

# **High service users at Legal Aid NSW**

## **Profiling the 50 highest users of legal aid services**

**We set out to profile our clients.**

**We found out that they look like this.**

**They can be described as clients with 'complex needs'.**

**Based on this, we think we need a different kind of service, just for them.**

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Legal Aid NSW

June 2013

Authors note:

The authors wish to thank Kristie Verrinder and Michelle Kyle at the Penrith office of Legal Aid NSW. Without their substantial administrative support this study would not have been possible. The authors also gratefully acknowledge the advice and practical legal expertise of many colleagues at Legal Aid NSW and in particular Monique Hitter (Project Sponsor), Mary Whitehead, Wayne Gale, Debra Maher and the tireless staff of the Children's Legal Service, Rachel Dart, Danielle Castles, Erin Gough and Aideen McGarrigle.

The authors wish to acknowledge the expert work of Amanda Wilson, a criminologist from the Faculty of Law at the University of NSW and principal of AMW Specialist Consulting, in undertaking data analysis for the project. Special thanks to Professor Eileen Baldry, a research partner and supporter of Legal Aid NSW whose work on frequent presenters to mental health, health and justice agencies inspired this modest study. Thanks also to Professor Margaret Hamilton from the University of Melbourne.

## **Executive summary**

Legal aid lawyers assist people, across crime, family and civil law who have experienced significant disadvantage. This small study sought to profile clients of Legal Aid NSW by analysing the 50 most frequent users of legal aid services between July 2005 and June 2010.

Importantly, the study found that 80% of high users of legal aid services were children and young people who were 19 years and under, and 82% of high service users had their first contact with Legal Aid NSW by the time they were 14 years old.

Of the 50 highest users of legal aid services, 74% were male and 26% were female. However, females were over-represented as service use increased: of the 10 highest users of legal aid services, 50% were female. The two highest users of legal aid services were both female and together they had 239 dealings with Legal Aid NSW over five years to 2010.

More than three quarters of high service users (82%) were Australian born.

Drug and alcohol use was common: three quarters of high service users had used drugs and/or alcohol. Nearly half (46%) had received a mental health diagnosis, indicating a strong prevalence of mental illness amongst high service users.

The study found evidence of complex and multiple needs amongst high service users of legal aid services. The co-existence of behavioural disorders (such as Oppositional Defiant Disorder or Attention Deficit Disorder) with drug and/or alcohol issues was most common as was the co-existence of mental health issues and drug and/or alcohol issues amongst high service users.

There appeared to be a strong relationship between high legal aid service use and experiencing abuse or neglect at home, with 72% of high service users experiencing abuse or neglect at home or witnessing violence at home. Of high service users who had more than 101 contacts with legal aid services, 80% had experienced abuse or neglect or previously witnessed violence at home.

Almost all high service users (94%) had spent time in a juvenile detention centre, more than half (58%) had experienced homelessness and nearly half (46%) had spent time in out-of-home care.

Eighty two per cent had, at one time, been excluded, suspended or expelled from school. Of those high service users who had more than 101 contacts with legal aid services, 93% had been expelled or suspended from school.

The number of schools attended by individuals was also an indicator of high legal aid service use: two thirds (65%) had attended four or more schools.

The study found a relatively high prevalence of disadvantage in the families of high service users. One third had a primary carer with a disability and in most cases this was a psychiatric disability. Just under half (46%) had a primary carer who had experienced drug and/or alcohol issues and one third (40%) had a primary carer who had been identified as a victim of domestic violence.

The study found that legal aid high service users also commonly accessed other services including drug and alcohol services, services provided by Community Services (formerly known as DoCS), mental health services, Justice Health services and homelessness services.

The findings of this study indicate that these clients have complex needs. It can be difficult to meet the needs of these clients through the traditional legal service delivery model where legal and non-legal services are not joined up.

The findings provide evidence to inform the development of a new, intensive legal aid service that provides targeted, specialist services to a small group of complex needs clients *at the same time* as brokering a package of police, mental health, education, housing and human services to support this group of clients who are amongst the most disadvantaged people in the community.

## 1. Introduction

### John<sup>1</sup> – a Legal Aid NSW High Service User

John is a young man twenty years old. He had his first contact with Legal Aid NSW when he was twelve and is a high user of legal aid services with 96 service contacts over a five year period.

John's childhood was characterised by physical health problems. He suffered from chronic ear infections, his speech was slow to develop and he had periodic bouts of asthma. He had early corrective surgery for a congenital abnormality.

John's mother suffered from obsessive-compulsive disorder and other anxiety problems. John's father was violent to his mother. At age two, John's parents separated and he lived with his mother in refuges for a period of time. He has subsequently had periods of living with his mother, his father, his grandparents and in various foster placements.

At age four John was diagnosed with attention-deficit hyperactivity disorder. Over the subsequent years clinicians have diagnosed him with conduct disorder, oppositional defiant disorder, and various other psychiatric diagnoses. He has had episodes where he has self-harmed and has attempted suicide. On intelligence tests, John returned scores in the range of moderate intellectual disability.

Community Services became involved with John when he was seven years old. Over subsequent years John had many short and difficult out-of-home-care placements as well as numerous periods where he lived with friends or on the street.

John attended four primary schools and his early learning difficulties were initially addressed by teachers' aides. As John transitioned to high school he was frequently excluded and expelled. Placements in special schools were unsuccessful and he stopped attending school in Year nine.

John started smoking cannabis and drinking alcohol when he was about thirteen years old. By age fifteen he was using amphetamines. He has had periods of residential drug and alcohol treatment and was recommended for the Youth Drug and Alcohol Court but did not proceed with an application.

John's criminal justice offending profile involves offences such as stalk/intimidate, breach of bail, assault, and theft offences. Often his offences involve family members as victims.

Over the past two decades there has been an increasing interest in understanding the small group of clients with many and complex needs.

As public legal service providers, legal aid lawyers assist people who have experienced significant disadvantage. Many clients receiving civil, family and criminal law services from Legal Aid NSW have complex needs including drug and alcohol addictions, psychiatric diagnoses and histories of family violence. These clients' complex needs can

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<sup>1</sup> Names have been changed

be further affected by structural factors such as joblessness, poverty and community dysfunction.

Fragmented, traditional service delivery models are often not able to meet the needs of these clients. This causes escalation of problems leading to continued interactions with the civil and criminal justice systems.

While there is an emerging interest in the characteristics of complex clients and their dealings with the legal system, there has been little research on complex needs clients in a legal context.

This study of high service users at Legal Aid NSW provides valuable insights into the characteristics of a small group of our clients with complex needs. It also highlights which other services are frequently used by Legal Aid NSW clients with complex needs, thereby assisting us to explore how to improve our services to these clients.

## **2. A study of high service users at Legal Aid NSW**

This study was commissioned in 2010 by the Chief Executive Officer of Legal Aid NSW and was overseen by the Executive Director, Civil Law, Legal Aid NSW.

Consultations on the study's methodology were undertaken with Professor Margaret Hamilton, University of Melbourne,<sup>2</sup> and Professor Eileen Baldry, Professor of Criminology at University of NSW.

Research and ethics approval was given for this study pursuant to section 10(2)(l) and section 25(4)(g) of the *Legal Aid Commission Act*, which authorises Legal Aid NSW, in the exercise of its principal functions, to conduct research into all aspects of legal aid.<sup>3</sup>

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<sup>2</sup> Professor Margaret Hamilton was the former Chair of the Multiple and Complex Needs Panel, a statutory body in Victoria and is an Executive Member of the National Council on Drugs.

<sup>3</sup> Section 25(4)(g) of the *Legal Aid Commission Act* states that 'the carrying out by a person of any research approved by the Commission, being research carried out in a manner that ensures that the identity of an applicant for legal aid or a person to whom legal aid is granted is not disclosed to other persons' is an exception to the privilege created by the solicitor-client relationship.

## 2.1 Aims

The study aimed to:

- identify the 50 highest service users of legal aid services;
- profile the characteristics of these high service users;
- establish service use patterns for these clients; and
- identify common points of intervention in their lives.

## 2.2 Methodology

### 2.2.1 Method

The study used quantitative data collection methods. The main tool used for collecting quantitative data was a questionnaire. Secondary data collection was used to supplement findings from the questionnaire.

### 2.2.2 Sampling

Legal Aid NSW CASES and ATLAS data systems were used to generate a report of the 50 clients of Legal Aid NSW with the highest number of 'dealings' with legal aid services over a five year period from 1 July 2005 to 30 June 2010.<sup>4</sup> This included all legal aid service types and matter types delivered by the in-house and assigned crime, family and civil law practices of Legal Aid NSW.

A 'dealing' may describe a variety of contacts with a legal aid service such as:

- a 20 minute legal advice session
- a Local Court mention to determine bail
- a short Children's Court hearing to determine care arrangements
- a complex higher court trial.

Using this report, electronic and hard copy files for each of the 50 high service users were requisitioned from Legal Aid NSW offices across NSW, private practitioners who had undertaken work for these clients on a grant of aid, and Legal Aid NSW archives.

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<sup>4</sup> 'dealings' in the Legal Aid NSW CASES and ATLAS system includes the following services provided by Legal Aid NSW: grants of aid, legal representation, duty services, advice and minor assistance services. In CASES and ATLAS all dealings are equally weighted. This means one grant of aid = one duty service = one minor assistance.

### *2.2.3 Questionnaire*

A questionnaire was developed. The questionnaire included questions used to extract de-identified client data from files across these variables.

- Client demographics and characteristics
- Health
- Housing
- Education
- Out of home care
- Intergenerational disadvantage – information about client’s primary carers
- Offending profile
- Legal Aid NSW service history
- Other service history

Two Legal Aid NSW staff collected data using the questionnaire. Standard data definition and data collection procedures were put in place to ensure consistency in the collection of data between data collectors.

Documents on client files most commonly used to complete the questionnaire included:

- applications for legal aid
- fact sheets
- client criminal record
- court reports
- care applications
- section 32 reports and other forensic or psychiatric assessments
- risk of harm reports and other program assessment reports
- case work reports – Probation and Parole Service reports, Community Services placement and carer assessment reports and care plans.

### *2.2.4 Secondary data*

The report generated from Legal Aid NSW CASES and ATLAS data systems was used as a source of secondary data as it included the date of birth and number of legal aid service contacts for each of the 50 high servicer users. Computer entries in ATLAS and CASES data systems were also used to supplement the data from hard copy client files.

### *2.2.5 Analysis*

At the completion of data collection, Legal Aid NSW commissioned Amanda Wilson, criminologist and principal of AMW Specialist Consulting to assist with data entry, auditing, cleaning and data analysis.<sup>5</sup>

Statistical Product and Service Solutions (SPSS) software was used to create a file and the data from the coding tool was manually entered. A small amount of qualitative data was subsequently back coded using a code frame. Data was analysed using simple univariate and bivariate statistics.

Cross tabulations were undertaken to look for relationships between variables. Of particular interest was the relationship between the total number of legal aid service contacts and various demographics, client characteristics and primary caregiver characteristics.

### *2.2.6 Limitations*

A detailed understanding of a client's needs, the quality of services used by the client and the level of collaboration or cross-agency response was not measured by this study.

For the purposes of this study, each dealing with a legal aid service was treated as one service contact. No weighting was given to account for the fact that some dealings, such as a complex care proceeding in the Supreme Court, would require significantly more legal aid service time and resources than other dealings, such as a legal advice session.

Clients were not interviewed for the study and no formal interviews with lawyers were undertaken.

The sample size (n=50) limited the range of statistical tests that could be performed on the data set.

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<sup>5</sup> Amanda Wilson is an academic in the Faculty of Law at the University of New South Wales. She has worked as a consultant criminologist for AMW Specialist Consulting since 2007 and has taught social science and criminal justice at UNSW since 2008. Amanda has held research positions on various projects at Australian universities and has been employed as a consultant by a number of agencies including NSW Police, the Department of Attorney General and Justice, Legal Aid NSW and Housing NSW.

## 2.3 Research findings

### 2.3.1 Use of Legal Aid NSW services

As Table 1 shows, 30% of high service users had used more than 101 legal aid services provided by Legal Aid NSW or private practitioners.

The client with the highest number of dealings with Legal Aid NSW over the period of the study was a 16 year old young woman who had 142 contacts with Legal Aid NSW services. These contacts ranged from services provided by legal aid in relation to care and protection matters through to legal aid criminal law services for a wide range of offences including offences relating to behaviour whilst in out of home care, assault and theft of a motor vehicle. The client in the cohort with the lowest number of dealings with Legal Aid NSW was a 17 year old woman who had 63 contacts with legal aid services.

**Table 1: Total number of service contacts with Legal Aid NSW**

Total number service contacts	Frequency (n=)	Per cent (%)
60-70	1	2
71-80	12	24
81-90	11	22
91-100	11	22
101+	15	30
<i>Total</i>	<i>50</i>	<i>100</i>

All 50 high service users used criminal law services provided by Legal Aid NSW, 13 (26%) used family law services and 10 (or 20%) used civil law services . Family law services were most likely to be used for care and protection proceedings. Civil law services commonly related to proceedings under NSW Mental Health Act as well as fines, housing and social security issues.

On average, high service users received between 21 and 30 grants of legal aid, 20 to 40 duty services, and between 16 and 26 advice and minor assistance services.

High service users were frequent users of specialist services provided by Legal Aid NSW. As expected with high numbers of young people among high service users, 49 of the 50 high service users used the Children’s Legal Service. Eight used services of the care and

protection practice and eight used the services of the Client Assessment and Referral Service, an in-house social work service at Legal Aid NSW. Six used the services of the Mental Health Advocacy Service, a state wide specialist service of Legal Aid NSW which provides advice and legal representation for people subject to involuntarily treatment under the NSW Mental Health Act and people appearing before the Guardianship Tribunal.

### 2.3.2 Age

Interestingly, 80% of high legal aid service users, or 40 out of 50, were 19 years and under.

The study found that high service users had their first contact with legal aid services at a relatively young age. The mean age at first contact with legal aid services was 13.2 years and 82% of high service users had their first contact with Legal Aid NSW by the time they were 14 years old.

### 2.3.3 Gender

Of the 50 highest users of legal aid services, 74% were male and 26% were female, showing that males were considerably more likely to be high users of legal aid services.

However, females were over-represented as service use increased. Of the 10 highest users of legal aid services, 50% were female. The two highest users of legal aid services were both female and together they had 239 dealings with Legal Aid NSW in the five years between 2005 and 2010.

### 2.3.4 *Aboriginal and Torres Strait Islander status and other cultural background*

More than three quarters of high service users (82%) were Australian born. Four high service users (8%) reported Aboriginal or Torres Strait Islander cultural backgrounds. While, this is an overrepresentation of Aboriginal or Torres Strait Islander people amongst high service users it is not as high as might be expected given the high proportion of Aboriginal people who come into contact with the criminal justice system. This may, in part, be due to the fact that most Aboriginal people choose to use legal services provided by the Aboriginal Legal Service in NSW.

### 2.3.5 *Illness and drug and alcohol use*

Many of the high service users suffered chronic health issues and experienced a range of disabilities. The files of 12 high service users (24%) indicated the presence of health conditions including asthma (seven), Hepatitis C (two) and epilepsy.

As many as 39 high service users (78%) were reported as having used drugs and/or alcohol. Cannabis use was common: almost half (23 people or 46%) were reported as having used cannabis. Use of alcohol (13) and amphetamines (12) was also commonly reported.

### 2.3.6 *Developmental and psychiatric disability*

23 high service users (46%) had received a mental health diagnosis. This did not include behavioural disorders such as Oppositional Defiant Disorder or ADHD. Noting that 40 out of 50 high service users in this study were aged 19 years and under, the prevalence of diagnosed mental illness is relatively strong amongst high service users, given that mental illness may not yet be diagnosed in young people.

A total of 20 high service users (40%) were described as experiencing behavioural disorders such as Oppositional Defiant Disorder (seven), Conduct Disorder (seven) and Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder (six).

Just under one third of high service users were described in psychiatric reports and assessments as having developmental issues. Twelve of these 13 high service users were described as having 'low to borderline IQ' or a mild to moderate 'intellectual disability'.

The study did not find evidence of physical disability amongst high service users.

The prevalence of mental illness among high service users is consistent with surveys of legal need which show that people with a disability or chronic illness, when compared with the general population, have increased rates of vulnerability to legal problems and reduced rates of resolution of their legal problems.<sup>6</sup>

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<sup>6</sup> See Coumarelos, C & Wei, Z (2009), 'The legal needs of people with different types of chronic illness or disability', *Justice Issues Paper 11*, Law and Justice Foundation of NSW, Sydney

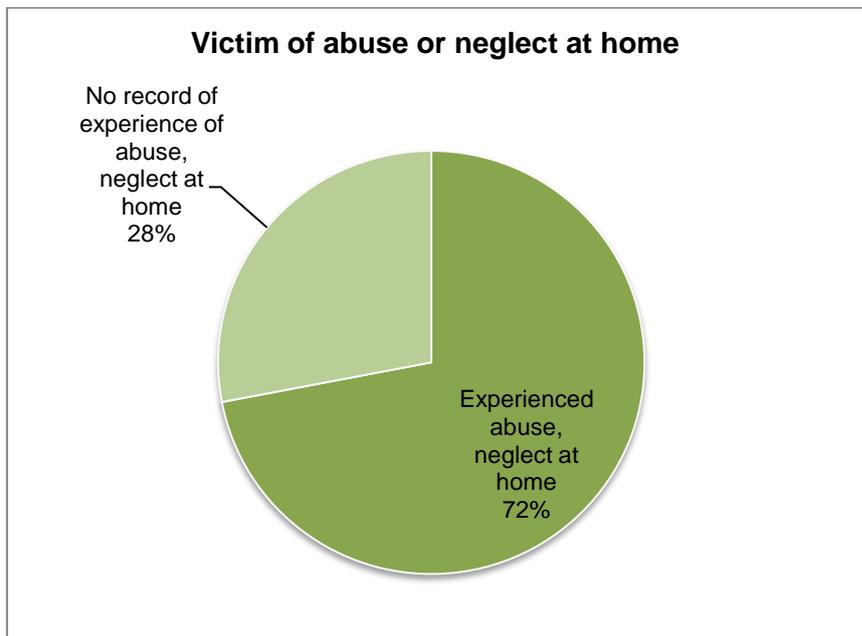
2.3.7 *Co-morbidity – evidence of complexity*

The study found evidence of complex and multiple needs amongst high service users of legal aid services. The co-existence of behavioural disorders (such as Oppositional Defiant Disorder) with drug and/or alcohol issues was most common, with 21 high service users experiencing this morbidity combination. Seventeen had been diagnosed with mental health issues and drug and/or alcohol issues. Five high service users experienced four co-morbidities - mental health diagnosis, behavioural disorders, drug and/or alcohol issues and developmental issues.

2.3.7 *Experiencing neglect or abuse at home*

As Figure 1 shows, for as many as 36 high service users (72%), the study found evidence on file of a history of abuse or neglect at home. For the purposes of this study, this included witnessing domestic violence.

**Figure 1: History of abuse or neglect at home**



There appears to be a strong relationship between experiencing abuse or neglect at home and high legal aid service use.<sup>7</sup> Table 2 shows that, of high service users who had

<sup>7</sup> Note that due to the small sample size in this study (n=50) this relationship is not statistically significant

more than 101 contacts each with legal aid services, 80% had experienced abuse or neglect at home.

**Table 2: Total number of contacts with Legal Aid NSW and history of abuse or neglect**

Total no. of Legal Aid service contacts	Victim of abuse/neglect or witnessed violence in the home			Total
	Yes	No	Not on file	
60-70	1	0	0	1
71-80	7	3	2	12
81-90	7	4	0	11
91-100	9	1	1	11
101+	12	3	0	15
<i>Total</i>	<i>36</i>	<i>11</i>	<i>3</i>	<i>50</i>

### 2.3.8 Experiences of prison and homelessness

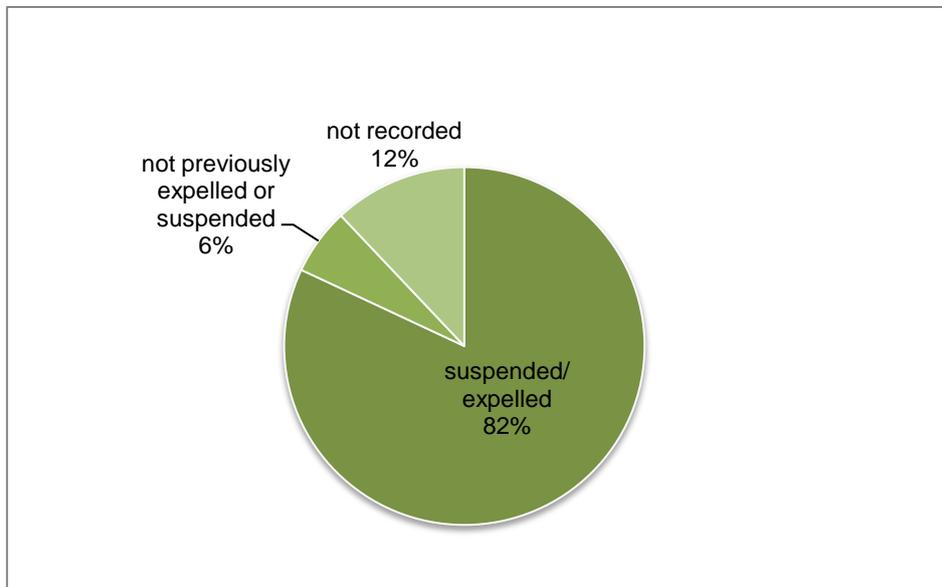
Almost all high service users (47) had spent time in a juvenile detention centre, either on remand or on a control order and eight had spent time in an adult prison. Over half the high service users (29) had experienced homelessness.

### 2.3.9 Education

Using the most recent data on files, the study showed that 90% of all high service users (45) were not enrolled in school. Given 23 of these were aged 18 and under, it appears that a high number of school aged high service users were not enrolled in school. Of the 24 files on which a high service user's highest educational attainment was noted, just under two thirds (15) had left school in Year 9.

As Figure 2 shows, 41 (82%) had been excluded, suspended or expelled from school.

**Figure 2: Proportion of high service users excluded from school**



There appears to be a strong relationship between being suspended or expelled from school and high legal aid service use.<sup>8</sup> As Table 3 shows, of high service users who had more than 101 contacts each with legal aid services, 93% had been expelled or suspended from school.

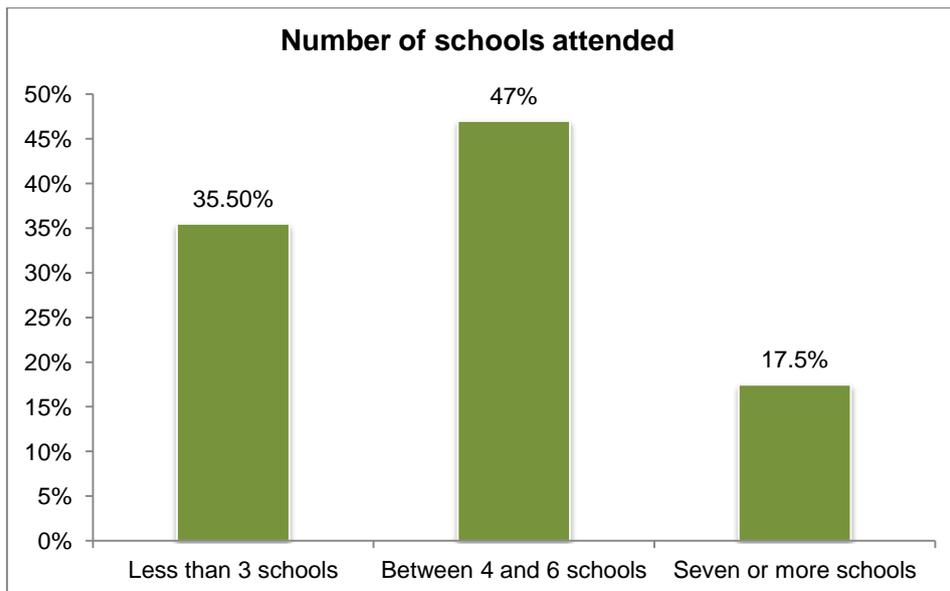
**Table 3: Number of Legal Aid NSW service contacts by number of clients who had ever been excluded from school**

Total no. of Legal Aid service contacts	Excluded/suspended/expelled from school			Total
	Yes	No	Not on file	
60-70	0	0	1	1
71-80	9	1	2	12
81-90	9	1	1	11
91-100	9	0	2	11
101+	14	1	0	15
<i>Total</i>	<i>41</i>	<i>3</i>	<i>6</i>	<i>50</i>

<sup>8</sup> Note that due to the small sample size in this study (n=50) this relationship is not statistically significant

The number of schools attended by individuals was also an indicator of high legal aid service use. As Figure 3 shows, two thirds of high service users (65%) attended four or more schools.

**Figure 3: Number of schools attended by high service users of Legal Aid NSW**

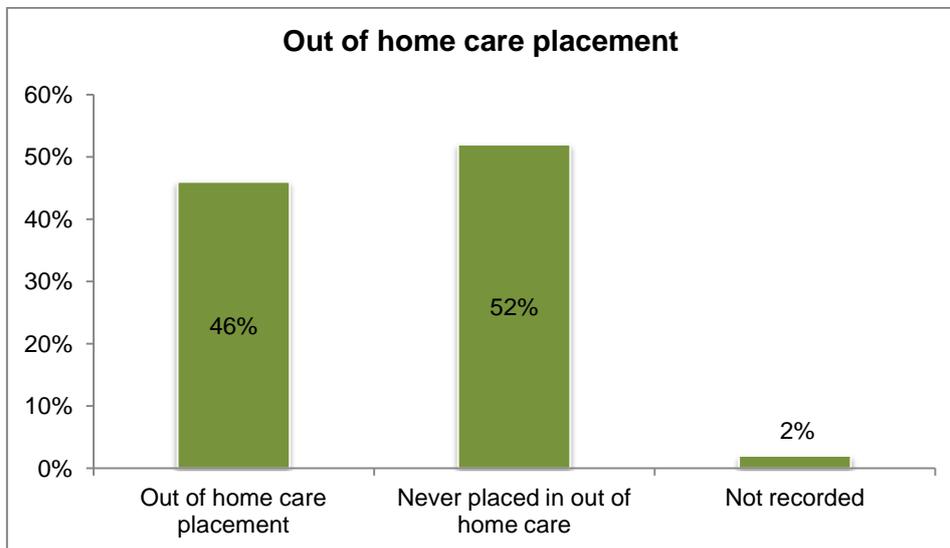


### 2.3.10 Experiencing out-of-home care

As Figure 4 shows, nearly half of all high service users (46%) had spent time in out-of-home care. This study supports the anecdotal experiences of lawyers from Legal Aid NSW who have observed a trend of significant concern: the increasing 'drift' from the care system to the criminal justice system.<sup>9</sup>

<sup>9</sup> The 2008 Wood Report found that approximately one third of young people in juvenile detention had a history of out-of-home care: see the Hon James Wood, AO QC (2008), *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, page 556. One reason for this 'drift' may be that criminal sanctions are increasingly used to manage challenging behaviour of children and young people living in out of home care; see McFarlane K (2012); 'From Care to Custody: Young Women in Out-of-Home Care in the criminal justice system', *Current Issues in Criminal Justice*, volume 22.

**Figure 4: Number of high service users who have spent time in out-of-home care**



### 2.3.11 *Disadvantage at home: primary care givers*

The study found a relatively high prevalence of disadvantage in the families of high service users. Like many other studies of disadvantage,<sup>10</sup> this study may suggest indicate the intergenerational transmission of disadvantage by showing a relationship between a high service user and the existence of disability, mental illness and educational disadvantage in their primary care givers.

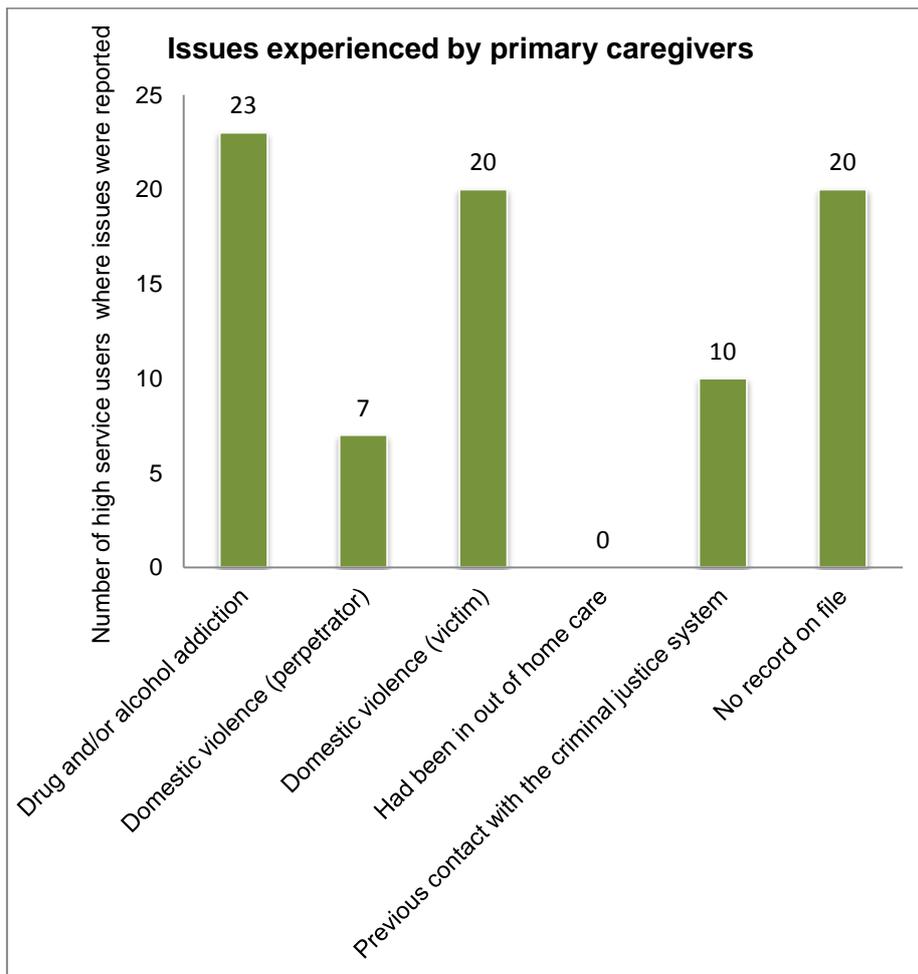
In one third of the files of high service users (17), a disability of the primary carer was identified and recorded. Psychiatric disability was the most common disability of primary carers, with 12 out of 17 high service users' files reporting that the primary carer had a psychiatric disability or mental illness.

As Figure 5 shows, other issues were also commonly experienced by primary care givers of high service users. Just under half of all high service users (23) had primary caregivers

<sup>10</sup> See for example di Addio, A (2007); *Intergenerational Transmission of Disadvantage: Mobility or Immobility across Generations? A Review of the Evidence for OECD Countries*; OECD Social Employment and Migration Working Papers No 52, , available at [www.oecd.org/els/38335410.pdf](http://www.oecd.org/els/38335410.pdf); See also Cobb-Clark D (2010); *Disadvantage across the generations*, *Insights*, Vol 8, University of Melbourne, Faculty of Business and Economics.

who had experienced drug and/or alcohol issues, and just under half (20) had a primary care giver who identified as a victim of domestic violence.

**Figure 5: Issues experienced by primary caregivers of high service users**



### 2.3.12 Interaction with human services and education services

The study also examined the extent to which Legal Aid NSW high service users were also regularly using other government and non-government services.

The study provides some evidence of multi-service use patterns for legal aid high service users.

As Table 4 shows, over the five years to 2010, high legal aid service users commonly accessed drug and alcohol services, services provided by the Community Services (formerly known as DoCS), mental health services, Justice Health services and homelessness and supported accommodation services.

**Table 4: Support services used by high service users**

Support service	Proportion of high service users accessing service
Treatment for alcohol and/or drug addiction	20%
Community Services (formerly DoCS)	17%
Mental health services	14%
Justice Health services	13%
Homelessness and other accommodation services	12%
Employment assistance/training	7%
Ageing, disability and home care (formerly DADHC)	4%
Other	15%

Being excluded from services has been noted as an experience that can exacerbate already complex needs and bring people into contact with the justice system.<sup>11</sup> The study did not find extensive evidence of exclusion from services for Legal Aid NSW high service users. The exception to this is exclusion to services providing emergency accommodation. As Table 5 shows, 22% of high service users (11) were reported as being excluded or restricted from receiving services from refuges or agencies providing emergency accommodation.

<sup>11</sup> See for example Victorian Government Department of Human Services (2003); *Responding to people with multiple and complex needs: Phase one report* available at [http://www.dhs.vic.gov.au/\\_\\_data/assets/pdf\\_file/0008/610865/complex-phase-july2003.pdf](http://www.dhs.vic.gov.au/__data/assets/pdf_file/0008/610865/complex-phase-july2003.pdf)

**Table 5: Proportion of high service users excluded from support services**

Support service	Proportion of high service users excluded or restricted from accessing services
Homelessness and other accommodation services	22%
Treatment for alcohol and/or drug addiction	6%
Mental health services	4%
Ageing, disability and home care services/DADHC	4%
No record on file of exclusion or restriction	64%

### 3. Findings in context

The findings of this study are consistent with other studies describing clients in the legal system.

Health surveys of people in custody suggest a greater proportion of people with complex needs compared with the general population. The 2009 *NSW Young People in Custody Health Survey* demonstrated that young people in custody have disproportionately complex needs and multiple indicators of social disadvantage:

- 87 percent of young people in custody were found to have at least one psychological disorder with 73 percent found to have two or more disorders;
- 60 percent had a history of child abuse or trauma; and
- 89 percent reported having used illicit drugs.<sup>12</sup>

A 2012 survey of legal need in NSW also confirmed the existence of multiple, clustered legal needs. The majority of legal problems were concentrated among a minority of respondents. Nine per cent of respondents accounted for 66 % of the legal problems reported.<sup>13</sup> The survey showed that people who are already disadvantaged, by reason of

<sup>12</sup> Devon Indig et al. (2011) '2009 NSW Young People in Custody Health Survey: Full Report' Justice Health: Sydney. See also Devon Indig et al. (2010) '2009 NSW Inmate Health Survey: Key Findings Report' Justice Health: Sydney.

<sup>13</sup> Coumarelos, C, Macourt, D, People, J, MacDonald, HM, Wei, Z, Iriana, R & Ramsey, (2012), *Legal Australia-Wide Survey: legal need in Australia*, Law and Justice Foundation of NSW, Sydney

having a disability for example, are particularly vulnerable to substantial and multiple legal problems.

The current Legal Aid NSW study suggests that a small group of high users of legal aid services have complex needs. While the diverse body of literature on multiple and complex needs clients does not provide a consensus description, three factors appear to commonly co-exist for these clients:

- a person has multiple, rather than singular, needs;
- structural disadvantage has compounded those needs; and
- service responses have been ineffective.<sup>14</sup>

While commonly arising from mental health diagnoses, behavioural disorders or disability, complex needs can also arise from other issues such as contact with the criminal justice system, experiencing domestic and sexual violence and social isolation.<sup>15</sup> Importantly, the existence of complex needs cannot be divorced from structural disadvantage such as poverty, lack of access to stable housing, meaningful employment, family and community dysfunction and dispossession of land.<sup>16</sup>

Poor service responses is also 'a strong thread running through the literature on multiple and complex needs'.<sup>17</sup> Services are designed to assist separately with a person's mental health problems or drug problems or legal problems rather than all interrelated problems for that person at once. A lack of coordination between services can lead to different service responses, eligibility criteria and professional approaches. In the absence of person-centric services, people with complex needs are frequently referred from service to service. People with complex needs often find themselves explicitly excluded from the very services they require to assist them.

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<sup>14</sup> Ann Rosengard, Isla Laing, Julie Ridley & Susan Hunter (2007) *A literature review on multiple and complex needs* Scottish Executive Social Research: Scottish Government, at para 2.16.

<sup>15</sup> Shannon McDermott & Jasmine Bruce (2010) *Evaluation of the Complex Needs Coordination Project: Final Report* Social Policy Research Centre: University of New South Wales. Accessed <<http://www.cityofsydney.nsw.gov.au/community/documents/Homelessness/CNCP-EvaluationReport.pdf>>

<sup>16</sup> Jennifer Rankin & Sue Regan (2004) *Meeting complex needs: The Future of Social Care* Institute for Public Policy Research & Turning Point, London.

<sup>17</sup> Ann Rosengard, Isla Laing, Julie Ridley & Susan Hunter (2007) *A literature review on multiple and complex needs* Scottish Executive Social Research: Scottish Government, para 2.18.

Agencies delivering legal services are beginning to recognise and respond to the challenges of assisting clients with complex needs or 'clustered' legal problems.<sup>18</sup> Public legal assistance agencies, such as Legal Aid Commissions, Aboriginal Legal Services and Community Legal Centres, recognise that fragmented services are inadequate for complex individuals. This has led to a substantial growth in efforts to deliver services more *collaboratively* to address a client's legal and other problems.<sup>19</sup>

The National Partnership Agreement on Legal Assistance Services, the current funding agreement between the Commonwealth Government and Legal Aid Commissions, reflects the interest in the legal assistance sector in improving partnerships between Legal Aid Commissions and other service providers. Through performance indicators and targets, the Agreement seeks to 'join up' service providers who share clients and reduce the 'churn' that is commonly experienced by complex needs clients.<sup>20</sup>

#### **4. Implications for legal aid services**

Given the predominance of children and young people amongst high service users in this study, Legal Aid NSW could consider developing a new intensive service centred around the needs of complex young people.

The study provides evidence for having this service focus on young people who have experienced neglect or abuse or witnessed violence in their family home, been expelled or excluded from school or spent time in out-of-home care.

This service could be located in the Children's Legal Service, with the care and protection practice in the Family Law Division of Legal Aid NSW or be a stand-alone service with a specific charter and a highly skilled, specialised and unique workforce.

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<sup>18</sup> Suzie Forell and Abigail Gray (2009) *Outreach legal services to people with complex needs: what works?* Law and Justice Foundation of NSW, Sydney.

<sup>19</sup> For example, Legal Aid NSW delivers integrated services with Health and Housing in NSW to people who are homeless and at risk of homelessness, medico-legal partnerships between legal aid lawyers and health practitioners and legal outreach services in Migrant Resource Centres targeting clients with immigration and family law problems

<sup>20</sup> Council of Australian Governments (2010) *'National Partnership Agreement on Legal Assistance Services'*

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[http://www.federalfinancialrelations.gov.au/content/national\\_partnership\\_agreements/Other/Legal\\_Assistance\\_Services\\_new.pdf](http://www.federalfinancialrelations.gov.au/content/national_partnership_agreements/Other/Legal_Assistance_Services_new.pdf)>

Some service development strategies could include:

- early identification of young people under 14 years at risk of becoming high service users;
- identification of key transition points or points of intervention for young people with complex needs, such as engagement with the Children's Court, where a young person may benefit from an intensive legal service;
- provision of creative and intensive legal services that would better meet the complex needs of young people with the aim of reducing the number of care proceedings and reducing reoffending; and
- authentic collaboration with key health, housing, mental health, disability and community service agencies to ensure the *same* small group of complex young people are also being assisted with intensive services from these agencies *at the same time*.

Based on the results of this study, a new intensive legal service for young people could include the following features:

- Continuity of representation
- Low lawyer-client ratios
- Specialist lawyer across multiple practice areas
- Innovative legal responses
- Innovative court-based responses
- Case management and services advocate
- Brokerage for specialised expert reports
- Authentic commitment to collaboration with other services
- An evaluative framework

These features are discussed in more detail below.

### **Continuity of representation**

Clients could be assigned a single highly experienced lawyer who would then represent them in all court matters and be their point of contact at Legal Aid NSW whenever a legal

issue arose.<sup>21</sup> This lawyer would also be the point of contact for other services supporting the young person. They could be given a new type of legal aid grant that recognises complex needs clients and removes the requirement for lawyers to make separate grants of aid for separate legal matters or to apply for extensions to grants of aid for matters as they progress through stages of the court process.

### **Low lawyer-client ratio**

Given the complexity of client need, lawyers with complex needs clients could be permitted to reduce their caseloads in order to provide a quality, high-level service to each of their complex needs clients.

### **Highly skilled/specialist lawyer across multiple practice areas**

A highly experienced lawyer could provide services across several practice areas (such as care and crime) and have close relationships with legal experts in other areas of law. This recognises that clients may come with a range of intersecting legal problems. An understanding of civil legal issues and ability to call in legal experts in specialist areas of civil law, such as laws relating to government benefits, fines and unpaid debt, housing and administrative law, could be a feature of the service, as these areas of law affect a significant proportion of complex needs clients.

### **Innovative legal responses**

The lawyers working with complex needs clients would be expected to 'think outside the square' when developing solutions to a client's legal problems. For example, they could explore the possibility of bundling a variety of legal issues (such as criminal law and care and protection law issues) into the same legal process so that client-centred legal outcomes could be achieved for young people with complex needs.<sup>22</sup>

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<sup>21</sup> Continuity of representation enables the solicitor to develop a relationship of trust with the client, and familiarity with the client's often lengthy criminal, health and out-of-home care history. It is important to avoid a 'fragmented approach' that has been criticised in the context of complex-needs juvenile clients in the past. (NSW Auditor-General's Report; (2007) *Performance Audit: Addressing the Needs of Young Offenders*, p.5). In the case of children and young people in out-of-home care, it would enable early identification of issues that relate to how the care provider are responding to the client's behavioural difficulties, potentially escalating that client's interaction with the criminal justice system.

<sup>22</sup> This requires senior, experienced solicitors who have knowledge across multiple practice areas of law, an awareness of the specific needs that can arise as a result of the behavioural problems and developmental disabilities and significant experience in liaising effectively with health and welfare professionals and other agencies within the justice cluster.

### **Innovative court-based responses<sup>23</sup>**

Legal Aid NSW could work with the Children’s Court and police to explore possible options for case managing ‘bundled’ complex legal matters for a small number of complex needs clients. For example, rather than establishing a specialist Court, the Children’s Court could consider establishing an informal complex needs children’s ‘list’. Using powers in section 33 of the *Children’s (Criminal Proceedings) Act* (similar to the common law Griffiths remand),<sup>24</sup> the Court could consider deferring the sentencing of a young person for the purposes of assessment, treatment or engagement with another program that may form part of a suite of intensive services provided to the client by Police, health, mental health, housing and other human service agencies.

The Court could also consider using this mechanism to bring about collaborative agency involvement. Using lessons from the *parens patriae* jurisdiction in the Supreme Court,<sup>25</sup> the Children’s Court could ‘case manage’ intensive services to young people provided by government agencies and NGOs such as Juvenile Justice, Disability, Justice Health, mental health, housing and other support services.

### **A service system advocacy function**

An ‘experienced case service advocate’ function within Legal Aid NSW could assist lawyers working with complex needs young people to identify and advocate for an intensive package of high quality mental health, disability, other health and housing services to support the client and keep them from reoffending. They could ensure close contact is maintained with the young person between court appearances, assist carers and family members to navigate the service system and advocate as appropriate and ensure continuity of service for these clients.

### **Arrangements to urgently obtain specialist and superior quality expert reports**

Flexible brokerage funds could be made available, through a new grant of legal aid, to purchase high quality psychiatric or neuro-scientific expertise that recognises and diagnoses complex co-morbidity issues for young people with complex needs. These

<sup>23</sup> S Vignaendra and Hazlitt G (2005); *The nexus between sentencing and rehabilitation in the Children’s Court in NSW*; Judicial Commission of NSW..

<sup>24</sup> See Judicial Commission of NSW; *Deferral for Rehabilitation or Other Purpose*, Sentencing Bench Book, available at [www.judcom.nsw.gov.au/publications/benchbks/sentencing/deferral\\_for\\_rehabilitation.html](http://www.judcom.nsw.gov.au/publications/benchbks/sentencing/deferral_for_rehabilitation.html)

<sup>25</sup> *parens patriae* principles governed the formation of the NSW Children’s Court in 1905 but now formally describes the Supreme Court’s protective jurisdiction See S Vignaendra and Hazlitt G (2005); *The nexus between sentencing and rehabilitation in the Children’s Court in NSW*, Judicial Commission of NSW.

professional reports could be used to support better applications for bail or sentencing submissions.

***Authentic* collaboration with other services to intensively support a small number of clients at the same time**

Most importantly, it is critical that Legal Aid NSW is joined by Police, health, housing, education, mental health and community service agencies to provide intensive services to the same small group of young people with complex needs clients at the same time. Agencies could consider identifying a small but highly complex group of young people and offer an intensive 'best service' to this group of clients simultaneously. Agreements to share information amongst agencies and work collaboratively and intensively with the same group of clients would be essential.

## **5. Conclusion**

This study, profiling the top 50 clients receiving Legal Aid NSW services, found that the highest users of legal aid services were predominately young men under 19 who had their first contact with Legal Aid NSW by the time they were 14 years old.

There was evidence of complex needs in legal aid high service users, with a high prevalence of mental illness. Many had experienced abuse or neglect or witnessed violence in the home, been suspended or expelled from several schools and spent time in out of home care.

Based on the results of this study, a new, intensive legal aid service could look to provide complex needs young people with creative legal services that meet their legal needs, and, at the same time, broker a co-ordinated package of intensive mental health, housing and human services support to assist in preventing the young person from reoffending.

This package of legal and non-legal intensive services delivered to a small group of complex needs young people may lead to critical improvements in the lives of these clients, who are amongst the most disadvantaged people in the community.

The resource constraints across State government present significant challenges to service development. However, the strategic coordination of programs and services targeted at a small group of complex needs clients will only have a positive effect on these young people and the systems with which they interact.