

'LAY PEOPLE, FOR GOD'S SAKE! SURELY I SHOULD BE DEALING WITH LAWYERS?'

Towards an Assessment of Self-help Legal Services in Australia

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The last decade has been a time of change for the domain of Australian legal services. Amongst other developments, the period has seen a marked growth in the supply of legal information to consumers, using traditional and online methods. This has been accompanied by a seemingly significant increase in the supply of legal services that apparently involve *consumers themselves* in the service delivery process. This article presents our exploratory research findings on the growth and significance of these services in Australia

Introduction

The last decade has been a time of change for the domain of Australian legal services. Amongst other developments,¹ the period has seen a marked growth in the supply of legal information to consumers, using traditional and online methods.² This has been accompanied by a seemingly significant increase in the supply of legal services that apparently involve *consumers themselves* in the service delivery process.³ This, at least, is the appearance, judging by the proliferation of what may loosely be referred to as 'self-help legal services'.

This article presents our exploratory research findings on the growth and significance of these services in Australia.⁴ Our working definition of a self-help legal service, and the initial point of reference for this research, was 'a service that allows or encourages a legal consumer to take personal responsibility for some or all the activities necessary to complete a legal

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¹ See, for example, Law Council of Australia (2001) *2010: A Discussion Paper: Challenges for the Legal Profession*, www.lawcouncil.asn.au/download.html?table=publication&oid=1963155603, accessed 7 June 2002.

² Scott and Sage (2001).

³ For similar trends elsewhere, see Garcia (1997); Gallagher and Stover (1997); Barnes (1990); Bindman (1982); Podgers (1993); No Attribution (1994); Source Book Inc, No Attribution (1991); No Attribution (1997); Anosike (1998); No Attribution (1997); Marcotte (1990); Scanlon (1996).

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transaction'. We conceived of a 'legal transaction' broadly to include any legal work⁵ that was undertaken to achieve a legal outcome in common areas of personal legal services.⁶ Typically, the focus would be on legal services that were provided 'free', such as those made available by community legal organisations, legal aid commissions, courts and government departments. However, we also included services offered by some private sector providers, given their rising prominence in the self-help 'market'. In each instance, we were interested in services that required an element of consumer participation for their completion.

The research relied on qualitative interview and documentary data gathered from various legal service providers. The main research questions that shaped the study were about the nature of these services, the reasons or motivations behind their introduction, and respondents' own assessments of their merits, utility and likely future use. Our aim was to be able to provide an initial account and assessment of the nature and significance of these services, given that they have so far attracted so little attention in the academic literature on consumers' access to law.

The article begins by suggesting the context for the growth of self-help legal services, and notes some of the literature that has a bearing on questions of client or consumer participation in legal service delivery. After explaining the research setting and method of our inquiry, we summarise and interpret the data. This is followed by discussion and analysis of some of the more pertinent issues identified in the data. Our findings are summarised in the final section.

Our main research findings are that there is indeed a growing and significant category of legal service that contains a self-help dimension, but that there is insufficient understanding of the limits of self-help services, when they are best used, and what they can best achieve. The distinction between genuine self-help services and community legal education⁷ services is important for consumers, but is often blurred by suppliers. Too much emphasis is being placed on the capacity of consumers to help themselves without really knowing that they are able to do so. Far more information is needed about who is best able to benefit from these services, and under what circumstances.

One of the many issues to emerge in the course of the study concerns the question of how well the self-help legal consumer is generally received in traditional legal institutions. Our evidence suggests that some courts, at least, are committed to accommodating the self-helper, as challenging a task as this

⁵ We are aware of the difficulties of fixing a meaning to 'legal service'. For the purpose of this research, we found it unhelpful to do so, as long as it involved advice, representation or some other form of legal assistance; see for example, United Kingdom (1989); McEwin (1992).

⁶ These included areas such as family law, criminal law, succession, conveyancing, property and tax, whether or not this involved court work of various kinds or other legal processes involving government authorities (such as licensing).

⁷ Biondo (1998), pp 169, 170-71.

may be. However, an acceptance of the self-represented consumer is not universal, as the quotation that forms the basis for this article's title indicates.⁸

Background

Australian self-help legal services probably originated in the 1970s with the work of community legal centres (CLCs). In keeping with their commitment to demystify the law and break down the traditional lawyer-client relationship,⁹ CLCs developed initiatives designed to educate the community regarding their rights and responsibilities. This type of community legal education was not seen as an end in itself, but rather a means to empower people to make informed choices about what further law-related actions they might take. It was designed to promote 'legal literacy' and to raise the profile of poverty law issues¹⁰ rather than providing a way to resolve specific immediate problems.¹¹ This education could be combined with traditional lawyer services.

In more recent times, legal information services have been adopted and developed on a large scale by both government and other non-profit agencies.¹² What explanation might there be for this dramatic increase in legal information services?

Through the 1990s, the ideology of the marketplace has increasingly permeated the discourse on legal service delivery. Legal practice has become a business,¹³ and lawyers have become players in a legal services marketplace, competing with many other legal service providers. The roles of citizens, as legal subjects, have been recast: the 'legal services consumer' — or at least the notion of one — has come of age. The new script requires that lawyers, courts, legal aid commissions, and even government departments providing legal services, be seen to be consumer-centred. Competition and efficiency, the new articles of faith, must drive decisions on how best to serve the legal consumer. Ultimately, accountability to the marketplace, by both private and public sector providers, will ensure that legal consumers are well served.¹⁴

Even 'access to justice' rhetoric has been clothed in marketspeak. Because competition and efficiency will supposedly deliver cheaper and better legal services, this will consequently increase access to law. A rejuvenated market order, consisting of a carefully deregulated legal industry, will deliver access to justice on a scale promised but never achieved under older capitalism. At last, it is said, things are beginning to look better for law's many strugglers.

⁸ The quotation was taken from one of our interview transcripts, and is considered further at the end of the segment on 'Providers' evaluations of their own services'.

⁹ Chesterman (1996), pp 34, 36–37.

¹⁰ See Bothmann and Gordon (1979).

¹¹ Giddings and Robertson (2001).

¹² Scott and Sage (2001), Ch 2; Australian Law Reform Commission (2000).

¹³ A view that no longer seems heretical; see, for example, Law Council of Australia (2001), Ch 5.

¹⁴ Trade Practices Commission (1994); Access to Justice Advisory Committee, Commonwealth Attorney-General's Department (1994).

It has not been suggested that the marketplace alone could be trusted to deliver law to the needy. There has remained a role for publicly funded legal aid services.¹⁵ In the public sector, the challenge has been how to deliver social services with reduced or static budgets.¹⁶ Consequently, suppliers of public sector legal services have been encouraged 'to seek alternatives to traditional service delivery'.¹⁷ Courts, for example, have turned to more efficient procedures and methods, and have marketed these new services with a 'consumer focus'.¹⁸ Governments have promoted alternative dispute resolution methods, and mediation in particular can be seen as a way to encourage parties to find their own solutions.¹⁹

What other 'alternatives' to traditional services have emerged? One strategic response has relied on two key ingredients of the new and developing vision. First, there was a belief in the importance of consumers having access to legal information²⁰ — a belief facilitated by dramatic improvements in information technology that made mass communication of legal messages a real possibility. Second, there was a belief that consumerism, with all its potential benefits for consumers, also carried with it consumer responsibilities. These included the responsibilities of informed engagement with the market in order to keep suppliers on their toes and accountable to the market order. But, arguably, enlightened and informed legal consumers could make another contribution in the marketplace. This contribution lay in the seemingly untapped potential of consumers' own productive capacity.

The new script, therefore, also envisaged new roles for consumers. For example, the *Justice Statement*, released in 1995 by the Federal Labor government led by Paul Keating, confidently declared that 'often, people only need advice or information and are then capable of resolving a dispute or legal problem *by themselves*'.²¹ In a sense, therefore, people (that is, consumers) could become their own lawyers for certain but unnamed 'disputes or legal problems'. The same report proceeded to extol the advantages of having consumers capable of 'accessing laws'.²² In this view, access to legal

¹⁵ For example, Commonwealth Attorney-General's Department (1995), Ch 6.

¹⁶ As matters turned out, the last decade saw increased pressure on the legal aid system, and many Australians continue to face real difficulties accessing the legal services that really matter to them. See Noone (2001); Dewar et al (1998); Giddings (1998).

¹⁷ Commonwealth Attorney-General's Department (1995), p 103; Scott and Sage (2001), p 12.

¹⁸ Sackville (2002).

¹⁹ Although the rise of self-help legal services in Australia appears to coincide with the emergence of alternative dispute resolution processes, we do not propose to explore this link in this article. It is, however, a matter that warrants further investigation.

²⁰ Access to Justice Advisory Committee (1994), Ch 4; Parliament of Victoria, Law Reform Committee (1999), esp Ch 12.

²¹ Commonwealth Attorney-General's Department (1995), p 104, italics added.

²² Commonwealth Attorney-General's Department (1995), Ch 7.

information, coupled with consumer capacity, seemed almost synonymous with access to legal services (and therefore to justice itself) — or at least was seen as going a long way towards providing access to justice.

This thinking assumes or encourages a belief in the self-directed legal services consumer, as someone willing and able to play a part in making the market work more efficiently. The legal services consumer must be a capable acquirer of information, and therefore an active learner; a person endowed with the capacity to make rational choices on the basis of that information; and, as far as possible, someone willing to take responsibility to service their own legal needs. All of this presupposes the currency of a political ideology in which individual autonomy, ability, self-interest and self-assertion are key formal characteristics.

Although the concept of the participating legal services consumer is not strongly established in the literature on legal service delivery and consumption, perspectives and theories from different strands of literature provide some guidance in developing an understanding of this area. The growing literature on services, for example, incorporates a theory concerning the variable but significant co-productive capacity of consumers of a diverse range of service types. Co-production theory provides one avenue through which to make greater sense of the market's tendency to encourage or even oblige consumers to contribute to their own service outcomes.²³ Efficiency advantages of consumer participation apply both to private and public sector service settings.²⁴ In certain circumstances, the involvement of consumers is seen to improve both the service quality and the consumer's sense of satisfaction with the service outcome.²⁵ This literature also examines the factors, including consumer characteristics, which affect consumer participation levels.²⁶ However, consumer co-production in legal service settings is so far an understudied area, particularly in the context of legal services provided by public sector or not-for-profit agencies.

Questions of client participation in lawyers' services have arisen in a number of lawyer-client literature streams. First, the literature on 'unbundled' legal services asserts that there are circumstances when it is desirable that clients participate in their own legal services by taking on tasks that normally are the responsibility of the lawyer.²⁷ This literature, which consists of both normative and empirical work,²⁸ acknowledges the variability of client willingness and ability levels. Second, sociological studies of power and control in lawyer-client relationships demonstrate that client involvement in tasks and decision-making, although variable and controversial, is part and

²³ Iacobucci (1998); Zeithaml and Bitner (2000); Normann (1991); Koelemeijer and Vriens (1998).

²⁴ Bateson (1985); Alford (1998).

²⁵ Mills and Morris (1986); Zeithaml and Bitner (2000), p 323.

²⁶ Mills and Moshavi (1999).

²⁷ Mosten (1994); McNeal (2001).

²⁸ An Australian study that examines the incidence of unbundling in family law services is Hunter et al (2000).

parcel of the legal service encounter.²⁹ Third, the literature on client-centred lawyering advocates a participatory model of the lawyer–client relationship and focuses on the importance of client input into that relationship. Although, strictly speaking, it does not place emphasis on the client’s productive capacity, it is concerned with the client’s needs and interests being taken seriously,³⁰ and therefore appears to have some resonance with the notion of the participating consumer.

Limited comments about the possible relevance of some of this literature to an understanding of self-help legal services are included below.³¹

Research Setting and Method

Interviews were conducted with 18 representatives of Australian legal services suppliers (providers) in 2000 and 2001. Respondents were situated across three states and one territory.³² Each interview was conducted on a semi-structured interview basis and lasted approximately 45 minutes. Our questions sought initially to elicit descriptive information about the supplier’s services and its customers. Subsequently, each respondent was asked to provide views and comments on the reasons and motivations for the introduction of legal services with a self-help component together with their perceptions about the success, or failure, and likely future use of these services. All interviews were recorded and transcribed. Most respondents expressed a preference to remain anonymous. For this reason, references to interview transcripts are coded by number in the discussion and analysis that follow.

All respondents were senior office bearers or employees of the institutions they represented. Most were in senior or influential positions, such as directors, senior policy or project staff, judicial officers or proprietors. A small minority of respondents came from different sections or departments of the same institution. Nearly all respondents were legally qualified, although most were not practising in conventional lawyers’ roles. The provider types represented by the 18 respondents are stated below. The number code of each respondent is included in brackets after the name of the provider.

- four Community Legal Centres (CLCs), specialising in different areas of community work (# 1, 2, 3, 4);
- two courts at federal level (# 5, 6, 7, 8);
- four government agencies, one at federal and three at state level (# 9, 10, 11, 12);
- one Legal Aid Commission (# 13, 14);
- two internet legal service providers (# 15, 16);
- one private sector legal kit provider (#17);

²⁹ An early example is contained in the work of Rosenthal (1974), pp 30–31. The work by Felstiner and Sarat (1992), pp 1474, 1486, 1490–91 and Sarat and Felstiner (1995) provides one leading example of incidents of client participation in service delivery.

³⁰ For example, Binder et al (1991).

³¹ See below under ‘Discussion and analysis’.

³² Queensland, New South Wales, Victoria and the Australian Capital Territory.

- one solicitor in specialist private family law practice(#18).³³

In all cases, providers were selected because our initial informal inquiries revealed that their services included at least some that appeared to fit our working definition of a 'self-help legal service'.³⁴ Initial pre-selection inquiries were assisted by a preliminary scrutiny of hard copy publications and online services that appeared to contain legal self-help elements. All respondents subsequently provided information on the sorts of services that formed the focus of our study, although there were some inconsistencies in use of terminology, and in understandings about what constituted services with a self-help element.³⁵

During or following some interviews, we were provided with copies of providers' publications that had been discussed during the interview. Some of these publications were selected and analysed separately from the interview transcripts and are referred to in the summary and interpretation of the data below.

Summary and Interpretation of Data

Because our research was qualitative, we formulated our primary objectives to include the identification of themes, issues, difficulties and questions arising out of the focus of our inquiry. Our aim, therefore, was to provide some understanding of — or give some meaning to — a species of legal service that has potential significance for many legal consumers. As far as possible, we have tried to avoid presenting or discussing the data in ways that suggest quantifiable conclusions.

For convenience, the structure of the following section is arranged around the following areas: clients, customers and consumers; the nature of the services offered and mode of delivery; why service providers offer these services; provider perceptions of why consumers make use of these services; and providers' evaluations of their own services, including an assessment of their likely future use.

Clients, Customers and Consumers

Given the range of suppliers involved in the sample, there was a great deal of variation in the way that potential self-help consumers were identified. Examples included people on or below the poverty line, prisoners, disadvantaged women, people from all walks of life who had experienced

³³ A family law solicitor was interviewed to obtain a practitioner's perspective on self-help litigant activities in the Family Court of Australia, and views of unbundled legal services involving family lawyers.

³⁴ As stated above, our working definition was 'any service that allowed or encouraged a legal consumer to take personal responsibility for some or all the activities necessary to complete a legal transaction'.

³⁵ A lack of shared understanding about the nature of a service with a self-help element raises significant issues about the utility of these services, together with the assumptions and expectations of providers. All these matters are discussed in more detail in 'Discussion and analysis' below.

family disputes, taxpayers generally, the general public, people predominantly from lower socio-economic backgrounds, people mainly in the 30–50 age group, and internet users, probably with high education levels.

There is considerable breadth in the variation, from especially disadvantaged to relatively privileged. With some limited exceptions,³⁶ the users of these services are individuals rather than business entities, suggesting that many of these services are designed for legal transactions of a personal nature, rather than for business or corporate ones.³⁷

Some data suggested the perception of different consumer 'types' from the point of view of their ability to assist themselves in the conduct of legal transactions. A notable example was provided by a judicial officer who suggested four 'distinct classes of litigants in person'. However, a classification along these lines may have a broader significance for an understanding of the variable capabilities and skills of self-helpers:

There are some who are quite skilled and able to really address quite sophisticated issues and present their case, their issues, more than adequately. And they may in fact choose to be representing themselves ... [and] often do an extremely good job ... that wouldn't be as well done if they were represented ... There are then those who have had a reasonable exposure to court, but they've run out of money, can't get legal aid, the case is still going. So, although they are reluctantly representing themselves, they've had sufficient exposure ... [and] some capacity to understand what you're telling them, and with your assistance, to prepare their material, and ... participate in a defended process ... And then you've got the next category who are literate and barely managing ... and you've got to break all the rules to help them get through. And then you've got the non-English speaking background illiterates, huge cultural barriers, who just flounder and you may or may not get it right with them.³⁸

The Nature of the Services Offered and Mode of Delivery

For reasons developed more fully below, we prefer the view that legal information supply on its own is better not regarded as a legal self-help service.³⁹ In our view, legal self-help involves a consumer engaging in a transaction that is directed towards a particular legal outcome. A self-help service is one that facilitates such a transaction: it is directed towards assisting the legal consumer to complete defined legal tasks. The mere supply of general

³⁶ Some government agencies also service business clients (eg Interview Transcript #12), but it is not clear that these are for self-help services. Also, business clients seem to make use of private sector kits (Interview Transcript #16).

³⁷ This is borne out by the fact that most of the services discussed below were indeed of the personal legal services variety.

³⁸ Interview Transcript #8.

³⁹ See below under 'Discussion and analysis'. It is likely that this distinction is recognised by some providers.

legal information, in the abstract, is in most circumstances unlikely to achieve such an outcome.⁴⁰ In other words, general legal information is of limited utility in dealing with specific and pressing legal problems faced by needy consumers.

By contrast, the supply of specific and timely legal advice or 'coaching' does, as we suggest below, potentially play an important if not crucial role in facilitating legal self-help. Legal information services nevertheless remain a significant feature of the self-help legal landscape,⁴¹ regardless of their utility, and for this reason we include reference to them in the ensuing discussions.

Most providers in our sample reported supplying considerable quantities of legal information to consumers. In this form of service, general legal information on a range of topics is made available by way of information sheets and publications, through call centres, or online.⁴² As a rule, these services are not seen as providing legal advice, and some publications contain disclaimers to that effect.⁴³ The distinction between information and advice is seen by providers to be important, despite the fact that it is a difficult distinction.⁴⁴ One respondent judicial officer suggested that:

advice is what those who don't want to give assistance say they'll be forced to do with unqualified people, and information is what those who *do* want to give assistance say when they're giving it, irrespective of whether it's advice or not.⁴⁵

Another judicial officer made a similar point:

⁴⁰ For example, Office of Fair Trading, Department of Equity and Fair Trading (2000). As a leading US writer on legal services puts it: 'Finding [legal] information and knowing how to use it are two different things': Kritzer (1999).

⁴¹ Scott and Sage (2001), pp 17–19 also question the utility of 'generic' information services; and see Giddings and Robertson (2001).

⁴² Legal Aid Queensland (1999a, 1999b); Legal Aid Queensland (2000); Caxton Legal Centre Inc (1996); Office of Fair Trading, Department of Equity and Fair Trading (1998).

⁴³ For example, 'This publication is intended to give general information about mobile home living arrangements. While every effort has been made to ensure accuracy, the law is complex. No responsibility is accepted for any loss, damage or injury suffered by any person acting or relying on information contained in or omitted from this publication.': Caxton Legal Centre Inc (1999). Similarly, one respondent stated that call centre services did not involve self-help: Interview Transcript #13.

⁴⁴ Greacon (2001); Greacon (1995); Scott and Sage (2001), p 55; Giddings and Robertson (2001), p 187.

⁴⁵ Interview Transcript #7.

The courts, I think, traditionally have an idea that you can't give advice and almost to the extent that in some courts they can't even tell you if it's a Form 3 or a Form 8 that you need. That's just nonsense.⁴⁶

'A Guide to Mobile Home Living' is one example of a legal information brochure that does not purport to provide advice.⁴⁷ It is a 51-page guide to the law on owning and living in a mobile home in Queensland, and outlines the rights and responsibilities of mobile home residents under the relevant law. It highlights issues consumers should consider in choosing a suitable park and provides detailed information on the type of agreement that should be made with a park owner. It also contains information on contract variation, vacation, eviction and dispute settlement mechanisms.

Few respondents were willing to describe precisely what they understood by a self-help legal service. However, amongst those that did, there was some degree of commonality, and these understandings also coincided with our initial description of legal self-help. One respondent said that self-help referred to 'any part of our service where ... we try [to] impart skills and knowledge that will assist a person to solve their own legal problem'.⁴⁸ Another referred to self-help services as 'providing materials which allow our clients to fulfil their obligations themselves'.⁴⁹ Another spoke of 'a step-by-step guide' to allow consumers to complete their own legal transactions.⁵⁰ Yet another said that self-help services are those in which 'the client is in control of their own matters and we are just providing them with some tools to assist them'. Finally, a respondent described their services in the following terms: 'information to help people do things for themselves ... [together with] the paperwork which people need' to complete a legal transaction, and also 'support services' to facilitate completion of the transaction.⁵¹

Our interpretation of the survey data suggests that, among the various services that actually support legal self-help, two distinct categories can be detected. The first is what can be referred to as the legal transaction kit. Typically, this is a document-based service that carefully guides the user along a series of steps designed to achieve a specific legal outcome. The second self-help support service can conveniently be referred to as 'legal coaching'. Coaching takes a variety of forms, but its distinctive core element is timely and directed legal advice or assistance to a legal consumer who is taking some or all of the responsibility for a particular legal transaction.

⁴⁶ Interview Transcript #8.

⁴⁷ Caxton Legal Centre Inc (1999).

⁴⁸ Interview Transcript #1.

⁴⁹ Interview Transcript #9.

⁵⁰ Interview Transcript #12.

⁵¹ Interview Transcript #17, in which the respondent was referring to 'do-it-yourself kits' on conveyancing, probate, wills and powers of attorney.

Self-help Kits

Some examples of legal transaction kits revealed in our research included the following: 'how to obtain parenting orders' kit; 'bail by mail' kit; divorce kit; self-preparer tax kit; appeal against suspension of a drivers' licence kit; unfair dismissal kit; will kit; and conveyancing kit.⁵² Although some deal with matters that could have very serious consequences for their users, they all involve at least some paper-based legal work, but may also involve an ancillary step like a court appearance. They are therefore designed to facilitate transactions susceptible to being handled mainly, but by no means exclusively, through completion and lodgment of documents. This does not mean that successful completion of the document, and subsequent appearance where required, necessarily leads to the completion of the whole transaction, or to the end point from the consumer's point of view. Sometimes the self-help kit addresses only a step along the way in a more extensive transaction, such as the case of a divorce kit or a licensing application: a formal response, judgment, or decision may ultimately be required from another service provider or other entity.

An examination of a 'bail by mail' kit⁵³ reveals that its aim is to assist remand prisoners to apply for or vary an existing bail order. It contains general information on the bail process, including the conditions an applicant must satisfy in order to make a successful application. It also sets out the application process itself, together with forms and detailed instructions to enable the user to complete necessary documentation, file the application, and to appear when the matter is heard. The kit is very obviously designed to assist a user to act on a self-help basis with minimal assistance from anyone else.

The use of the word 'kit' by the service supplier does not necessarily signify a legal transaction kit of the kind being considered here. Many 'kits' are in fact legal information publications of the 'know your rights' variety, and are not intended by their publishers as anything more.⁵⁴ Again, this underscores the difference between legal information kits and legal *transaction* kits,⁵⁵ and the fact that they serve very different purposes. In some cases there is a fine line between the two.⁵⁶ As far as providers are concerned, transaction kits do not involve the provision of legal advice.⁵⁷

Coaching

As suggested above, most providers emphasised their roles as sources of legal information for consumers, rather than suppliers of advice. Nevertheless, four

⁵² Interview Transcripts #1, 3, 5, 9, 12, 13, 17.

⁵³ Prisoners' Legal Service and Legal Aid Queensland (2001).

⁵⁴ For example, 'Activist' and 'Where You Stand' kits produced by a community legal centre, and the 'Age Wise Kit' produced by a state government office.

⁵⁵ This matter is considered further below under 'Discussion and analysis'.

⁵⁶ For example, Legal Aid Queensland (2001a, 2001b).

⁵⁷ Legal Aid Queensland's *How to Apply for a Protection Order (Domestic Violence)* and *Variations of Court Orders about Children* both include the disclaimer: 'The material displayed on this page is intended as information only. If you have a legal problem you should seek legal advice from a lawyer.'

overlapping but distinguishable kinds of legal coaching support emerged from the interviews. First, and most commonly, some interviewees gave examples of what they saw as general advice services (as opposed to information ones) across a range of legal matters. These were aimed at helping people who were acting for themselves ('empowering people to use the law themselves')⁵⁸ so that they could solve their own problems. For example, clients were given oral advice, on request, at various stages of a matter they were handling on their own.⁵⁹ Second, some providers gave assistance specifically for the completion of legal documents and forms.⁶⁰ Third, there was some evidence of support services specialising in assistance for self-helpers to complete legal transaction kits.⁶¹ Fourth, some coaching was directed specifically to assistance in handling court procedures and assisting litigants in person, and involved various formal and informal strategies,⁶² including direct judicial intervention to assist unrepresented litigants during the course of proceedings. One interviewee described this in the following terms:

We have to be concerned about delivering a just outcome and the alternative is really not to give people much help. If you don't, they'll flounder ... they won't present the evidence ... [and] their applications will be dismissed. You can, as a judicial officer ... say, look, it's not really my responsibility to do this, but I think we're actually trying to achieve a bit more than that.

The existence of these two forms of self-help service — transaction kits and coaching — revealed in our data might suggest that the service *range* is really quite limited, even if transaction kits appear to be plentiful. It should also be noted that both these forms rely quite significantly on the input or presence of a legal expert. Transaction kits are carefully crafted in advance of the consumer's engagement with them, while coaching in its various guises involves expert input during the currency of the transaction. In both cases, the performance of the work comprising the transaction is achieved (successfully or not) through mutual effort. In this sense, the legal work is co-produced. What this suggests, in turn, is that the 'self-help' label, if it implies consumer-only input, is a misnomer and is potentially confusing. It would be more accurate to describe the services referred to here as legal services involving limited expert assistance. However, the 'self-help' terminology is fairly well established,⁶³ even if there is no general consensus about what it actually means in the context of legal work.

⁵⁸ Interview Transcripts #1, 17. One interviewee stated that clients might return to the service provider on multiple occasions in order to be coached on the next stage of the transaction: Interview Transcript #1.

⁵⁹ Interview Transcripts #1, 13.

⁶⁰ Interview Transcripts #2, 4, 13, 18.

⁶¹ Interview Transcripts #16, 17.

⁶² Interview Transcripts #6 and 2, 4, 5, 7, 8, 18.

⁶³ For example, Prisoners' Legal Service and Legal Aid Queensland (2001); Legal Aid Queensland (1998).

The modes of self-help service delivery revealed in the interviews included paper-based publications (being books, guides, pamphlets, sheets, manuals, kits), often made freely available in offices and other venues utilised by likely users, or in some cases by mail delivery. Online dissemination methods were commonly used by most providers, reflecting the massive shift to information technology across the industry.⁶⁴ Use of telephone, video, videoconferencing and CD-ROM were also evident. Many providers still made at least some use of face-to-face communications (including through interpreters in limited instances) on a one-to-one basis or as part of a group setting. Combinations of these delivery methods included, for example, use of transaction kits in a group meeting.⁶⁵ Transaction kits were always either confined to paper-based publications (most common) or in some cases online services. Coaching services were offered using most methods of instantaneous communication. The sample did not reveal any instances of coaching by email.

Why Service Providers Offer These Services

Respondents were asked to explain their understandings of why their institutions were offering these services. Although most of the responses were about self-help services themselves (the meaning of which was established during the interviews), some responses tended to include reference to legal information services.⁶⁶

A major response from government, legal aid and CLCs was the need to spread limited resources. In a climate of tight budgets, when not everyone could be helped with more traditional services, self-help options were seen as an appropriate alternative 'avenue'. For example:

We know we can't provide the top of the range legal service, being a lawyer to go to court, to the numbers of people that need the service, so what else can we do? It's a way of managing limited resources to provide assistance to maximum numbers of people.⁶⁷

Put slightly differently, fostering self-reliance saved money for the provider by allowing 'downsizing of the government':

[previously] most of our staff would be purely processing staff ... checking documents ... which was very time consuming. We went into the education role and the self-help role ... If we didn't have self-assessment, you could probably look at doubling [our staff].⁶⁸

⁶⁴ Law and Justice Foundation of New South Wales (2001).

⁶⁵ Interview Transcript #13.

⁶⁶ The reasons for the introduction of legal information services tended to be couched in terms of the need to make people more informed about their legal rights.

⁶⁷ Interview Transcript #11.

⁶⁸ Interview Transcript #9.

This point was made in a number of similar ways. For example:

We don't have the resources to assist people with everything when it's quite possible that if they took some action themselves, they could solve the problem ... [this is a] resource thing for us, government, and it's just the first logical step ...⁶⁹

Again:

The more that we can allow people to help themselves and to do it correctly, the less pressure it puts on the public purse that provides the necessary support infrastructure for it. And this is why we're moving towards the internet as well ...⁷⁰

The other reasons given for the introduction of these services were the following:⁷¹

- These services are the next best alternative when lawyers' services are not available.
- They are better than nothing.
- They are a way of dealing more efficiently with routine work.
- They are a way of relieving voluntary lawyers of having to do the same things over and over again (that is, this in the provider's staff interest).
- They are a way of helping disadvantaged litigants who would otherwise flounder.
- Self-helpers are a fact of life and we (the provider) cannot afford to ignore them — for example: 'Our [self-help services] have been driven to some extent by the 35 to 37 per cent of the court's users being litigants in person'.⁷²
- They are a way of enabling and empowering people.
- They help the administration of justice (a reference to assistance to self-help litigants which 'improves the quality of the evidence').⁷³
- Because there is money in this for the provider (a response from a private sector kit provider).
- Because self-help involves costs savings for the consumer.

Provider Perceptions of Why Consumers Make Use of These Services

Given that this research was based on provider interviews, and not upon data obtained from consumers themselves, the respondents were not in the best position to indicate the reasons why consumers made use of self-help. However, some respondents (such as those we interviewed from CLCs)

⁶⁹ Interview Transcript #10.

⁷⁰ Interview Transcript #12.

⁷¹ Summarised from all the interviews.

⁷² Interview Transcript #6.

⁷³ Interview Transcript #7.

worked directly and routinely with their consumers and expressed definite views in response to these questions.

A clear, if not overwhelming, message from the interviews was that many consumers accessed self-help options for the very simple reason that they were unable to afford traditional legal services. (More limited responses suggested that some consumers saw self-help as a positive opportunity to *save* money they would otherwise have to spend.) This was coupled with the perception that often there was really 'no choice' for the consumer, who would otherwise be left with no other way of tackling the problem. Overall, therefore, the predominant view was that self-help was something forced on the consumer by the circumstances rather than a choice freely made from among other options.

Some respondents suggested that consumers saw self-help opportunities in a positive light, typically in terms of self-empowerment and the satisfaction that comes with helping oneself. For example, one respondent drew attention to more educated, capable and informed consumers who wanted to be less dependent on professionals.⁷⁴ Similarly, some consumers in particular situations simply did not have faith in solicitors and felt that they could do a better job on their own.⁷⁵

Providers' Evaluations of Their Own Services

Respondents were asked to provide their perceptions of the organisation's work in this area. Were these self-help services generally 'successful' or not? Responses were mixed. Some kits were cited as having been very successful, such as the 'bail by mail' kit.⁷⁶ The Family Court's divorce kit was rated highly because it enabled 70 per cent of kit users to conduct their divorces without practitioner assistance.⁷⁷ Similarly, the self-preparer 'taxpack' was regarded as successful, given that it generally evoked 'a very high positive reaction from taxpayers'.⁷⁸ Several respondents made the point that self-help kits were enormously helpful to consumers *provided* that they used clear and plain language and that it was always possible for users to get some ancillary advice.

Judicial officers in the sample gave examples of what were perceived to be good outcomes in coaching. There was a strong sense that all the various efforts made to assist unrepresented litigants were of great benefit to the litigants, even though court coaching is difficult and at times problematic.⁷⁹ One form of coaching, by way of illustration, was described as follows:

⁷⁴ Interview Transcript #16.

⁷⁵ A reference to men in Family Court proceedings: Interview Transcript #1.

⁷⁶ Interview Transcript #3.

⁷⁷ Interview Transcript #5; this perception was 'collaborated' by judicial officers who saw first hand how the kits worked in practice.

⁷⁸ Interview Transcript #9.

⁷⁹ Interview Transcripts #7, 8. For example: 'The real problems are when you find someone who really can't represent themselves properly ... and you know that there are issues, there are other matters, there are other things that should be cross-examined ... [and] the person is just not able to raise them adequately': Interview

One of the problems that most litigants in person have, I think, is to identify the issue with clarity. They don't have much difficulty in telling you, in family law at least, what they want, but certainly in family law identifying the issues and identifying and confining themselves to evidence in relation to those issues is quite difficult. So I usually try at the outset to make them identify the issues ... and I have, on occasions where there have been a number of issues to be dealt with, got my associate to type up ... a list of what the issues are, and then given them that list when they go into the witness box and ask them to simply tell me about each of those issues. I've found that's quite an effective way of controlling the evidence, so that it's relevant and not irrelevant, and they tend to feel comfortable that they haven't forgotten anything, and that they are able to say something about each of the things they want to say something about. From my point of view, that seems to work quite well, and I do that as much as I can.⁸⁰

It was readily acknowledged that even 'successful' transaction kits⁸¹ like the divorce kit had their limitations. Many people made use of this service because they had no real choice, and this was a particular problem in the case of people with disabilities.⁸² Similarly, while tax self-preparation seemed to work best with more 'straightforward' assessments, there are some users 'who really abuse us because they can't understand anything we tell them'.⁸³

Respondents from community legal centres were especially hesitant about endorsing self-help services. All expressed at least some level of doubt about just how helpful they really were, but most felt that they had no option but to persevere with them, given a lack of adequate resources to provide more extensive services. For example, one respondent stated that self-help was 'problematic' and expressed this view:

I wish we could actually assist people who are poor and disadvantaged, rather than getting poor and disadvantaged people to accept self-help ...⁸⁴

Another respondent thought that consumers were grateful to be receiving (coaching) assistance, but that this was really insufficient. Although it was better than nothing, it was not a substitute for proper representation.⁸⁵ Also,

Transcript #7. One respondent also made mention of the difficulties associated with the use of interpreters in court proceedings: Interview Transcript #8.

⁸⁰ Interview Transcript #7.

⁸¹ The 'bail by mail' kit was cited as one that had been successful: Prisoners' Legal Service and Legal Aid Queensland (2001).

⁸² Interview Transcript #5.

⁸³ Interview Transcript #9.

⁸⁴ Interview Transcript #2.

⁸⁵ Interview Transcript #4.

kits seemed satisfactory for literate users, but even they needed assistance to complete them — ‘and unfortunately we just don’t have these resources’.⁸⁶

Not surprisingly, many respondents noted the very real problems resulting from an expectation that self-help is potentially a panacea. For people with disabilities, literacy problems, language difficulties and with problems gaining access to necessary technology,⁸⁷ self-help is simply not an option. One respondent suggested that ‘the fit isn’t good unless the client is middle class’.⁸⁸

But even more ‘capable’ people sometimes face considerable obstacles. A criticism that appears to strike at the core of the argument for transaction kits is that this form of assistance to self-helpers cannot impart *skills*. As one respondent put it:

we are imparting a whole heap of information to people about their rights but we are not capturing within those kits the skills that they need ... and so what we create is what I can only describe as the angry army of informed litigants who have nowhere to go.⁸⁹

Some skills, it is thought, can be taught to self-helpers. But this requires a process that the kit alone cannot produce. Instead, skills learning to enable the self-helper to use some kits effectively requires working ‘one-to-one’ with the user. For example, where skills training is possible:

You can teach clients basic drafting skills ... [but] you can’t teach them to work out what is legally relevant to their case as opposed to what *they* think is relevant to their case.⁹⁰

There are other skills that are ‘incredibly difficult’ to teach. In the context of court appearances, for example, the self-helper cannot be skilled up to interpret legislation during proceedings,⁹¹ or to cross-examine with the detachment that circumstances often require. For these sorts of reasons, self-help kits and coaching can raise expectations that are unrealistic:

I sometimes wonder whether for some people we do a great disservice by giving them a self-help kit. Particularly for those people who are already lacking in confidence and have felt marginalised ... You give

⁸⁶ Interview Transcript #3. The respondent identified the problem of kit users turning to ‘bush lawyers’ (such as fellow inmates) to complete kits. This could lead to failure, and failed expectations.

⁸⁷ As one respondent put it: ‘putting everything on the internet isn’t going to deal with everyone’: Interview Transcript #12.

⁸⁸ Interview Transcript #14.

⁸⁹ Interview Transcript #1.

⁹⁰ Interview Transcript #1.

⁹¹ The respondent gave the example of a magistrate asking a question like: ‘Under what power can I grant you an adjournment in this matter?’: Interview Transcript #1.

them a self-help kit and they can't do it. And then they feel like failures
...⁹²

Another theme to emerge in the responses evaluating these services was about legal complexity and the difficulties this poses for self-helpers and self-help service providers alike. Some laws are by nature complex, or require skilful interpretation, and are quite unsuited to self-help.⁹³ Others pose potential dangers for those engaging in certain legal transactions so that even relatively well-educated self-helpers are at risk.⁹⁴ Another difficulty is presented by what was seen to be the steady growth of increasingly complex laws and regulations, making it difficult for the self-help community to keep up.⁹⁵ This complexity factor, it was suggested, is one of the reasons why self-help guidelines and principles should be developed so that rational and sensible choices could be made about when, how and where self-help services could and should be used, if at all.⁹⁶

Many respondents expressed opinions about the kinds of transactions that seemed more suited to self-help.⁹⁷ The general consensus was that kits needed to be limited to reasonably straightforward transactions, where procedures were 'fairly standard', 'routine', 'well-defined', 'reliable' and where discretion and judgment calls were minimal.⁹⁸

Self-help is really limited to those areas which involve repetitive functions ... They are so repetitive that even lawyers approach them in a repetitive way.⁹⁹

Some respondents noted what were seen as very significant benefits (to users) of coupling self-help kits with coaching services. This coupling was

⁹² Interview Transcript #1. As another respondent put it, 'reliance on self-help services can tend to further marginalise those community members who are already marginalised': Interview Transcript #14.

⁹³ For example, one respondent stated that criminal law was usually not suited to self-help because of the complex evidentiary questions that often arose in criminal trials: Interview Transcript #14.

⁹⁴ One example given by respondents was that of discretionary trusts in wills: Interview Transcripts #16, 17. This and other examples led to the observation that self-helpers, like lawyers, will make mistakes and this could lead to disastrous consequences. Consequently, do 'the benefits of empowering people with more accessible and less expensive legal services ... outweigh the negatives of sometimes getting it wrong?': Interview Transcript #16.

⁹⁵ Interview Transcript #2.

⁹⁶ Interview Transcript #2.

⁹⁷ Interview Transcripts # 1, 2, 4, 5, 9, 13, 14, 15, 16 and 17.

⁹⁸ For example, Interview Transcripts #13, 16 and 17. Less agreement was evident in respect of particular areas of law: family law disputes were cited both as areas that lent themselves to self-help and as areas that did not.

⁹⁹ Interview Transcript #17. Wills (but not wills involving discretionary trusts) and powers of attorney were two examples.

vitality important for the success of certain transaction kits, given that many consumers would not be able to complete the kit successfully without adequate support mechanisms.¹⁰⁰

This evaluation by respondents of their services elicited some very particular insights into the circumstances when self-help services were or were not suitable. In addition to those already suggested, such as the user's cultural background, literacy level and level of education,¹⁰¹ and inadequate access to technology, respondents specifically identified other factors and circumstances seen to be highly relevant to self-help. It is important that self-helpers have a 'reasonable degree of control' over their lives,¹⁰² have sufficient confidence in their abilities, possess negotiation skills (for certain transactions), and are operating in a context in which debilitating emotional issues are not being generated. One obvious context in which self-help is unlikely to be of benefit to the user is where there is no 'level playing field' because the 'opposition' is powerful, skilful, well-resourced and adversarial.¹⁰³

Finally, some respondents identified what can be described as the need for cooperation and goodwill from officials of the law, or other 'players' in the system.¹⁰⁴ A lack of sympathy or understanding by others could mean a failure of the self-help attempt.¹⁰⁵ For example, the hostility allegedly experienced by probate kit users from a Registrar of Probate was interpreted in the following terms:

these people who are coming before [me] are lay people, for God's sake! They're not lawyers, and surely I should be dealing with lawyers?¹⁰⁶

Providers' Evaluations of Their Own Services: The Future

Despite misgivings by some respondents, the interviews suggest general agreement that the future will see a steady increase in legal services relying on consumer participation. Some of the reasons identified corresponded with those expressed in response to earlier questions about the introduction of these services in the first place. Thus all respondents from governments, CLCs and legal aid authorities linked future service delivery strategies with inevitable budgetary constraints or 'escalating costs'. For example, 'traditional' legal aid

¹⁰⁰ Interview Transcripts #1, 9, 17.

¹⁰¹ One respondent suggested that 'it's the professionals and high income people who are asking and wanting to be empowered: Interview Transcript #16.

¹⁰² Interview Transcript #13.

¹⁰³ Interview Transcripts #2, 4, 8, 9, 12, 13, 14, 16, 17.

¹⁰⁴ This applies even where relatively 'capable' self-helpers are concerned — for example, for users of conveyancing kits, cooperation is often needed from bank representatives to allow the transaction to run smoothly: Interview Transcript #17.

¹⁰⁵ One example: a judicial officer asking inappropriate questions on the law in order to frustrate the litigant in person's efforts: Interview Transcript #1.

¹⁰⁶ Interview Transcript #17.

services were likely to dwindle in real terms, meaning that numbers of unrepresented litigants and other self-helpers would have to increase.

Other points made in support of speculation about the inevitability of more consumers being drawn into the self-help industry highlighted the certain improvement in information technology and the ever-increasing opportunities for information supply. This was linked to the claim that more consumers would embrace the new technology, that many would become more educated, and growing numbers would require access to information that was likely to be helpful to them. This would lead to increased levels of participation, but also meant that support services would be required. One respondent stated that, because legal education services were an essential part of the organisation, they would necessarily become more prolific. In part, this was because they were regarded as a 'preventative measure' in that they limited the number of complaints the organisation received. Another saw online delivery of information as part of a movement away from face-to-face service delivery. It was also felt that even the cost of existing call centre services could be reduced by making improvements to the quality of information available online.

No respondent was willing to predict that consumer participation in the world of legal services would decline. However, it was felt that there is a residual reluctance to break away entirely from the 'traditional ways of doing things'. One CLC respondent thought that the use of kits in that sector would be re-examined and that there would be a likely move to further development of self-help videos and interactive self-help media.¹⁰⁷

Discussion and Analysis

One of the issues to emerge from the interview data concerns the question of whether community legal education should properly be viewed as a self-help legal service. At one level, this question may seem inconsequential, but the issue is important as to the value placed on legal information and assumptions about its utility. Some respondents made a clear distinction between information supply and genuine self-help services. But others did not, suggesting an assumption on their part that the mere dissemination of legal information to legal consumers encourages or facilitates legal problem solving.¹⁰⁸

A 'legal service', however one chooses to define it, implies a transaction or process around something in particular, rather than the dissemination of legal knowledge (legal information) in the abstract. It involves the *application* of legal knowledge, including skill and judgment, to a particular set of facts and circumstances leading to an outcome. Providing access to legal information without anything else does not and cannot lead to the same outcome. Access to legal services, as we see it, requires far more than access to legal information.

There are other questions concerning the utility of legal information supply on its own. These questions also have implications for self-help kits,

¹⁰⁷ Interview Transcripts #1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15.

¹⁰⁸ Commonwealth Attorney-General's Department (1995), p 104.

although not perhaps to the same extent.¹⁰⁹ The first is a cognitive one, being a question about what constitutes 'consumer learning in law', or consumer legal knowledge. How and under what conditions do consumers acquire useful legal knowledge? That is, how and when do they learn, or learn enough, to derive any real benefit from the information? The mere supply or transfer of information, assuming the intended recipient has access to it, does not guarantee that the consumer will actually receive and comprehend it in a meaningful way, or know how to apply it appropriately. Legal information can, however, serve as a platform for, or entrée to, self-help or more traditional legal services. In other words, legal information can help steer a consumer towards more concrete forms of legal assistance.¹¹⁰

Second, there is the matter of law's potential complexity, faced by self-help providers and consumers alike. While some legal transactions are routine, or appear to be routine, others contain at their core a complex mix of ingredients that make legal work challenging for all but the highly experienced. What makes some legal work complex are factors such as knowing what legal rules actually mean, understanding the scope, circumstances and limitations of their operation, having the skills and judgment to apply them, and recognising their potential indeterminacy in certain circumstances. Another element that may add to complexity levels is the presence of discretionary power on the part of officials and decision-makers, and the implications of this for the consumer.

While few interview transcripts make direct reference to law's potential complexities, many respondents appeared to be aware of the manifest variations between legal transactions that were amenable to self-help and those that were not. Yet nothing in this research suggested to us that there is anything like an adequate understanding of what constitutes legal complexity, or why certain matters are more complex than others.¹¹¹ Therefore, except perhaps through intuition and experience, there was no demonstrable way of determining which legal transactions were truly within the grasp of consumers. This would tend to suggest that developing an understanding of this issue is pivotal in determining the possibilities and limitations of legal self-help in the future. This seems especially important given the possibility that such services may in fact disadvantage consumers in certain circumstances, particularly where they are facing complex matters. Users may develop a false sense of security, they may treat information as advice, or they may simply misunderstand what is stated.

¹⁰⁹ The reason being that transaction kits are more carefully directed and crafted to facilitate the consumer's engagement with routine transactions, rather than leaving the consumer without any meaningful assistance.

¹¹⁰ This appears to be one of the objectives contemplated in the mobile home kit: Caxton Legal Centre Inc (1999).

¹¹¹ One respondent made mention of the fact that criminal proceedings were quite unsuited to self-help. One thought that family law proceedings were ideally suited (because the issues were usually straightforward), but another expressed concern about self-help in family law because issues were often difficult.

Third, and allied to if not part of the complexity issue, is the matter of the consumer's need to possess sufficient skills to act on a self-help basis. An analysis of the 'bail by mail' kit,¹¹² for example, suggests that in order to be successful a user would need certain skills. These include basic but good reading and writing skills, the ability to comprehend and apply the factors relevant to questions of bail, the ability to devise an argument that meets the needs of a bail application, and the ability to present that argument orally. In addition, the user would require social skills to obtain cooperation from staff, typing skills (or access to typing), and be able to adhere to filing and appearance deadlines.

One respondent raised the skills factor very pointedly, and questioned whether the need for skills was too often overlooked or ignored by self-help legal service providers.¹¹³ It is important to be able to establish whether it really is possible for persons to solve *legal* problems without at least a minimal level of skills, and what the requisite skill level might be. How do consumers act for themselves without being taught to interpret relevant legislation, for example, or to write in a particular way, or to advocate effectively, or to confine arguments to relevant issues, or to negotiate, or to employ appropriate levels of judgment so as to avoid being labelled 'querulous'?¹¹⁴ And to what extent can transaction kits and coaching teach skills, or compensate for an inadequate skills base? These are difficult questions, to which no ready answers emerged in the interviews.

Another definitional distinction to emerge in the course of the interviews was that between information and advice. Although we detected some scepticism about the veracity of the distinction,¹¹⁵ some respondents were of the view that it constituted an important if not essential organisational device in the design and deployment of the provider's services, in order to keep services within budget and to limit potential liability.¹¹⁶ For these respondents,¹¹⁷ information is seen as merely 'generic' and is made freely available, without any concrete expectations about how useful it might be. Advice, however, is applied to real circumstances and is potentially far more immediate — and helpful — for the consumer. As one respondent put it:

¹¹² Prisoners' Legal Service and Legal Aid Queensland (2001).

¹¹³ Interview Transcript #1

¹¹⁴ Sackville (2002).

¹¹⁵ Some of the difficulty appears to arise from the fact that the context alone determines whether advice or information is being given. For example, information about how to handle a particular procedural requirement may be 'generic' if part of a fact sheet, but it becomes advice if proffered in response to a consumer's inquiry about a very real need for that particular information at that moment.

¹¹⁶ See also above at note 43.

¹¹⁷ Typically, CLCs and the Legal Aid Commission.

information is material that's freely available to the public and speaks about the law in general. If somebody's wanting to know 'how does that apply to me?' then we'd say that's advice.¹¹⁸

It seems necessary to point out that the difference is important for consumers. People faced with legal problems want help and, if self-help is the only available option, advice rather than 'generic' and potentially confusing information is what is really needed. Unfortunately, while it is advice that self-helpers often need, it is all too often information alone that providers are willing or able to give.

In spite of all the uncertainties concerning the utility of self-help services, some providers pointed to considerable self-help successes with some transaction kits. Transactions that are thought best suited are those that are mainly document-based, are 'repetitive' in nature (meaning that they easily 'fit' multiple situations), and which lend themselves to formulating step-by-step directions for the user. Not surprisingly, perhaps, the weight of opinion from respondents who addressed this issue was that the 'best' form of limited legal assistance for the self-helper is the comprehensive transaction kit *coupled with* coaching assistance.¹¹⁹ It is this combination of support that is most likely to find a path through the obstacles presented by complexity and limited skill.

The claims concerning successful self-help outcomes need to be qualified. With very few exceptions,¹²⁰ respondents were unable to say with complete certainty that their self-help services worked well, while none was able to point to any reliable data to demonstrate their success. Several respondents made the point that statistics on self-help kits, for example, were extremely difficult to obtain, while the nature of their service operations precluded the gathering of feedback from successful users.¹²¹ It should be added that there is, as yet, no obvious way in which success can be measured. How, for example, does one decide whether the use of a kit has been successful? Is success to be measured only by reference to whether the consumer achieved the outcome being sought?

Yet another important question concerning self-help services is whether they exist mainly for the more disadvantaged members of the community. It would be somewhat ironic if this were the case, given the strong view that successful self-helpers are likely to be better educated, have good language skills, and possess a range of skills essential for the legal environment. On the face of it, given the range of services and the breadth of the community that has access to them, self-help legal services are not meant exclusively for any

¹¹⁸ Interview Transcript #13.

¹¹⁹ Interview Transcripts #1, 9, 13. It is the understanding of the authors that one of the providers involved in this study has subsequently altered its policy on self-help kits to make them available in conjunction with other support (coaching) services.

¹²⁰ For example, Interview Transcript #17.

¹²¹ Interview Transcripts #1, 3, 17.

one part of the community.¹²² However, it is also true that some of the service providers who formed part of the study specialise in legal services for poorer and more vulnerable people.

A perspective that adds some context to the matter of who is most likely to use and benefit from legal self-help concerns the distinction between voluntary and involuntary self-helpers. It is important to know whether, in general, self-help services are likely to be more successful when the consumer has freely chosen to be a self-helper, and less successful when the 'choice' is thrust upon them.¹²³ Our data suggest that more privileged consumers are more likely to exercise genuine choice in selecting a self-help option (like a conveyancing 'kit'),¹²⁴ whereas those who are disadvantaged might effectively be involuntary users of the only service option available (such as a kit to vary court orders regarding children).¹²⁵ This could mean that self-help legal services are a positive development for some, but not so for disadvantaged people for whom these services are a poor — and the only — substitute for the services of experts.

How does one begin to evaluate the merits, or otherwise, of Australian self-help legal services? At the extremes, there are two competing visions of the consumer's status in the changing landscape:

- 1 the informed and empowered legal consumer, responding positively to legal information and self-help services; taking control of and responsibility for all but the most complex legal work;
- 2 the permanently isolated and powerless legal consumer, for whom law remains complex, overwhelming and inaccessible,¹²⁶ despite the availability of legal information and self-help options.

The only way to reconcile these two visions is by recognising that 'the consumer' has hugely variable characteristics. As the quotation from the judicial officer who described categories of self-representing litigants suggests,¹²⁷ consumers range from the 'sophisticated' to the illiterate. Unfortunately, the language of the marketplace — and the concept of the 'legal services consumer' in particular — tends to gloss over these differences by standardising what in reality is a remarkably diverse group.

None of the respondents was willing to endorse either of these two extremes without qualification. Most, but not all, appeared to adopt a position that lay somewhere between them. Most seemed to accept that self-help services, despite their flaws and shortcomings, are better than nothing. They

¹²² See, for example, the summary of consumers referred to by respondents in 'Clients, customers and consumers' above.

¹²³ Unfortunately, clear information on this question did not emerge from the interview transcripts. Nevertheless, some respondents did report that they often dealt with clients who had nowhere else to turn.

¹²⁴ Interview Transcript #17.

¹²⁵ Interview Transcript #4.

¹²⁶ For a perspective on the powerlessness of disadvantaged people in legal service delivery, see Parker (1994).

¹²⁷ See above, under 'Clients, customers and consumers'.

thought that either (a) they facilitate access to law for those consumers able and willing to assume responsibility for their specific service needs (the stronger version); or (b) they provide some opportunities for some consumers to help themselves legally in circumstances that are far from desirable (the weaker version). Either way, it is not sensible to under-value the importance of the legal self-help industry.¹²⁸ At the very least, it is arguable that there is considerable force in the 'something is better than nothing' view.

We made reference earlier to some of the literature on both services and legal services that may assist in broadening an understanding of the concept and workings of legal self-help. Services theory, and co-production theory in particular, underscores the fact that consumer participation is a reality in many service transactions. It makes the claim that the production of services — even specialised ones — is not necessarily a process in which the 'supplier' alone plays a part.¹²⁹ In the context of legal services this is significant because traditional legal service ideology places overwhelming emphasis on the role of the professional 'expert', relegating the perception of the consumer's role to one of, mainly, passive recipient. By contrast, the concept of self-help legal services assumes the potential and value of the consumer's own role in meeting legal service needs. The theory of service co-production therefore seems especially valuable in broadening our understanding of the possibilities and limitations of consumer participation in legal work. It also draws attention to the fact that consumer participation cannot be taken for granted, and that there are factors that inhibit consumer participation.¹³⁰ Our research data suggest that there are many factors that have a significant if not decisive bearing on the ability of legal self-helpers to perform successfully. These include issues such as the nature of the legal transaction, the complexity of the matter, and the consumer's own skills and personal characteristics.

The concept of 'unbundled' legal service is a helpful indicator of the fact that some legal services can be broken down into a number of 'discrete' or constituent tasks.¹³¹ In theory, it should be possible to deploy the unbundling strategy to determine which kinds of legal work are susceptible to task differentiation, and also to determine which of those tasks can competently be managed by an able consumer. In fact, from the information gathered in the course of this study, it seems safe to say that 'manufacturers' of transaction kits rely heavily on the task differentiation strategy. The 'bail by mail' kit, for example, consists of directions to the user in respect of a series of separate tasks, the successful completion of all of which may result in a successful bail application.

However, none of this literature seems to provide an adequate basis to develop a comprehensive understanding of self-help legal services. The notion

¹²⁸ There is, as we see it, also a need to explore more closely the activities of private providers, given that there is likely to be major growth in this sector in the future.

¹²⁹ Iacobucci (1998); Zeithaml and Bitner (2000); Normann (1991); Koelemeijer and Vriens (1998).

¹³⁰ For example, Mills and Moshavi (1999).

¹³¹ For example, Mosten (1994).

of the co-producing consumer of market services certainly seems useful, but the current literature largely assumes a private sector service context in which the provider's central aim is to manage its clients' productive potential in order to maximise the provider's service efficiency. Many of the legal self-help contexts explored in this research do not fit comfortably within the private sector, service provision model. Unfortunately, the concept of legal service co-production in a public sector or not-for-profit setting has not yet commanded the attention of service theorists. Likewise, although the concept of task differentiation in 'unbundling' literature parallels the task approach implicit in self-help work, the analysis of legal services from this perspective appears so far to be quite limited.

We are conscious, therefore, of the need for the development of a more thorough understanding of legal self-help. A theory of self-help legal services will need to take account at least of the kind of legal work amenable to this form of delivery, the potential roles and limitations of both providers and consumers, the outcomes that legal self-help can realistically achieve, and the changing market and other contexts in which these alternative legal services are developing.

Summary and Conclusion

Our research leads us to a number of conclusions, which can be summarised. It seems clear that 'self-help' legal services are a significant feature of the contemporary marketplace in legal services. Providers in the marketplace have a strong sense that these services are here to stay, and will even grow. This may mean that traditional legal services will continue to shrink in the future. Self-help involves a style of delivery that seeks increasingly to transfer responsibility for legal services on to the consumer. Providers attach considerable importance to technology in making these services available. This is especially true in the case of legal information supply, although there are strong doubts concerning the utility of information supply on its own. We suggest that it should not be regarded as a legal service at all, and that it is unhelpful and misleading to confuse legal and educational services. Although the distinction between information and advice is important for consumers, it is not well understood by them, and may be used by providers as a justification for not providing assistance when it is really needed. Self-help legal services (probably better described as limited assistance legal services) consist of legal transaction kits (which are confined to more routine but nevertheless important transactions) and various forms of coaching, or legal advice.

Some providers of self-help services tend to make assumptions about the capacity of consumers to engage on a self-help basis. Sometimes these assumptions are not well founded. Arguably, there is insufficient appreciation, first, of the relevance of complexity in many kinds of legal work, and second, of the importance of consumers needing to possess sufficient skills in order to act on a self-help basis. We are of the view that there is also a crucial question about involuntary use of these services, and whether the absence of genuine choice places the consumer at a particular disadvantage.

The most useful form of self-help service is the transaction kit coupled with coaching assistance. The profile of the capable self-helper is uncertain, but successful self-help outcomes are most likely to be achieved by consumers who are well educated, confident and possess good language and other skills. This research suggests that so far there is insufficient evidence to establish conclusively that these services are really helping, although it is assumed that in some areas they are. Further research will need to explore these issues from a consumer angle. This project has focused on provider perceptions of legal self-help.

We suggested at the outset that the growth of self-help legal services is closely connected with the ascendancy of a marketplace approach to legal service delivery. Part of the current thinking about the supply and consumption of legal services in a market setting is a strong belief that legal consumers, in order to be consumers, must be able to access and use legal information relevant to their needs. This is accompanied by a belief in the willingness and ability, if not obligation, of legal consumers to take greater personal responsibility for their own legal needs. It is an irony that empowerment strategies pioneered and employed by community legal centres in the 1970s to strengthen community understanding of the law have more recently been adopted as part of a much larger project to rejuvenate the legal services marketplace. Now, access to copious quantities of legal information is being presented as part of the answer to providing access to justice itself.

The most pessimistic interpretation of all of this is that only the rhetoric and the technology has changed and access to legal services remains the problem that it has long been, or has become even worse. The best interpretation is that legal information and legal self-help is making some difference for some people some of the time. But this has yet to be established.

References

Secondary Sources

- Access to Justice Advisory Committee, Commonwealth Attorney-General's Department (1994) *Access to Justice: An Action Plan*, Commonwealth of Australia.
- John Alford (1998) 'A Public Management Road Less Travelled: Clients as Co-producers of Public Services' 57 *Australian Journal of Public Administration* 128.
- Benji O Anosike (1998) 'How to Settle Your Own Auto Accident Claim Without a Lawyer', reviewed by J Collins in 94 (22) Part 1 *The Booklist* 1938.
- Australian Law Reform Commission (2000) *Managing Justice: A review of the federal civil justice system*, Report 89, AGPS.
- R Barnes (1990) 'Cutting legal costs' 21 (No 1) *Black Enterprise* 41.
- J Bateson (1985) 'Perceived Control and the Service Encounter', in J Czepiel, M Solomon and C Surprenant (eds), *The Service Encounter: Managing Employee/Customer Interaction in Service Businesses*, Lexington Books.
- David Binder, Paul Bergman and Susan Price (1991) *Lawyers as Counsellors: A Client Centred Approach*, West Publishing Co.
- G Bindman (1982) 'Legal Services in the USA' 27 *The Law Society's Gazette* 1347.

- Salvatore Biondo, 'Community Legal Education', in Jeff Giddings (ed), *Legal Aid in Victoria: At the Crossroads Again*, 1998, Fitzroy Legal Service.
- Susan Bothmann and Robert Gordon (1979) *Practising Poverty Law*, Fitzroy Legal Service.
- Caxton Legal Centre Inc (1996) *Liable Parent Kit: Stage 1*, LAQ.
- Caxton Legal Centre Inc (1999) *Going Mobile: A Guide to Mobile Home Living*, Office of Fair Trading, Department of Equity and Fair Trading.
- John Chesterman, *Poverty Law and Social Change: The Story of the Fitzroy Legal Service* (1996) Oxford University Press.
- Commonwealth Attorney-General's Department (1995) *The Justice Statement*, Office of Legal Information and Publishing, Attorney-General's Department.
- John Dewar, Jeff Giddings and Stephen Parker (1998) *The Impact of Changes in Legal Aid on Criminal and Family Law Practice in Queensland: A Research Report Commissioned by the Queensland Law Society and the Family Law Practitioners' Association*, Faculty of Law, Griffith University.
- William Felstiner and Austin Sarat (1992) 'Enactments of Power: Negotiating Reality and Responsibility in Lawyer-Client Relations' 77 *Cornell Law Review* 1447.
- M Garcia (1997) 'Key Trends in the Legal Profession' 71 (5) *Florida Bar Journal* 16.
- S Gallagher and S Stover (1997) 'Legal Aid for Do-it-yourselfers' 51 (11) *Kiplinger's Personal Finance Magazine* 129.
- Jeff Giddings (1998) *Legal Aid in Victoria: At the Crossroads Once Again*, Fitzroy Legal Service Press.
- Jeff Giddings and Michael Robertson (2001) "'Informed Litigants with Nowhere to Go": Self-help Legal Aid Services in Australia' 25(4) *Alternative Law Journal* 184.
- John Greacon (2001) 'Legal Information v Legal Advice: Developments During the Last Five Years' 84 (4) *Judicature* 198.
- John Greacon (1995) 'No Legal Advice from Court Personnel: What Does That Mean?' (1995) 34 *The Judges Journal* 10.
- Rosemary Hunter et al (2000) *Legal Services in Family Law*, Justice Research Centre.
- Dawn Iacobucci (1998) 'Services: What Do We Know and Where Shall We Go? A View from Marketing', in T Swartz, D Bowen and S Brown (eds), *Advances in Services Marketing and Management: Research and Practice*, vol 7, JAI Press Inc.
- K Koelemeijer and M Vriens (1998) 'The Professional Services Consumer', in M Gabbott and G Hogg (eds), *Consumers and Services*, John Wiley and Sons.
- Law Council of Australia (2001) 2010: *A Discussion Paper: Challenges for the Legal Profession*, www.lawcouncil.asn.au/download.html?table=publication&oid=1963155003, accessed 7 June 2002.
- Law and Justice Foundation of New South Wales (2001) *Email Law: A Planning Guide for the Delivery of Free Legal Assistance via Email*, New South Wales Attorney-General's Department.
- Legal Aid Queensland (1998) *Work Licence Self-Help Kit*, LAQ.
- Legal Aid Queensland (1999a) *Debt Self-Help Kit*, LAQ.
- Legal Aid Queensland (1999b) *What to Do When You've Been Sacked from Work*, LAQ.
- Legal Aid Queensland (2000) *Consent Orders about Children*, LAQ.
- Legal Aid Queensland (2001a) *How to Apply for a Protection Order (Domestic Violence)*, LAQ.
- Legal Aid Queensland (2001b) *Variations of Court Orders about Children*, LAQ.
- Prisoners' Legal Service and Legal Aid Queensland (2001) *Bail by Mail Self-Help Kit*, LAQ.
- Paul Marcotte (1990) 'Lawyers on a Disk: Consumers can Draft Legal Documents with New Software' 76 *American Bar Association Journal* 18.

- I McEwin (1992) *Cost of Legal Services and Litigation: Access to Legal Services: The Role of Market Forces*, background paper prepared for the Senate Standing Committee on Legal and Constitutional Affairs, Parliament of the Commonwealth of Australia, February.
- Mary McNeal (2001) 'Unbundling and Law School Clinics: Where's the Pedagogy?' 7 *Clinical Law Review* 341.
- Peter Mills and James Morris (1986) 'Clients as "Partial" Employees of Service Organizations: Role Development in Client Participation' 11(4) *Academy of Management Review* 726.
- Peter Mills and D Moshavi (1999) 'Professional Concern: Managing Knowledge-based Service Relationships' 10(1) *International Journal of Service Industry Management* 48.
- F Mosten (1994) 'Unbundling of Legal Services and the Family Lawyer' 28(3) *Family Law Quarterly* 421.
- No Attribution (1994) 'Legal Ease' *DollarSense* 13.
- No Attribution (1997) 'Ways to Save Money Using Self-help Legal Software' 8 *Hudson Valley Business Journal* 18.
- Michael A Noone (2001) 'The State of Australian Legal Aid' 29 *Federal Law Review* 37.
- Richard Normann (1991) 'The Client as Customer — the Client as Co-producer', *Service Management*, 2nd edn, John Wiley and Sons.
- Office of Fair Trading, Department of Equity and Fair Trading (1998) *Keeping Baby Safe: A Guide to Nursery Furniture*, Commonwealth of Australia.
- Office of Fair Trading, Department of Equity and Fair Trading (2000) *Retirement Villages: Consumer guide to the New Act*, Queensland Government.
- C Parker (1994) 'The Logic of Professionalism: Stages of Domination in Legal Services Delivery to the Disadvantaged' 22 *International Journal of the Sociology of Law* 145.
- Parliament of Victoria, Law Reform Committee (1999) *Technology and the Law*, AGPS.
- J Podgers (1993) 'ABA in Action: A News Roundup on Association Activities and People' 79 *American Bar Association Journal* 119.
- Prisoners' Legal Service and Legal Aid Queensland (2001) *Bail by Mail Self-Help Kit*, LAQ.
- David Rosenthal (1974) *Lawyer and Client: Who's in Charge?*, Russell Sage.
- Ronald Sackville (2002) 'From Access to Justice to Managing Justice: The Transformation of the Judicial Role', paper presented at the Australian Institute of Judicial Administration Annual Conference: Access to Justice — The Way Forward, Brisbane, 12–14 July.
- Austin Sarat and William Felstiner (1995) *Divorce Lawyers and their Clients: Power and Meaning in the Legal Process*, Oxford University Press.
- Cynthia Scanlon (1996) 'Court Opens Do-it-yourself Legal Centre' 16(32) *Business Journal* 23.
- Sue Scott and Caroline Sage (2001) *Gateways to the Law: An Exploratory Study of How Non-profit Agencies Assist Clients with Legal Problems*, Law and Justice Foundation of New South Wales.
- Source Book Inc, No Attribution (1991) 'Do-it-yourself law' 43 *Women in Business* 4.
- Trade Practices Commission (1994) *Study of the Professions: Legal*, Final Report, AGPS.
- United Kingdom (1989) *The Work and Organisation of the Legal Profession*, January (Cm 570), p 5.
- Valerie Zeithaml and Mary Bitner (2000) *Services Marketing: Integrating Customer Focus Across the Firm*, McGraw-Hill.