but this has shifted so that it can use its limited resources to make the most impact on human rights protection.[158]

In South Africa, there remain significant issues of poverty and cultural segregation even though apartheid is officially at an end. Organisations with minimal resources have therefore had to be inventive and innovative and stretch their resources to ensure the maximum impact for the high numbers of disadvantaged people in the country. There is an array of seemingly insurmountable problems in the communities. Accordingly, the ALP with its own limited resources has had to focus on how to refer clients where there is no public interest issue. It has engaged in significant training of non-government organisations on legal issues and training legal services staff about issues affecting AIDS clientele.[159] This has led to increasingly close relationships between the AIDS Law Project and a range of agencies that actually work closely and are often situated in very poor communities, who can then identify concerning trends or treatment and similarly refer cases where there might be a significant public interest issue to the ALP. Grass roots organisations are becoming equipped through ALP training to identify legal issues so that human rights abuses do not remain unattended and can be appropriately referred for action rather than ignored.[160]

The focus of the work of the ALP is:
*   to enable people with HIV/AIDS to have access to adequate health care and treatment in both the private and public sectors
*   to enable people with HIV/AIDS who experience discrimination and unfair treatment access to legal remedies to protect fair fundamental rights
*   to ensure that people with HIV/AIDS are not denied access to employment, employee benefits, insurance, education and other services.[161]

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[158] Discussion between author and the Acting Director, AIDS Law Project, 16 July 2007.
[159] In Australia, the Public Interest Law Advocacy Centre in Sydney engages in capacity building and training of community organisations. See <http://www.piac.org.au> for further details.
[160] Discussion between author and the Acting Director, AIDS Law Project, 16 July 2007.
[161] AIDS Law Project, *Annual Review 2005-206*, Centre for Applied Legal Studies, University of Witwatersrand.

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The project carries out litigation and legal advocacy campaigns to counter wrongs that have occurred, to establish legal precedents, to prevent human rights abuses from occurring again and to build capacity within existing legal advice service providers to provide free legal advice. The ALP carries out research, supports policy formulation, suggests legislative change and conducts legal campaigns to remove barriers that unfairly limit access to health care services. It also raises awareness in government about rights as well as monitoring, lobbying, and advocacy.[162] Examples of some test cases strategically undertaken, have been around vulnerable people in the workplace with a particular focus on domestic workers, private security industry workers, miners and health care workers. Workers in these sectors face discrimination or poor working conditions that impact upon their health.

Many non-government organisations work on the ground within townships. The ALP links closely into these organisations and trains them so they can then raise awareness in the communities (for example the townships) where they are located, thus enabling systemic issues of injustice to be identified referred and then acted upon, if there are the resources to do so. The ALP will then campaign, write submissions to government and engage in test case litigation to establish precedents, change policies and create benefits and improve outcomes and access to health and social services through legal action, so as to improve outcomes for a large number of disadvantaged people.

A difficulty for the ALP is that many of the supporters from whom they received funding have taken the view that, now that there is a Constitution in place in South Africa, all will be well. Some philanthropic foundations have withdrawn funds whereas others focus on funding individual projects with very specific aims and accountabilities. This means that endeavours to overcome systemic injustice and build frameworks that are sustainable, become fragmented or piecemeal. The ALP tries, where possible, to broaden the benefit of individual projects but such endeavours can come into conflict with the often tightly prescribed terms of the project work required by the philanthropic foundations. This is not only a difficulty for the ALP but also for other organisations such as the Legal Resource Centre which does significant test case work and has represented many South Africans since and during apartheid.[163]

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[162] Ibid 1-2.
[163] Discussions between the author and the Legal Service Resource Centre, 3 July 2007.

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4. St Petroc's Society for Single Homeless People in Cornwall

In Cornwall in the United Kingdom the St Petroc's Society for Single Homeless People (St Petroc's) was formed in 1986 to provide accommodation and social care services to meet the needs of single homeless people in Cornwall.[164] This sees a co-location of advice services but it does not include legal advisers. It has considerable support from all the churches, local communities and dedicated groups of 'friends' or 'partners'.[165] Single homeless people often fall outside the responsibility of statutory authorities. Very often they are sleeping 'rough' and may have a range of difficulties, including drug or alcohol dependency, mental ill-health, relationship problems or an offending lifestyle, which contribute to their homelessness and social exclusion.[166] St Petroc's tries to give 'realistic assistance,' rather than clients being met with 'a mesh of unrealistic requirements'. They link-up with a range of agencies on-site. One agency is the Health for Homelessness Team which offers a primary health care service with a doctor and a nurse and a drug dependency psychiatric nurse and specialist alcohol and homelessness social worker. Another agency is 'Breadline' which has a café, office and a medical room. It also responds to accommodation enquiries and finds housing, and provides advice on benefits.

Other agencies also visit the centre including the Citizens Advice Bureau and the YMCA. As well as resettling homeless people, the Centre has a youth worker and a youth accommodation worker funded through Comic Relief as a joint venture between St Petroc's and the Youth Offending Team. This service offers young people ongoing advice and support in a safe and settled environment so they are able to build on skills, confidence and self-esteem. It links with the Youth Accommodation Support Scheme to obtain and secure accommodation in the private sector and encourages youth to pursue training and education. The success of the program is stated as patients and clients who can access one service via the other with a great sense of well-being and in a form which promotes self-esteem[167] It is noted that many homeless people seen by the service do not regard their health to be a priority and that their health is susceptible to being poor because they sleep rough. The patients/ clients would be unlikely themselves to attend a general practitioner's service, but as they are

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[164] Thanks to Ash Patel of the LSRC for directing the author to this project and for enabling her to view his interviews with the agency.

[165] St Petroc's Society, *Annual Report 2005-2006*, Cornwall.

[166] <http://www.housingnet.co.uk/housingnet-html/Saint_Petroc_s_Society.html>

[167] St Petroc's Society, above n 165, 3-14.

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in need of housing support they will turn up to the accommodation service. Many present with issues such as malnutrition, exposure, early life trauma, family breakdown, have been victims of physical and sexual abuse, can have learning disabilities, and use drugs and alcohol to self-medicate.[168] Many people self–refer after they hear of the service through others who have trusted the service in the past. The centre also tries to work closely with local police to enable them to call them for assistance, rather than taking a law and order approach which can sometimes exacerbate the problems of homeless people.[169]

It is noted that one gap in services provided to these people in temporary accommodation on-site was the availability of legal services. St Petroc's takes the service delivery to the homeless and people with temporary accommodation in a similar way to the Homelessness Clinic discussed above. The addition of legal services at St Petroc's would be a complement to this.

I.   SOME CONCLUSIONS

Smith's principles[170] discussed in Section B, highlight that it is not always easy to divorce good service delivery from the pressures of resources, funding and politics. This is recognised as the difficult climate within which decision-makers, policy-makers and service delivery agencies operate within Australia. However, it should not become a reason for defining policies and practices. As Smith notes, access to justice requires the deployment of every possible means, flexibility and innovation combined with empirical research findings which can inform how justice is delivered.

Often issues around legal aid services and inadequate funding are consigned to the fringe as issues of health and education are often at the forefront of politicians' and the public's minds at election time and thus little priority is given to legal aid as an issue. The research outlined in this report highlights that people's legal or justiciable problems are integrally connected to people's health and well-being and that there is a significant role for education. Some existing models of service delivery are provided in this report that highlight innovative practice. People's lack of knowledge about their legal options and where they can find appropriate services – if these services exist – suggests that more must be done in both service delivery

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[168] St Petroc's Society, above n 165, 14.
[169] Unpublished interview with worker at St Petroc's and Ash Patel, reproduced with permission, 2007.
[170] Smith, above n 40.

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and in educating members of the public. It is hoped this report will provide an impetus for further research, the adequate resourcing and funding of legal aid services, and the adoption of better strategies reflecting the complex and compounding nature of poverty and social exclusion. Only if this occurs can legal aid services and the private legal profession claim that they reach out effectively to those on the margins.

Here are some recommendations aimed at improving legal aid service delivery to the vulnerable and disadvantaged based on the empirical research findings discussed in this report:

J.   RECOMMENDATIONS

1.   The role of government in the coordination and resourcing of services and a vision for the future

(i)   There is a key role for government in ensuring that it provides an appropriate environment and funding resources so that its services can develop the methods and service provision that will enable people to benefit from the law through early and effective advice.[171] This includes contractual arrangements and policy frameworks wherein legal advisers have scope to deal with all clients' problems together, rather than in isolation, and by cooperation between services working together which can improve clients' outcomes immeasurably.[172]

(ii)   Government needs to be better at enabling services that it funds to have greater autonomy in identifying issues and resolving them on behalf of clients/patients and be less prescriptive about the services provided. More trust in the professional judgment of the service providers who work directly with affected people is needed. It is important that government, in the manner in which it specifies service delivery, is informed by the reality and context for people on the ground affected by their policies and legislation. It is recognised that agencies have to be accountable, but if the different approaches suggested in the research as likely to work are to come to fruition, then government may also need to be more flexible if services are to be more responsive to need. This may

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[171]   Pleasence et al, above n 3, 105, 153.
[172]   Balmer et al, above n 83, 39, 47-48.

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have resource implications, require flexibility in how funding and services agreements are drawn and may involve contract variation.[173]

(iii)   Human rights protections can sometimes be litigation led, though this is not always necessarily the only way to enforce human rights. Key human rights compliance can occur if government and its agents are substantively human rights compliant and have in place rigorous monitoring based on the reality of people's experience of their human rights. This is resource-intensive and expensive but can lead to improved policy outcomes, transparency and enhanced human rights on a day-to-day level.

(iv)   In communities that experience social exclusion, the funding and development of multiple advice service models should occur. These should also have a role and be expected to advocate against and address deprivation in conjunction with government, business and community. Only if community agencies on the ground can identify systemic issues and develop strategies with scope for local community input can many of factors creating social exclusion be identified and responded to, especially in communities lacking infrastructure and voice. This will make inroads in assisting with people's problems in the context of the causes and consequences of these problems, rather than in isolation from them.

(v)   Following on from recommendation iv) above, clients coping with many years of social exclusion or a dramatic worsening of their health or lifestyle and poor levels of educational attainment and self-esteem are often ill-equipped to deal with complex bureaucracies or hostile opponents.[174] Therefore advocacy and other services need to be supported both financially and in terms of their legitimacy by government. Governments may need to be less defensive of policies and practices which are identified as problematical and work with community agencies and communities to be more responsive and make improvements.

(vi)   Sensible and simple pathways and the building of capacity are required if people are to be able to seek redress when their human rights are infringed. Legislative human rights

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[173]   L Curran, above n 103.
[174]   Moorhead et al above n 32, iii.

provisions can tend to favor those who are already within the legal system or conversant with it. Great effort is needed to identify human rights infringements in marginalised communities (in Australia this includes indigenous communities)[175] to monitor and improve public administration of policies impacting upon people. This includes educating people about human rights and providing avenues for assistance and support so that vulnerable and marginalised people do not miss out on the benefits that human rights protections were meant to confer.

(vii)   The greater mobilisation of a wide range of policies and services in a concerted and strategic way is necessary to combat social exclusion and an interdisciplinary and cross-departmental approach should occur. Such mobilisation should be informed by both local communities and by good research. The LSRC has stated:

> however, in order to develop successful policies it is vital to understand the causes and manifestation of social exclusion. Whilst causation and associations may be complex and multi-dimensional, the chances of developing effective policy will be greater with an understanding of such processes.[176]

(viii)   The research reveals that those most likely to experience justiciable problems are the vulnerable and disadvantaged and that for various complex reasons there are many impediments to them being able to find help or to seek resolutions for their problems. More sustained effort is needed to reach these people and move beyond the traditional models of advice service delivery which involve people having to come to the legal advice point and make appointments. This involves the use of innovative outreach in legal service models, community development processes situated within deprived communities and purposeful, timely, sometimes tailored and cognitively appropriate community legal education. These measures need to be adequately supported and funded by governments.

(ix)   Significant effort, energy and resources are needed from committed State and Territory governments to equip those in service delivery and infrastructure support to make new human rights laws enforceable and to also develop the culture of respect for human

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[175]   See *'It's not easy walking in there': Towards Practical Reconciliation*, Catholic Commission for Justice Development and Peace, Melbourne (1999).
[176]   Buck et al, above n 44, 302, 303.

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rights across all spheres. This includes training, compliance and informed approaches in the day-to-day dealings that government and its agencies have with communities in areas as diverse as the courts, policing, housing, education, human services and health.

(x)   If human rights protections are to have any relevance then, as stated in recommendations iv and v above, they must be accompanied by strong local advocacy support on the ground. This should be based on a community development model that is linked into and/or (if appropriate) located in neglected communities so as to assist in identifying and responding to inappropriate conduct or practices. Integrated in this approach should be a role in the education and empowering of people in a respectful and sensitive manner to negotiate better outcomes and treatment for themselves so they can identify abuses and respond proactively to them.

(xi)   The LSRC has concluded that early intervention and advice at an appropriate time may prevent multiple problems.[177] The better defining of vulnerable populations so that they can be more effectively targeted in terms of social programs and public legal services is essential and government may need to make available funds for research to enable such targeting, rather than allowing it to continue in a vacuum of empirical information.

2.   A role for multiple agency service delivery or outreach including legal services

(i)   Legal Services should actively acknowledge barriers and address their service delivery to ensure it is connected, accessible and responsive. They must also regularly review the groups of people they do reach and those they are not reaching. This includes awareness of cultural, economic and health and deprivation impacts. Effort should then be made to ascertain how services can better meet the needs of those not being reached.

(ii)   Community agencies, where possible, should have members of their community on their Boards of Management to improve relationships and linkages into community. Such engagement should be non-politically based.

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[177] Pleasence et al, above n 54.

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(iii)   A coordinated and holistic approach to problem-solving which recognises that the health care and welfare professionals have a role to play in identifying those who are vulnerable to justiciable problems is needed by legal professionals if they are to lay claim to the professional claims of improving access to justice. Many vulnerable and marginalised people will either not seek advice at all or will seek advice from non-legal sources if they feel confident, familiar and have trust in that service.[178] The research highlights that lawyers can no longer presume that people with legal problems will seek out a lawyer and so they need to be more proactive in working with other services and assisting these other services to identify clients who need legal advice and assistance and, once identified, channels by which people can access legal advice.

(iv)   Civil law problems should not just be dealt with in a narrow context of lawyers only being able to provide narrow technical legal advice. Broader notions of holistic practice such as tackling social as well as legal problems need to be accorded much more attention by practitioners.[179] Clients' legal and social needs are complex and intersectional – their social and legal problems interrelate and amplify. The notion of 'intersectionality' should be adopted, namely that separate problems need to be understood and dealt with.[180] Here the need for coordinated management of solutions to justiciable and other problems is critical.[181]

(v)   The legal profession needs to make a greater effort to think laterally about who they can link a client up with in terms of other services or supports and how they can get the clients to other allied services. It does not involve much extra effort for lawyers to become conversant in the range of other services that exist in their local area.

(vi)   Non-lawyers should be trained to be able to identify what might be legal issues so that they can appropriately refer and support clients who come to them with additional problems. The research reveals that many who are involved in advising people are themselves not aware of issues which are legal in nature and do not accordingly enable considered and expert advice to be considered by their clients/patients.

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[178]   Noone, above n 103, 93-111 and Curran, above n 103.
[179]   R Moorhead et al, above n 32, iii.
[180]   Ibid.
[181]   Ibid ii.

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(vii) Following on from recommendation vi) above, frontline service providers (including those in soup kitchens, housing networks, case workers, carers, social workers, doctors, nurses, nutritionists and others) that vulnerable people may be likely to come into contact with need to be equipped with a repertoire of knowledge and the means to quickly and effectively refer clients on when necessary.[182]

(viii) One can provide a case-by-case response to people's justiciable problems but where they reveal ongoing repetitive unjust practices for a number of people, such case work needs to link into law reform, research, community legal education and campaign work. This can work to remove unjust laws and practices and raise awareness. Legal services need to be ready to engage law and social reform which is informed by case work.

(ix) Dedicated advice services should more closely mirror the needs and behaviours of those who wish to use them,[183] and be informed by solid empirical data rather than perception. This includes consideration in the approach to services of the following problems identified in the research:

- the way the people perceive their problems and how aware they are of potential remedies
- that their level of education and income impact on how well-informed people are
- that having unresolved problems leads to stress and anxiety caused by fear and complexity of multiple problems, and that these have an impact on the health outcomes of people and also need to be addressed
- the connections between unresolved problems and ill-health.

(x) The experience in South Africa reveals the critical nature of grass roots advocacy as the agencies are actually physically located in and within communities of disadvantage. Locating services within areas of disadvantage, rather then centrally, can enable the identifying of systemic injustices and barriers to access to human rights and legal assistance where otherwise these issues go unidentified due to the marginalisation of these communities. It is also critical therefore, that legal aid services foster strong links with such organisations on the ground and that they train them in how to identify

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[182] Ibid.
[183] Pleasence et al, above n 3, 105.

problems that may be able to be resolved by legal means and other assistance, and work with such agencies to ensure that community legal education is appropriate, timely and effective. Such a relationship should work on the basis of the model of community empowerment, capacity building and a respect for local knowledge and understandings. In communities which face extreme disadvantage and marginalisation these on-the-ground linkages are imperative if inroads into this disadvantage and social exclusion are to be made.

(xi)   Accessibility is frequently a factor in people's advice-seeking and accordingly for some people familiarity, trust and friendliness are considered important. The development of more multiple advice services in one location is required as disadvantaged people are likely to have multiple needs and require advice on a number of issues, and being able to do so in the same location at the same time is considered invaluable.[184]

3.   The role of community legal education

(i)   In the UK a new initiative, the Public Legal Education and Support (PLEAS) Task Force, was set up in January 2006 to develop proposals for how to promote and improve public legal education. The Task Force was supported by the Department for Constitutional Affairs – now the Ministry of Justice – and drew its membership from organisations and groups with a real interest in helping to improve public legal education.[185] The Task Force met from January 2006 for a year, completing its work in July 2007 with the publication of the report 'Creating capable citizens: the role of public legal education'.[186] That report's main recommendation was for a development strategy for public legal education (PLE) to be led by a new PLE organisation. The Task Force states that public legal education works to ensure that people:

- are aware of their legal rights and responsibilities and can recognise where the law can provide a remedy
- understand key legal issues and processes

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[184]   Buck et al, above n 77, 16.
[185]   The PLEAS Task Force Report and a two page summary can be downloaded in PDF format from <http://www.pleas.org.uk>.
[186]   Ibid.

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- have the confidence and skills to deal with their problems
- know where to go to get help[187]
- who are working as health professionals are trained in problem identification and how to provide appropriate referral and linkages upon the problem being identified, so as to provide a means of getting earlier advice to clients and patients to avoid escalation of problems due to ill-health. Further integration of services could lead to a reduction in social exclusion.[188]

Community legal education and its role in early intervention, identification prevention and reducing the escalation of justiciable/legal issues needs to be developed in Australia and can also be informed by international initiatives such as the PLEAS Taskforce.

(ii)   The legal profession, if it is serious about delivering legal aid services to the vulnerable and disadvantaged in an effective way, needs to undergo a cultural and educative shift and involve itself in training of other professionals who work closely with those likely to have unresolved justiciable and human rights issues.

(iii) Legal training both at undergraduate level and as part of practical professional development needs to address the narrow, often technical and reductionist approach of lawyers, by improving the legal interviewing skills and problem identification skills of lawyers. Client resolutions and client responsiveness can be impeded by inadequate skills and restrictive legal technical concentration that ignore the full contexts of client problems many of which would be capable of resolution with skill and, where appropriate, intelligent referral.

(iv)   More community legal education is needed. It should be located within communities based on a community development model. It should involve training by service providers and also of the service users themselves. It should demystify the legal system and attempt to empower and provide the basic knowledge people need to enforce their rights or to seek help in resolving their justiciable problems. Such education should recognise and heed people's educational attainments and cognitive abilities and be adapted using

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[187]   Ibid.
[188]   Pleasence et al, above n 3, 552, 556.

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teaching pedagogy to be able to relay the messages required by the audience at the different stages. Sometimes legal education is most helpful when there is a problem at hand and so legal education should also be able to target people at this stage of receptiveness. Often, more effective education occurs in environments where people feel comfortable and trusting.[189]

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[189] Ibid.