

The

JUSTICE PROJECT



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The Justice Project: Overview

- LCA's national review into the impediments to access to justice in Australia
- Focusing on those facing significant social and economic disadvantage
- Concentrating on 13 groups – while recognising that disadvantage is often intersectional and cumulative
- An extension of LCA's work promoting equality before the law, and advocacy for legal assistance and court resourcing to ensure effective access to justice

Focus groups

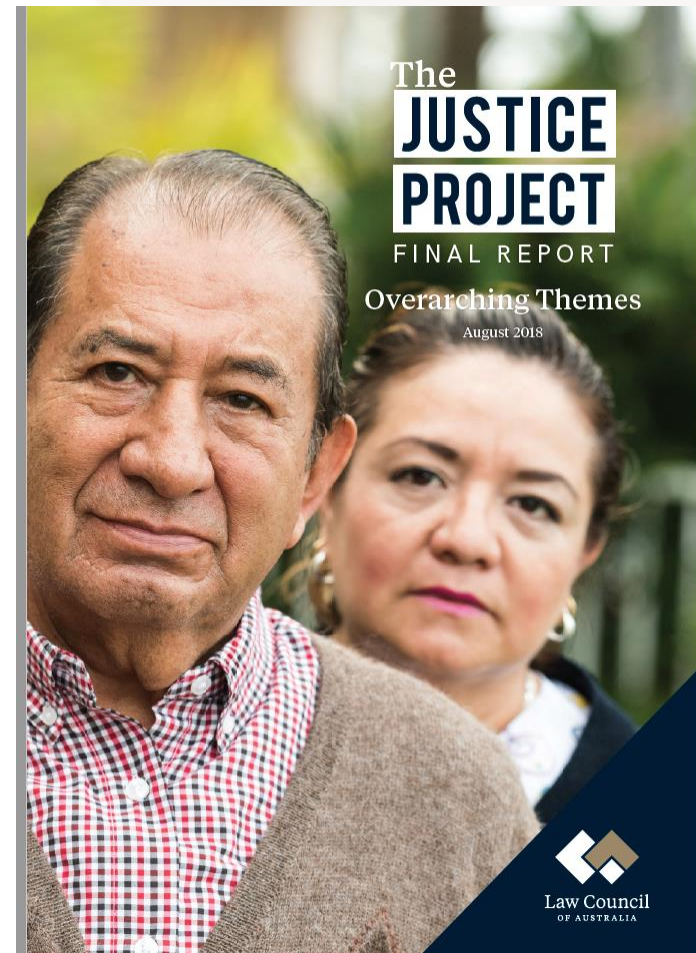
- Aboriginal and Torres Strait Islander peoples
- People with disability
- Older persons
- People experiencing economic disadvantage
- Homeless persons
- Children and young people
- Prisoners and detainees
- People who have been trafficked and exploited
- LGBTI people
- Recent arrivals to Australia
- Asylum seekers
- People who experience family violence
- People in regional and remote areas of Australia.

Work phases

- Project broken up into work phases:
 - Literature review, expert review (March to July 2017)
 - Release consultation papers (August 2017)
 - Over 150 consultations (August – October 2017)
 - Received 130 submissions (Sept-Nov 2017)
 - Progress Report and National Press Club event (March 2018)
 - Final Report (August 2018) – Parliament House launch

Final report

- Part 1: Group-specific chapters
 - eg Older People, People with Disability
 - key findings, priorities
- Part 2: Different parts of the justice system
 - eg Legal Services, Courts and Tribunals, Critical Support Services, ADR, Police/Corrections, Governments and Policymakers
 - what is effective/most needed for groups experiencing disadvantage



Good communication and the justice system

- Communication is pivotal to confidence in the justice system
- Communication is central to a person:
 - understanding the law that applies to them
 - identifying a legal right
 - knowing about the tools and services to solve legal problems
 - explaining their position effectively
 - understanding and perceiving a just outcome

What's at stake if communication is lacking?

- *An Aboriginal woman remained in prison for an additional two years because of a mistake in the recording of her sentence. The sentence was recorded as cumulative, not concurrent. The woman had no idea why she was in prison in the first place or that she should have been released at an earlier time.*
- (Consultation, Queensland Bar Association and Queensland Law Society).

Case study - Glenda

- *Glenda is an Aboriginal woman who was suffering from extremely severe depression and who was detained against her will under the Mental Health Act in a psychiatric institution. The treating team made an application for Electro Convulsive Treatment.*
- *This can only be given without consent if the person lacks capacity. Glenda was taken to a Guardianship Board hearing. The Board and all of the treating team were male. No Aboriginal liaison person was appointed. Funding is not available for legal representation at these hearings.*
- *The report of the treating team regarding Glenda's capacity was accepted without question and the order was made.*
- *Fortunately for Glenda she had two daughters who contacted Aboriginal Legal Rights who called me. I was able to seek a stay of the order.*
- *Glenda was so depressed that she could barely speak. But I was, after careful and gentle questioning over a considerable period of time with appropriate breaks, able to obtain clear instructions and make an assessment that she did in fact have legal capacity. She was terrified about the prospect of ECT and had felt powerless to do anything about it.*
- (Jennifer Corkhill, solicitor)

Communication and tribunals

- *‘A common situation observed by Legal Aid, in the context of child protection cases, is orders being made against a parent in their absence because he or she has difficulty finding the correct tribunal room to attend and his or her name cannot be called out in public due to closed court rules. Similar incidents were recounted in other jurisdictions.’*
- (Courts and Tribunals chapter)

Who is more likely to have communication needs?

- More obviously – many recent arrivals, asylum seekers, Aboriginal and Torres Strait Islander peoples, people with disability, older persons
- Less obviously – children, regional, rural, remote Australians, people who experience family violence, homeless people
- Multiple, intersectional barriers - mean more complex, escalating legal needs, combined with multiple communication barriers

Case study

- *A woman from Africa came to Australia as a refugee. She had no literacy in her own language and had experienced significant torture and trauma. Her partner was physically and sexually abusing her. It took a long time for her to gain the courage to seek assistance.*
- *When she went to court for an intervention order, she was not provided with an interpreter even though she spoke virtually no English. She found the entire process of going to court incredibly intimidating and was unable to look at the judge, which she said irritated him. He demanded that she look at him.*
- *This demonstrated a lack of awareness about the trauma survivors of family violence experience, which, for this woman, added to her previous experiences in her home country. The court process exacerbated her existing trauma and she struggled to recover.*
- (Judicial Council of Cultural Diversity, 2016)

Kinds of communications needs: language and literacy

- One quarter of the Australian population are born overseas
- There are 300 languages spoken in Australian households
- Migrants are increasingly settling in regional areas



Language and literacy (continued)

- Aboriginal and Torres Strait Islander people may have distinct communication needs
 - In remote communities many speak English as a third or fourth language
 - Practitioners report difficulties understanding their clients
 - Language and literacy barriers result in low engagement with the justice system

Kinds of communications needs: digital and distance related

- *There is a lack of access to technology. People don't always have phone reception. Technology is expensive – a lot of houses don't even have power. You are often better off driving long distances than trying to use tech – people aren't tech-savvy in Bourke.*
- (Mission Australia, Bourke consultations)

Digital and distance (continued)

- Unreliable internet and phone access in remote Australia remains a problem
- There are still significant inequities between urban and country areas
- Policymakers should not assume that technological justice solutions will transfer beyond the city

Kinds of communications needs: disability-related

- *‘Much of the information that is available online in regards to legal rights, responsibilities and processes is still not provided in formats that are accessible to people who are blind or vision impaired. Information-based brochures and guides are commonly provided in pdf format which is incompatible with the screen reading software that is needed.’ (Blind Citizens Australia, submission)*

Kinds of communications needs: disability-related

- *‘Legislation I find very difficult to read as it is very formal. The language I find very technical and many concepts difficult to decipher making it almost impossible to interpret how the law may apply to our own situation. ... This was one of the most hardest and stressful processes I have ever experienced in my life. This whole process impacted terribly on our family. It impacted significantly on my physical and emotional health and on our family ... At times it felt quite too hard and not worth the personal costs. At times, it was the system so to speak telling us to give up.’*
- Confidential (a person with psychosocial disability), submission.

Disability-related needs (continued)

- Further barriers are linked to:
 - The adversarial nature of the justice system
 - Power imbalances in tribunal settings

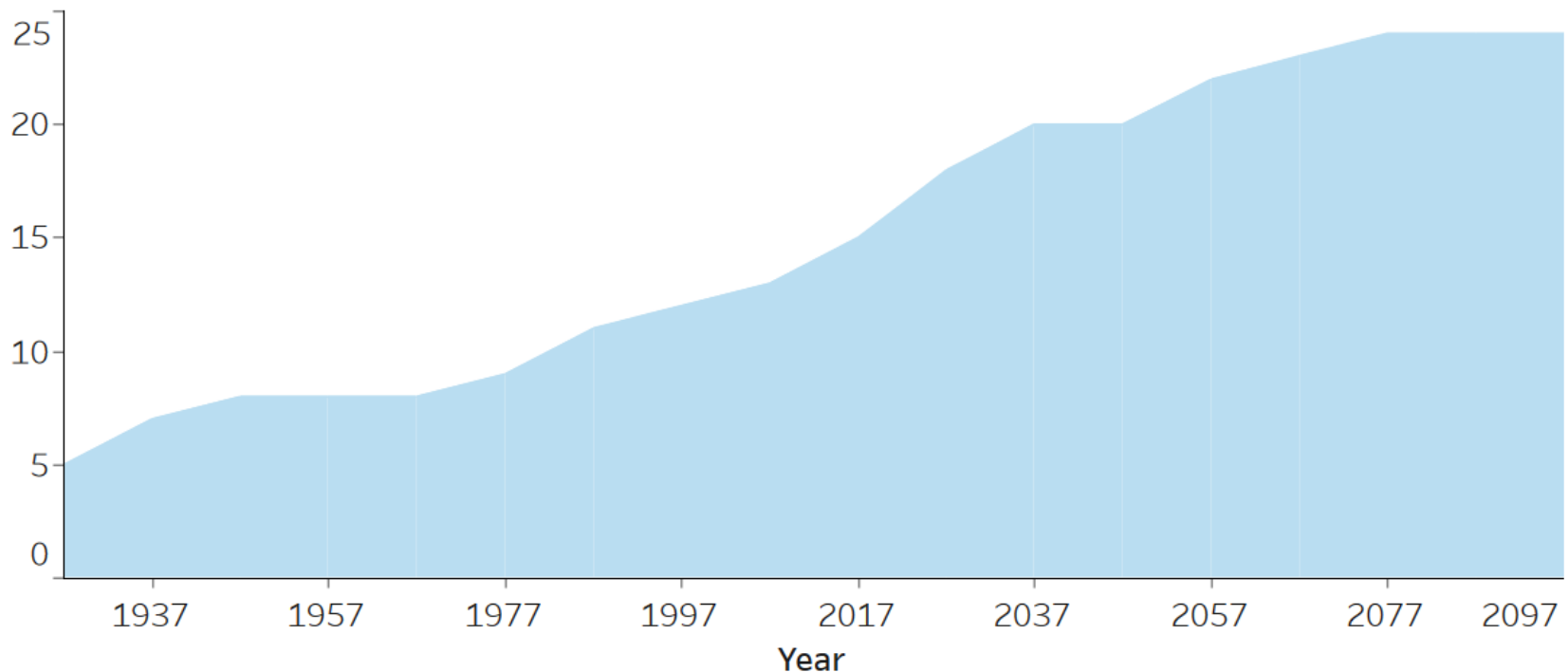
Kinds of communications needs: disability-related

- *Of course, the justice system's focus on expediency is in direct response to complaints about protracted disputes which can have their own deleterious effects. Further, there are financial costs involved in providing appropriate adjustments. However, these need to be balanced against the benefits of enabling people with disability to fully participate in the justice system.*
- (Mental Health Commission of New South Wales, submission)

Kinds of communication needs: age-related

Figure 1: Proportion of the Australian population aged 65 and over, at 30 June, over time

Per cent



Sources: ABS [1, 2].

Age-related (continued)

- Barriers affecting children include:
 - Complex language and questioning styles
 - ‘Invisible’ or undiagnosed communication needs
 - Alienation and intimidation



Kinds of communication needs: cultural

‘Some newly arrived migrants are particularly disadvantaged in a system where defined knowledge of the law is presumed and where ignorance is no excuse. A lack of understanding of Australian law, often fundamentally different to the law of their country of origin, reduces the overall effectiveness of the justice system.’ (JCCD)

Kinds of communications needs: trauma-related

- *'Abducted, beaten and tortured by government forces that accused him of supporting an opposition group, 'Matthew' fled to the US. He applied for asylum and was told to be as specific and detailed as possible – to provide the exact dates and times he was abducted, the number of guards who tortured him, what they wore, and the exact length of each prison detention.*
- *Highly traumatised, and still reeling from the effects of brutal blows to his head, Matthew could not remember the details asked of him. ... He tried to explain at his asylum office interview what had happened, but he became distraught as the officer forced him to relive his horrific experiences. Since his arrival, Matthew had tried to block out the memories of his past.*
- *As Matthew attempted to answer the questions, the circumstances of each abduction, detention and torture session blurred together. Terrified he would be forced to return to a country where he would likely be killed, Matthew's fears overwhelmed him. He could not recall the details the asylum officer asked him about, such as the circumstances leading up to each detention and the length of time detained. Citing inconsistencies between Matthew's asylum application and his testimony, the asylum officer rejected Matthew's claim.'*
- (Ardalan, 2015).

Effects of trauma on communication

- Difficulties recounting traumatic experiences
- Impact on memory



Kinds of communications needs: trust-related

- Certain groups have historical and ongoing experiences of unjust treatment under the law
 - Aboriginal and Torres Strait Islander peoples
 - LGBTI+ people
 - Recent arrivals and refugees
- Resulting in an abiding distrust of the law and justice system

Trust-related - effects on communication

- Avoiding the system altogether
- Engaging only at the crisis point



Solutions - Interpreters

- *'Milly was referred to our service by the local Magistrates' Court for assistance with a divorce application. We used a telephone interpreter for our first appointment. The interpreter was on a mobile phone. It sounded like she was driving. The line dropped out just as Milly was disclosing the violence and sexual assault she experienced during the marriage. She cried quietly while our lawyer called again for another interpreter to complete the interview.'*
- *We booked a face-to-face interpreter two weeks in advance for the next appointment. The divorce application had to be sworn and there was an affidavit accompanying it, which needed to be sworn too. A face-to-face interpreter is essential at a time like this.*
- *One hour before the appointment, the Interpreter Service sent an email to say that they had been unable to allocate an interpreter despite having previously confirmed our booking with the correct date and time. This was not enough notice to reschedule the client so she had a wasted trip.*
- *Milly was disappointed but resigned. She had a similar experience when reporting the family violence to police. We made another appointment but Milly cancelled. We have not heard from her again. Our efforts to assist her were frustrated by the inadequacies of the interpreter service.'* (Barwon Heads CLC, Submission)

Some solutions - accessible information and processes

- Plain English
- Translations



Disability-related supports

- *For a truly accessible justice system there needs to be flexibility to accommodate a wide variety of supports, for example communication needs could require anything, from braille through to plain English explanations. Other supports such as scheduling regular breaks or allowing sufficient time for the development of rapport and trust might be less obvious to identify.*
- Mental Health Commission of New South Wales.

Solutions – access to legal representation for most vulnerable

- *It is simply not possible to say, as a general rule, that a person who loses their liberty loses ‘more’ or ‘less’ than a person who loses their home, their livelihood, their children, their reputation, their earning capacity, their freedom of expression, their right to vote and so on. Nevertheless, the ‘incarceration is more serious’ argument persists and is commonly treated as a relevant factor in deciding whether a right to legal aid arises. (Rice, 2017).*

Solutions - access to support persons

- *'Apparently I hadn't put in a form that I was required to put in ... and he [the registrar] told me to go away and fill out a form, and I find it very difficult to do paper work ... because of my illness ... I had no advocate and no one there to help me to try and fill out this form. When I thought I had filled out the form appropriately ... I took it back in and handed it up to [the] judicial registrar ... he looked at it and threw it aside and said "I'm not accepting that". And I just broke down again.'*
- (Confidential (person with psychosocial disability), *Submission*)
- *'A person with mental impairment may not be very good with dates and times, but can tell you that the sun was high in the sky or was going down when it happened, or it was lunch time or dinner time.'*
- (Regional Alliance West, *Submission*)

Solutions – a disability-informed system

- Disability training
- Championing cultural change
- Disability justice strategies



Solutions – culturally competent responses

- Training
- Two-way engagement
- Diversity measures
 - Staffing
 - Cultural liaison officers
- Specialisation



Solutions – building community trust

- Community outreach and engagement
- Welcoming strategies
- Face-to-face services
- Circuit visits and local courts



Solutions – trauma-informed responses

- *Trauma-informed care describes a way of working with people that acknowledges, the likelihood of trauma, the lasting impact of trauma and promotes awareness and sensitivity to its dynamics. Trauma-informed approaches seek not to inflict any additional harm on individuals, and to avoid reactivating past traumatic experiences. It is based on the principles of safety, trustworthiness, choice, collaboration and empowerment.*
- Mental Health Commission of NSW, *Submission No 96.*

Technology?



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Technology – an evidence-based approach

- A nuanced, careful approach
- Exploration of the benefits and risks
- Avoid ‘one-size fits all’ strategies

Solutions – adequate time and resources

- Additional time is needed to
 - Build trust and relationships
 - Find the right supports
 - Make reasonable adjustments
 - Take adequate breaks
 - Explain processes
- However, courts and tribunals face chronic time pressures, largely due to under-resourcing
- This is exacerbated by a lack of access to legal assistance

Broader relevant recommendations

- Justice Impact Tests
 - Link resourcing to likely demand from policy shifts – eg increased focus on elder abuse
- Increased legal assistance funding – particularly civil
 - Ensure stable, consistent, evidence-based resourcing
- National Justice Interpreter scheme
- Multidisciplinary service and therapeutic, problem-solving approaches – eg health-justice
- Review resourcing needs of courts and tribunals
 - Having regard to their social, economic and cultural importance in upholding the rule of law
 - Ensure tribunals have power to allow party to be represented where necessary to ensure a fair outcome eg power imbalance, vulnerable party, decision has significant life consequences
- Focus on needs of regional, rural remote Australia
 - Access to lawyers, courts and tribunals, support services
- Targeted, tailored legal education - supported by national civics curriculum basics
- Building a more culturally responsive, inclusive and diverse justice system
- Disability:
 - Adopt State and Territory Disability Justice Strategies
 - More informed, disability-responsive justice system including lawyers, judiciary
 - Recognise role of disability advocates
- Technology:
 - Evidence-based, tailored approaches – complementing, not replacing face-to-face services

What next

PEOPLE WITH DISABILITY

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Priorities in this area include:

- Increase funding for legal assistance services to ensure that they have adequate resources to meet the complex needs of people with disability, including through providing appropriate aids and adjustments and engaging in sustainable partnerships with disability advocacy organisations and disability support services.
- Provide free legal assistance and representation for people experiencing disadvantage at first instance hearings for applications under Guardianship and Administration and Mental Health legislation.
- Increase disability training, education and awareness raising initiatives for justice system personnel who are likely to have close contact with people with disability.
- Invest in accessible, disability responsive and culturally appropriate support services and targeted prevention and early intervention approaches and programs.
- Enforce and formally recognise supported decision making.
- Address the intersectional needs of Aboriginal and Torres Strait Islander people experiencing disability by developing informed and culturally competent responses throughout the criminal justice system.
- Review conditions to stand trial laws and incorporate minimum safeguards, including:
 - limits on the period of detention;
 - regular and independent periodic review of detention orders;
 - access to judicial review for all decisions; and
 - access to stable, secure, individualised and culturally responsive non-custodial accommodation options.

1. Taborian Policy Institute, 2018. 4. LMJ Survey, 2017. 7. Victorian Mental Health Tribunal, 2017.
2. Human Rights Watch, 2018. 5. New South Wales Police Force, 2017. 8. NSW Mental Health Tribunal, 2017.

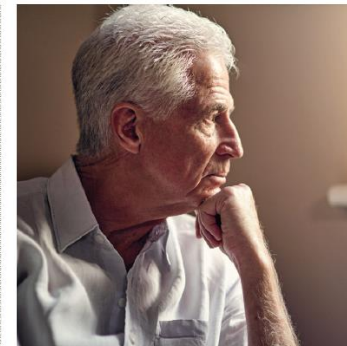
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OLDER PERSONS

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CASE STUDY: Barry, an eighty five year old man transferred his unencumbered home in the ACT to one of his adult children, Angela. Angela had promised to build a granny flat for Barry and take care of him until his death. There was no written agreement, however Barry had been living in his granny flat on Angela's property for approximately 5 years.

Angela remarried and advised Barry that the arrangement could not continue and demanded he leave his home. Barry was devastated by Angela's actions, however was able to go live with another child, Stephanie and did not want to seek any legal recourse against Angela as he was "too old and it was too hard" and he felt so ashamed about what had happened to him.¹



Priorities in this area include:

- Relax legal aid means and assets tests and expand grants of civil legal aid to more appropriately meet the needs of older persons.
- Resource legal assistance services to provide specialist advice and support for older persons.
- Support multi-disciplinary collaborations and service delivery approaches which address diverse groups' legal and non-legal needs.
- Develop and expand community awareness campaigns, curriculum, professional development and community legal education resources that focus on elder law issues, particularly elder abuse.
- Establish a well-coordinated, sufficiently resourced central referral service to refer older persons to legal and other support services.
- Develop appropriate and tailored measures to support older persons' effective participation in alternative dispute resolution proceedings.

1. LMJ Survey, 2017. Collaborative Funding Elements, 2016.
2. Davis, Salmer and Pleasants, 2014, Council on the Aging, Submission No 114, citing Australian Digital Inclusion Index.
3. ABS, 2016.
4. Australian Crime Quality Alliance, 2016.
5. VBA ACT, Submission No 116.

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Questions? Feedback?

