

COVID19 Legal Assistance Working Group Communique 1 May 2020

Ensuring access to legal assistance for those most in need during COVID19

Background

In March 2020, Health Justice Australia began hearing from our national network of health justice partnerships about areas of acute legal need likely to emerge in the context of COVID19; and about people for whom legal assistance services offered by telephone or otherwise remotely would be a barrier to accessing the help they needed. In response Health Justice Australia developed a [Position statement on Covid19](#).

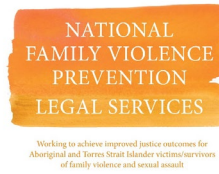
From that statement, Health Justice Australia was asked by legal assistance services to develop these positions further. To support this, Health Justice Australia convened a COVID19 Legal Assistance Working Group (the working group) with membership from: Community Legal Centres Australia, Legal Aid NSW, National Aboriginal and Torres Strait Islander Legal Services, National Family Violence Prevention Legal Services Forum and Victoria Legal Aid.

This communique shares the working group's understanding of the legal needs emerging and the groups of people who are likely to be most affected. The working group has begun exploring how legal and health services may work together to identify and respond to these needs as they emerge over the next few months. Service models will continue to be developed as new evidence and data arises and the sector learns more about the legal need impacts, demand and resources needed. In addition, the working group has considered the emerging needs of practitioners within the legal assistance sector itself in this rapidly changing environment.

1. Emerging legal needs

The working group has defined the acute legal needs that may be exacerbated for people who cannot access assistance by phone or remotely. These include:

- i. Family law, including particularly domestic and family violence; children with particular needs at home; children in state care needing contact facilitated (eg through mediation) especially for Aboriginal and Torres Strait Islander people; and the anticipated increase in child protection and domestic and family violence cases once restrictions ease
- ii. Tenancy
- iii. Social security
- iv. Employment
- v. Immigration
- vi. Consumer law issues (being exacerbated by systems changes and service provision challenges)
- vii. Criminal law – including risks of over-policing new public protection orders and orders made under the Biosecurity Act, especially for Aboriginal and Torres Strait Islander people
- viii. Fines and infringements



- ix. Financial hardship
- x. Under-reporting/engagement with services for elder abuse

2. People most likely to be at risk from legal need and who may experience barriers in accessing legal assistance services remotely

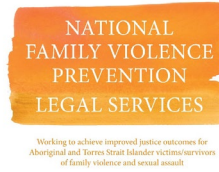
Many more people may experience legal need and be eligible for publicly-funded legal assistance as a result of Covid19. However not everyone will experience the same level of need and some people may have the capability to meet their own needs either through community legal education or other forms of information available, or without assistance at all. But there are cohorts of people who evidence tells us are likely to be at particular risk from unmet legal need and to experience barriers to accessing services remotely. These include:

- i. People who experience, or are at risk of domestic, intimate or family violence; or elder abuse
- ii. People involved with the child protection system
- iii. People experiencing English as a barrier to access
- iv. People who live with certain mental health issues
- v. Some young people
- vi. People who are homeless
- vii. First nations communities particularly those living in remote communities and those experiencing poverty
- viii. People living with disability and reliant on personal care
- ix. People who have little or no support managing underlying issues, for example alcohol and other drugs, including after being released on bail

3. Reasons why services available through phone or online platforms might be a barrier to accessing legal help

Not all cohorts, and not all people within those cohorts, will be impacted similarly. Some of the barriers to legal help when provided via remote (phone or online) services include:

- i. People are not able to access phones or the technology needed to contact services, either from availability of equipment, connectivity or cost
- ii. Accessing services from home may be unsafe in the context of family violence or elder abuse
- iii. People may not trust phone advice, for instance because of poor mental health or past negative experience with services
- iv. English may be a barrier to accessing help through remote services. This may result from a lack of interpreters, including for example in Aboriginal languages.
- v. Not having received or understood communication about changes to the function of regular service.



For these people alternative strategies could be of benefit. Some existing strategies that could improve access to legal help include:

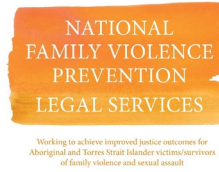
- **Community legal education** could be provided to support groups with high digital capability who can, with information, progress issues alone, leaving more capacity for one-on-one assistance for those who need that most. For example, through information about the rights of people who are recently unemployed within the current and changing environment of social security policy.
- **Legal assistance as a secondary consultation /intermediary support** could enable frontline workers such as health staff to spot legal issues and provide pathways to legal help.

4. Issues arising for legal assistance services

Practitioners providing legal assistance services are experiencing a range of challenges during COVID19.

- Professional development challenges** Some legal assistance services will need to work in different ways and possibly with different client groups. For example, a generalist civil lawyer may be required to increase their expertise around employment as more clients accessing the service are facing job loss or changes to their conditions of employment.
- Legal practice** is also facing challenges around risk management, eg in maintaining the confidentiality of client files while working remotely. Also, lawyers not being able to access clients in a timely and meaningful way to seek instructions, particularly clients in prisons.
- Practitioners wellbeing:** Practitioners are reporting the impact on their own health and wellbeing of dealing with aggressive or distressed clients over the phone; and the challenges of maintaining trauma-informed responses when previously relied-upon processes in a workplace aren't available.
- Aboriginal community controlled services** are finding clients are highly stressed and overwhelmed with the lack of face to face services. Clients may be struggling with technology either from lack of knowledge about how to use it, because they don't have access to equipment or because they don't have connectivity. There is significant grief and despair about interruption to relationships with children and family arising from Covid19.
- Other challenges** being reported as a result of working from home include the frustration of congestion in internet and phone networks. Legal assistance services, and the agencies that hosted outreach, are experiencing challenges about data storage and collection remotely. Inadequate resourcing of information technology across legal assistance sector is severely undermining ability to deliver effective services remotely.

Responses and resources from around the world Health Justice Australia has prepared a [digest of international sources and resources](https://www.healthjustice.org.au/2020/04/27/digest-of-selected-legal-assistance-responses-about-covid-19/) on legal needs and service responses to Covid19:
<https://www.healthjustice.org.au/2020/04/27/digest-of-selected-legal-assistance-responses-about-covid-19/>



5. Developing strategies to respond to acute needs among those for whom remote services are a barrier to getting the help they need.

Already, services have been innovating in the way they meet need during Covid19. For some, existing partnerships with health and other services has enabled a level of responsiveness that would otherwise have been impossible. For others, the shutdown of face to face services has provided a way to test new service models that otherwise might not have been explored. However, there remain people who are vulnerable to acute unmet legal need that will impact on their health and wellbeing over the coming period, for whom new and innovative service solutions will need to be found. Here are some of the directions that the Covid19 Legal Assistance Working Group will continue to explore.

- i. **Improving the capability of services to respond to multiple, intersecting needs** This includes building the understanding among frontline (including health) workers of the range of legal and social problems that might arise as a result of COVID19 and how to address them (ie where assistance can be found) through legal and other services still operating and with capacity to respond.
- ii. **Improving the communication about what services are available** Government responses to problems arising as a result of COVID19 could include broader information about where to go for assistance. For example, amid the concern about people at risk of family violence during this period, public announcements should acknowledge that legal needs may also be experienced as a result and that there are community legal services available to help. In another example, some states have a single phone number or point of contact for all legal services that could be communicated broadly to other services.
- iii. **Investing in public awareness campaigns** to build the capacity of the community broadly to be 'noticers' of legal and other need may expand referral beyond professional services and practitioners. For example through education of the 'volunteer army' mobilising in Queensland.
- iv. The working group has also discussed **data collection** about the extent of need now and as it changes into the future. Data collection will support the ability of services and sectors to develop shared strategies to address emerging needs and problems with accessing help for those needs. Administrative data and individual service reports will continue to provide insight into service usage, however, there are some factors that may make it difficult to use data collected to advance the working group's investigation. These include the lengthy processes for entering and reporting on data and issues with the comparability of data. A standardised survey instrument developed by Health Justice Australia is available for use by legal assistance services to support data gathering across the legal assistance sector nationally.

Next steps: The working group will continue to explore how to resolve the barriers to accessing legal assistance by phone or other remote service that are likely to affect some of those most vulnerable to unmet legal need and its impact on health and wellbeing during this period. We welcome input and suggestions to Tessa.Boyd-Caine@healthjustice.org.au and Bernadette.Roberts@healthjustice.org.au