



UNSW Law & Justice Research Series

Addressing Unmet Legal Need – Is it Time to Deregulate Legal Services In Australia?

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[2024] *UNSWLRS* 35
(2024) 18 *Court of Conscience* (Forthcoming)

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Michael Legg and Vicki McNamara, ‘Addressing Unmet Legal Need – Is it Time to Deregulate Legal Services In Australia?’
Published in: (2024) 18 *Court of Conscience* (Forthcoming)

(SSRN version – 23 October 2024)

ADDRESSING UNMET LEGAL NEED – IS IT TIME TO DEREGULATE LEGAL SERVICES IN AUSTRALIA?

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I. INTRODUCTION

Annually, a significant proportion of Australians face one or more legal issues, typically about consumer claims, criminal charges, housing, government decisions, or family matters.³ These problems often have other serious repercussions, including financial strain, health problems, stress and relationship issues. Despite these impacts, most people try to resolve their issues without professional legal help or engaging with formal justice systems.⁴ This behaviour reflects widespread ‘unmet legal need’ and is ubiquitous across Australia and globally.⁵

Unmet legal need was recently defined in the Australian context as ‘where a person is unaware they have a legal right, or where they would like to defend a right but do not because they cannot access legal services for various reasons, such as services being too slow, too expensive or unavailable as a result of inadequate supply of legal representation in the areas of law the matters relate to’.⁶ Accurately measuring unmet legal need is difficult, partly because people may not seek legal assistance, and partly due to inadequate government support for regular data collection and reporting in some jurisdictions.⁷

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³Delphine Bellerose et al, *Data to Inform Assessment of Legal Needs in New South Wales: Update on Vulnerable Community Groups* (Report, Law and Justice Foundation of New South Wales, September 2023) 4 https://lawfoundation.net.au/wp-content/uploads/2023/11/01PJR_Data-to-inform-assessment-of-legal-needs-in-New-South-Wales_2023.pdf. See also Warren Mundy, *Independent Review of the National Legal Assistance Partnership 2020-25* (Final report, 28 May 2024) 45 <<https://www.ag.gov.au/legal-system/publications/independent-review-national-legal-assistance-partnership-2020-25>>, a review of the National Legal Assistance Partnership (NLAP) 2020-2025. The NLAP is the current agreement between Commonwealth and state and territory governments under which the Commonwealth provides funding for services provided by state and territory legal assistance providers.

⁴Bellerose et al (n 3) 6.

⁵Christine Coumarelos et al, *Legal Australia-Wide Survey: Legal need in Australia* (Report, Law and Justice Foundation of NSW, 2012) xiv. See also OECD and Open Society Foundations, *Legal Needs Surveys and Access to Justice* (OECD Publishing, Paris, 2019) 31 (‘*OECD and Open Society Foundations*’).

⁶Mundy (n 3) 34.

⁷For example, in analysing the current position in Australia, Mundy (n 3) at 35 notes that ‘A well-founded legal assistance framework would start with an objective assessment of legal need across geographies, population cohorts and legal matter types. This framework would allow governments to assess which legal needs should be met, and to allocate appropriate resources ... the absence of this necessary statistical base ... fails to define legal need and offer a framework for measuring it.’

Access to legal services is vital for understanding rights and obligations and making informed decisions. However, legal needs surveys and studies repeatedly indicate that unmet legal need disproportionately impacts disadvantaged or socially excluded individuals and communities.⁸ In Australia, the prevalence of legal problems and rates of unmet legal need are higher for specific groups, including Aboriginal or Torres Strait Islander peoples, rural or remote area residents, people with disabilities or mental illnesses, the homeless, children and young people, and older people.⁹

Traditional responses, such as increased government support for legal aid and increased pro bono lawyer hours, have proven to be inadequate to bridge the legal needs gap.¹⁰ The widespread inability to access legal services has prompted support for greater access to justice, innovation initiatives and reforms across the world.¹¹

This article explores the potential benefits of partial deregulation of legal services in Australia by allowing more 'lawyerless' legal services for those with unmet legal needs, to increase access and affordability. These services could be delivered in person, through technology, or other innovative approaches. Drawing on insights and lessons from existing legal services reform in England & Wales and in Utah in the USA, we consider the potential for similar reforms in Australia.

II. AUSTRALIA: CURRENT RESTRICTIONS ON ENGAGING IN LEGAL PRACTICE

The *Legal Profession Uniform Law*¹² prohibits 'unqualified entities' from legal practice. This prohibition aims '(a) to ensure, in the interests of the administration of justice, that legal work is carried out only by those who are properly qualified to do so; and (b) to protect clients of law

⁸ OECD and Open Society Foundations (n 5) 31. This guide reviewed more than 55 access to justice and legal needs surveys conducted by governments and civil organisations in over 30 countries over the 25 years leading up to the guide's publication in 2019. The guide notes that surveys showed consistent patterns in 'justiciable problems' globally, that these problems are clustered and not randomly distributed and that there are 'demonstrated associations between disadvantage and justiciable problems experience.' Other sources illustrating this issue includes data and research by the World Justice Foundation, for example see Daniela Barba and Alejandro Ponce, *Disparities, Vulnerability and Harnessing Data for People-Centred Justice* (WJP Justice Data Graphical Report II, 2023) <https://worldjusticeproject.org/sites/default/files/documents/WJPJusticeDataGraphicalReport-Part2_0.pdf>.

⁹ For the Australian-wide context, Mundy (n 3) 61 lists existing 'national priority client groups for which legal assistance services should be planned and focussed' and observes that 'certain cohorts of vulnerable people facing disadvantage are more likely to experience legal problems, less likely to seek assistance, and/or less able to access services for a range of reasons'.

¹⁰ Resources addressing this issue include: Gillian Hadfield and Deborah Rhode, 'How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering' (2016) 67(5) *Hastings Law Journal* 1191, 1193; Rebecca Sandefur, Thomas Clarke and James Teufel, 'Seconds to Impact? Regulatory Reform, New Kinds of Legal Services, and Increased Access to Justice' (2021) 84(3) *Law and Contemporary Problems* 69, 80; and for an overview of the current Australian context see Mundy (n 3); and 'Access to Justice For All', *Law Council of Australia* (Web Page, 17 September 2024) <<https://lawcouncil.au/access-to-justice-for-all>>.

¹¹ The World Justice Project is an example of a globally focused organisation committed to encouraging '... regulatory and procedural reform that creates a level playing field for legal services and facilitates the expanded use of technology, paralegals and other non-lawyer intermediaries, self-help services and tools, and other new approaches ...', from 'World Justice Forum participants reaffirm their commitment to justice for all', *World Justice Forum 2019 Concluding Declaration* (Web Page, May 2019) <<https://worldjusticeproject.org/world-justice-forum-vi/world-justice-forum-2019-concluding-declaration>>.

¹² *Legal Profession Uniform Law 2014* (NSW) s 10.

practices by ensuring that persons carrying out legal work are entitled to do so'.¹³ 'Qualified entities' include Australian legal practitioners with current practising certificates, law practices (sole practitioners, law firms, community legal services and incorporated/unincorporated legal practices), and foreign lawyers practicing foreign law.¹⁴

Since 2001, New South Wales has permitted incorporated legal practices, a form of alternative business structure ('ABS') requiring at least one solicitor director with an unrestricted practising certificate.¹⁵ This reform changed who could profit from legal services, introduced greater professionalism in legal practice management, and allowed access to new forms of capital. Legal services in Australia have also been previously deregulated through allowing '... non-lawyers ... [to] ... provide advice and representation in conveyancing, intellectual property, workplace relations, taxation and migration matters'.¹⁶ Despite these reforms and other legal practice innovations, such as NewLaw which combines the use of an ABS with technology and new forms of pricing,¹⁷ legal services are insufficiently accessible for many Australians and the scale of unmet legal need continues to increase in certain areas of law and for particular communities.¹⁸

III. ENGLAND AND WALES: RESERVED (AND UNRESERVED) LEGAL ACTIVITIES

The UK reformed its legal services regulatory framework with the introduction of the *Legal Services Act 2007* ('LSA'). The LSA's regulatory objectives include '... protecting and promoting the public interest ... improving access to justice ... protecting and promoting the interests of consumers ...[and]... promoting competition ...'¹⁹

The LSA defines certain legal work as 'reserved legal activity',²⁰ namely: 1. Rights of audience; 2. Conduct of litigation; 3. Reserved instrument activities (for example, preparing an instrument relating real estate); 4. Probate activities; 5. Notarial activities; and 6. Administration of oaths. These types of legal work can only be carried out by an 'authorised person' or 'exempt person' as defined by the LSA.²¹ It is a criminal offence to carry on reserved legal activity without

¹³ Ibid s 9.

¹⁴ Ibid s 6.

¹⁵ *Legal Profession Amendment (Incorporated Legal Practices) Act 2000* (NSW) s 47E.

¹⁶ Vicki Waye et al, 'Innovation in the Australian legal profession' (2017) 25(2) *International Journal of the Legal Profession* 213, 219-220. See also Productivity Commission, *Access to Justice Arrangements* (Inquiry Report No. 72, 2014) 21.

¹⁷ Roger Quick, 'A paradigm shift? NewLaw, ALSPs and NewMen', *Quick on Costs* (Thomson Reuters, Online) [120.90].

¹⁸ Mundy (n 3) 45.

¹⁹ *Legal Services Act 2007* (UK) s 1 ('LSA').

²⁰ Ibid s 12(1) lists the Reserved Legal Activities and LSA Schedule 2 provides details about what each of these activities constitutes. See also Legal Services Board, *Reserved legal activities* (Web Page, 2024) <<https://legalservicesboard.org.uk/enquiries/frequently-asked-questions/reserved-legal-activities>>.

²¹ Ibid s 18 defines an 'authorised person' as '... (a) a person who is authorised to carry on the relevant activity by a relevant approved regulator in relation to the relevant activity ... or (b) a licensable body which, by virtue of such a licence, is authorised to carry on the relevant activity by a licensing authority in relation to the reserved legal activity'. LSA (n 19) s 19 defines an 'exempt person' as '... a person who, for the purposes of carrying on the relevant activity, is an exempt person by virtue of ... (a) Schedule 3 ...'. Schedule 3 of the LSA provides a detailed list of Exempt Persons, and includes solicitors and barristers.

entitlement.²² The *LSA* also provides for ABS entities, allowing a licensed body to carry on reserved legal activities and other activities.²³ This provision ‘... substantially relaxes ... the traditional restrictions on the business models within which lawyers can practice and the financial and managerial relationships they can enter into with nonlawyers without sacrificing ... professional values ...’²⁴

The Legal Services Board (‘LSB’), established by the *LSA*, oversees the regulation of legal services in England and Wales.²⁵ The LSB’s website notes that legal work falling outside of the regulatory framework of the *LSA* (and which is thus unreserved) includes:

- providing legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes;
- providing representation in connection with any matter concerning the application of the law or any form of resolution of legal disputes; and
- any activity that does not fall within one of the six reserved legal activity categories...²⁶

In summary, the *LSA* reform model allows a range of regulated and unregulated non-lawyer providers to perform legal services outside the six categories of reserved legal activities.²⁷

Although access to justice issues persist, there are some signs of progress. The model has increased legal services options and alternative pricing models for consumers by lowering traditional market entry barriers that required formal legal training and qualifications, and due to the ‘... acceptance of the idea that useful legal help can be provided by a variety of legal and lay professionals ... [with] ...options ... in the form of unbundled services to support ... “DIY” law and a wide range of advisory services to help people manage legal questions and issues that have not turned into lawsuits (yet)’.²⁸

Many non-lawyer providers are profit seeking commercial entities attracted to a more competitive legal services market, providing a range of services that are complementary or ancillary to legal advice. By 2023, an estimated 3,800 unregulated providers were offering

²² Ibid s 14.

²³ Ibid Pt 5.

²⁴ Hadfield and Rhode (n 10) 1210.

²⁵ Legal Services Board, *Who we are* (Web Page, 2024) <<https://legalservicesboard.org.uk/about-us/who-we-are>>. The LSB oversees multiple legal services regulators under the *LSA*, some of whom are also licensing bodies, as well as the Office for Legal Complaints which administers the Legal Ombudsman scheme. For a map of all current regulators under the *LSA*, see Legal Services Board, *Approved Regulators* (Web Page, 2024) <<https://legalservicesboard.org.uk/about-us/approved-regulators>>.

²⁶ Legal Services Board, *Where can I get help? Reserved legal activities* (Web Page, 2024) <<https://legalservicesboard.org.uk/enquiries/frequently-asked-questions/reserved-legal-activities>>.

²⁷ The LSB recently released a report on the scale of the unreserved market, noting that some providers are regulated by *LSA* regulators other than the LSB; some are regulated by other regulators such as the Financial Conduct Authority; and others are completely unregulated for the professional services they provide. See Frontier Economics, *Understanding the Unreserved Market* (Report, June 2023) 17 <<https://www.sra.org.uk/globalassets/documents/sra/research/understanding-unreserved-market-june-2023.pdf?version=49cfab>> (‘*Frontier Economics*’).

²⁸ Hadfield and Rhode (n 10) 1212.

unreserved legal services in England and Wales.²⁹ Unregulated providers comprise a small proportion of the legal sector when measured by turnover (around 6-8%),³⁰ but represent a significant proportion of certain segments of the legal services market, such as for small to medium sized enterprises (SMEs).³¹

The LSA reform model has also influenced innovation and technology trends that potentially improve access to legal services. A LSB report studying legal services providers from 2015 to 2018 evaluated the impact on innovation and technology use and found 'unregulated providers were twice as likely to have successfully introduced new or improved services'.³² Furthermore, 26% of legal services providers overall introduced new or significantly improved services, and 12% of unregulated providers introduced new to market services compared with 6% of solicitors and 4% of barristers' chambers.³³ These services included '... new technology or new ways of using existing technology ... moving into new areas of law ...', working with new types of collaborators or cross-selling to provide services (such as with real estate agents and architects), providing services to new client groups, and new pricing models such as fixed fee rather than hourly rates.³⁴

A subsequent 2022 LSB report noted 'unregulated providers are 1.5 times as likely to have undertaken innovative activities as other providers'.³⁵ It identified legal services that were '... affordable and convenient for consumers, perhaps because they were offered at a low or fixed cost, and/or offered online',³⁶ and pointed out the '... unregulated market offers consumer benefits through some price transparency ...[and]... also reduces the up-front cost or risk through offering fixed prices [or] percentage success fees'.³⁷

Digitisation of traditional in-person legal services by providers can generate new revenue streams and reduce service delivery costs while maintaining or increasing client satisfaction. Digital self-service tools require initial setup investment but can potentially service an unlimited customer base. A 2021 Oxford University study of technology and innovation in the UK legal services sector cited firms who confirmed that digital revenue now constituted a significant

²⁹ *Frontier Economics* (n 27) 23.

³⁰ *Ibid* 30.

³¹ *Ibid* 75 (as at June 2023 around 30% of SMEs received advice mainly from unregulated providers, and that this demand was expected to grow in the event of an economic downturn).

³² Legal Services Board, *Technology and Innovation in Legal Services – Main Report* (Report, November 2018) 2 <<https://legalservicesboard.org.uk/research/technology-and-innovation-in-legal-services-2018>> ('*Technology and Innovation in Legal Services*').

³³ Legal Services Board (n 32) 16.

³⁴ *Ibid* 18.

³⁵ Legal Services Board, *Mapping unregulated legal services – Research Report* (Report, June 2022) 5 <<https://legalservicesboard.org.uk/wp-content/uploads/2022/06/20220616-Mapping-unregulated-legal-services-FINAL-1.pdf>>.

³⁶ *Ibid* 6.

³⁷ *Ibid* 29.

percentage of their overall practice income.³⁸ And many otherwise underserved clients are open to using legal technology solutions, particularly for less complex legal needs.³⁹

The LSA reform model has been regularly evaluated since its introduction and has attracted some criticism and calls for further reforms. For example, an independent review of legal services regulation in 2020 found that the legal profession's monopoly on reserved legal activities was a '... historical feature of legal services regulation imported into the 2007 Act with no modern, risk-based reassessment of whether or not they would provide the correct foundation for 21st century, post-Brexit, regulation'.⁴⁰

A 2020 Competition and Markets Authority review also noted complexity and inefficiency issues with the regulatory framework, and the lack of focus on the risk profile of activities. It raised concerns about a '... 'regulatory gap' for unreserved services ... exacerbated by the poor alignment of the current reserved services to risks to consumers ...'⁴¹ Consumers purchasing legal services often lacked understanding about whether a provider was regulated or unregulated. They were also uncertain about the consumer protections available if issues such as poor or incorrect advice arose, or the potential risks associated with limited access to consumer protections, especially when dealing with unauthorised providers.⁴²

An illustration of how regulatory gaps may affect consumers is in the area of wills and estate administration. This is an area of legal services where unreserved providers have a high level of market penetration, as the largest group of unregulated providers (around 25%).⁴³

In 2011, the Legal Services Consumer Board conducted a 'shadow shopping' study, which evaluated wills provided by will-writing companies (unreserved providers) and solicitors (regulated providers). The study showed that 25% of wills purchased were substandard and failed a quality check. The same rate of failure was consistent across both will-writing companies and solicitors. However, as solicitors are regulated, their clients can escalate any issues to the Legal Ombudsman for investigation, and also benefit from protections like ethical and fiduciary duties and professional indemnity insurance. In contrast, clients using a will-writing company might encounter a lack of professional standards or insurance coverage. Also, as the company may sit outside the jurisdiction of the Legal Ombudsman, costly litigation may be the

³⁸ Mari Sako and Richard Parnham, *Technology and Innovation in Legal Services* (Final Report for the Solicitors Regulation Authority, University of Oxford, July 2021) 77 <<https://www.sra.org.uk/globalassets/documents/sra/research/full-report-technology-and-innovation-in-legal-services.pdf?version=4a1bfe>>.

³⁹ Legal Services Board and LawTech UK, *Qualitative Research Into SMEs' Legal Needs and the Adoption of Lawtech* (Report, October 2021) 3 <<https://legalservicesboard.org.uk/wp-content/uploads/2021/10/Lawtech-and-SMEs-report-October-2021.pdf>>. See also Legal Services Board, *Technology and Innovation in Legal Services – Main Report* (Report, May 2023) 18 <<https://legalservicesboard.org.uk/wp-content/uploads/2023/06/20230425-Tech-and-Innov-survey-2022-Designed.pdf>>.

⁴⁰ Stephen Mayson, *Independent Review of Legal Services Regulation: The Scope of Legal Services Regulation* (UCL Centre for Ethics and Law Working Paper LSR-2, March 2020) 39.

⁴¹ Competition and Markets Authority, *Review of the Legal Services Market Study in England and Wales: An Assessment of the Implementation and Impact of the CMA's Market Study Recommendations* (Report, 17 December 2020) 100.

⁴² Ibid.

⁴³ Market share is at June 2023, see *Frontier Economics* (n 27) 24.

only recourse in the event of a dispute.⁴⁴ A recent report from the Legal Ombudsman indicates that quality problems with wills persist, and argued the disjointed regulatory framework complicates consumers' decisions about service providers and how to resolve issues.⁴⁵

Despite criticisms, there has been no move to overhaul or reverse the *LSA* reforms since their introduction, although periodically adjustments are made to certain aspects of the framework. Bodies such as the LSB continue to review the overall level of regulation and guidance required to improve access to legal services while balancing risk considerations. A recent example is LSB statutory guidance which sets outcomes for the regulators that it has oversight of and their delegated bodies,⁴⁶ to drive the use of innovation and technology in a way that is consistent with existing regulatory objectives to improve access to justice, consumer protection and promoting competition in the provision of services.⁴⁷ When issuing this guidance, the LSB stated:

'Consumers have a greater appetite for technology that the legal profession tends to assume ... Our guidance puts beyond doubt the LSB's commitment to ensuring regulation does not hold back innovation whilst recognising that regulators must continue to be alert to the risks. From AI to videoconferencing, we want the sector to embrace technology and innovate to better connect people to legal services ... We now expect the regulators to embrace our ambition and move with appropriate pace to understand the public's needs and develop frameworks that balance the benefits and risks in the interest of people who need legal services.'⁴⁸

In summary, the *LSA* reforms offer valuable lessons, and the UK regulatory environment has played a critical role in driving change in legal services. Despite ongoing analysis and debate about factors such as risk for consumers in some areas, it has supported a range of innovative business practices and technology advancements that aim to make legal services more accessible, affordable and effective in England and Wales.

IV. UTAH, USA: LEGAL REGULATORY SANDBOX AND UPL WAIVER

Utah's 2020 legal services reforms also aim to increase innovation and improve access to justice for its citizens. The state is one of several US and Canadian jurisdictions revising the

⁴⁴ Legal Services Consumer Panel, *Regulating Will-writing* (Report, July 2011) 3.

⁴⁵ Legal Ombudsman, *Complaints in Focus: Wills and probate* (Report, 14 March 2024) <<https://www.legalombudsman.org.uk/media/r2hjcmvn/willwriting-report-final-141016.pdf>> 1.

⁴⁶ 'Guidance on promoting technology and innovation to improve access to legal services', *Legal Services Board* (Web Page, 23 April 2024) <<https://legalservicesboard.org.uk/wp-content/uploads/2024/04/Technology-and-innovation-guidance-for-publication.pdf>> ('Legal Services Board'). See also Neil Rose, 'LSB tells regulators they need to promote tech and innovation', *Legal Futures* (Web Page, 25 April 2024) <<https://www.legalfutures.co.uk/latest-news/lbs-tells-regulators-they-need-to-promote-tech-and-innovation>>.

⁴⁷ *Legal Services Board* (n 46) [4].

⁴⁸ Legal Services Board, 'LSB Issues Guidance to Regulators to Spur Innovation and Widen Access to Legal Services' (Media Release, 23 April 2024) <<https://legalservicesboard.org.uk/news/lbs-issues-guidance-to-regulators-to-spur-innovation-and-widen-access-to-legal-services>>.

ownership of legal practices and relaxing rules prohibiting the ‘unauthorised practice of law’ (‘UPL’).⁴⁹

Utah’s reform approach includes a legal regulatory sandbox (‘Sandbox’) trial with the primary goal ‘to improve access to justice’.⁵⁰ The Sandbox provides a temporary UPL waiver to participants and enables non-traditional legal service delivery experiments, including through technology use and non-lawyer involvement.⁵¹ It is virtual and is managed by the Office of Legal Services Innovation (Innovation Office) under the direction of the Utah Supreme Court.⁵²

Pre-reform in Utah, only lawyers could own legal practice entities and deliver law-related activities (such as legal advice, negotiation and court representation). Post-reform, the Innovation Office assesses new applicants to the Sandbox, including non-traditional entities and traditional entities proposing service methods previously banned. Initially, applications are reviewed for scope, legal area, innovativeness, and any potential risks associated with the proposed activity. If successful, applications are then reviewed by an Innovation Committee, who votes on inclusion. The Utah Supreme Court may then authorise or deny Sandbox inclusion.

Sandbox entities must report regularly and provide de-identified service-level data. This data is evaluated for potential consumer risks, such as ‘... inaccurate or inappropriate legal result ... fail[ure] to exercise legal rights through ignorance or bad advice ...[and the purchase of]... unnecessary or inappropriate legal service’.⁵³ If actual consumer harm is identified, the Innovation Office can suspend or terminate an entity’s authorisation.

Evidence of this reform’s success (as at January 2024) includes:

- 105 applications, with 51 Sandbox entities authorised to offer legal services;
- 76,216 legal services provided to 24,000 unique consumers; and
- services across various legal areas, primarily business (45.6%), immigration (17.9%) and military/veterans’ benefits (12%).⁵⁴

A 2022 Stanford Law School study examined the impact of reforms liberalising legal services on authorised legal service entities in Utah and Arizona (US), and in England and Wales. The study found that the ‘majority of entities are using both technology and other innovations to deliver services in new ways, mostly to consumers and small businesses’.⁵⁵ However, the report also

⁴⁹ We have focused on Utah in this article, as one of the earliest examples of legal services reform successfully incorporating changes to the ownership of legal practice and an innovation sandbox in the North America region.

⁵⁰ Utah Office of Legal Services Innovation, *Our History* (Web Page) <<https://utahinnovationoffice.org/our-history/>>.

⁵¹ David Freeman Engstrom et al, *Legal Innovation After Reform: Evidence from Regulatory Change*, Stanford Law School (Report, September 2022) 6. <<https://law.stanford.edu/wp-content/uploads/2022/09/SLS-CLP-Regulatory-Reform-REPORTExecSum-9.26.pdf>>.

⁵² Utah Office of Legal Services Innovation, *What We Do* (Web Page) <<https://utahinnovationoffice.org/what-we-do/>>.

⁵³ Utah Office of Legal Services Innovation, *What We Do* (Web Page) <<https://utahinnovationoffice.org/what-we-do/>>.

⁵⁴ Utah Office of Legal Services Innovation, *Activity Report: January 2024* (Report, 20 February 2024) <<https://utahinnovationoffice.org/wp-content/uploads/2024/03/January-2024-Activity-Report.pdf>> (‘Utah Office of Legal Services Innovation’).

⁵⁵ Engstrom et al (n 51) 7.

highlighted that different reform strategies led to different types of innovation. UPL reform was crucial in encouraging services for lower-income clients, and only the Utah Sandbox led to 'innovation in the nonprofit and community-based sector and in the development of new delivery models that serve low- and middle-income populations'.⁵⁶

Some examples of these types of entities are:

- **Rasa Legal:** Uses AI-enabled software and non-lawyer providers to help eligible users clear a criminal record at 'less than half the price of other lawyers ...for only \$15... and ... in less than 3 minutes';⁵⁷
- **Timpanogos Legal Center (TLC):** A nonprofit entity providing free legal services/clinics statewide and a legal advice hotline. It primarily services domestic violence victims and self-represented litigants, providing legal advice, document drafting, and referrals, but not in-court representation;⁵⁸ and
- **Holy Cross Ministries:** A nonprofit Roman Catholic organisation serving Salt Lake City families. It plans to offer legal services alongside its existing health services, delivered by non-lawyer Community Health Workers (CHWs). These CHWs, trained as bilingual medical debt legal advocates, will provide limited-scope legal assistance related to medical debt and related issues.⁵⁹

The Sandbox has only been running for four years and this model is not without challenges. Despite these reforms, a significant access to justice gap persists in Utah. A 2021 study estimated over 2.4 million civil justice problems were experienced annually by low and middle income people and small businesses in Utah, and received no legal services at all.⁶⁰ The 76, 216 legal services referred to above represents a fraction of estimated civil justice problems.⁶¹ Also, longer term challenges to expansion and scalability may deter some potential investors in Sandbox entities. If these are business entities eventually seeking to operate outside of Utah in one of the other 50 US states, they are currently subject to a patchwork of legal services regulations. This may constrain some business investment.⁶²

However, other fears, such as poor-quality services from non-lawyers in the Sandbox, have not eventuated.⁶³ As at January 2024, Sandbox entities had a 'harm-related' complaint rate of just 1 per 4,011 services delivered (a lower rate than the typical rate for lawyers according to work

⁵⁶ Ibid 36.

⁵⁷ *Rasa Legal* (Web Page, n.d.) <<https://www.rasa-legal.com/>>.

⁵⁸ *Timpanogos Legal Centre* (Web Page, n.d.) <<https://www.timplegal.org/>>.

⁵⁹ Office of Legal Services Innovation, 'Amended Sandbox Authorization Packet Holy Cross Ministries', *Utah Innovation Office – Authorised Entities* (Web Page, 15 August 2022) <<https://utahinnovationoffice.org/wp-content/uploads/2024/03/Holy-Cross-Ministries-Packet-and-App.pdf>>.

⁶⁰ Sandefur, Clark and Teufel (n 10) 73.

⁶¹ *Utah Office of Legal Services Innovation* (n 54) 4.

⁶² Kelli M Raker, *From Founded to Funded: Challenges & Visions for Justice Tech*, Duke Center on Law & Tech (Report, 2023)

<https://law.duke.edu/sites/default/files/images/embed/from_founded_to_funded_challenges_visions_for_justice_tech_oct2023.pdf> 30.

⁶³ 'Utah's Legal Sandbox is a Success, Easing Initial Fears', *Legal Tech Guide* (Blog Post, 17 November 2021) <<https://legaltechguide.org/blog/utah-legal-tech-sandbox/>>.

product studies).⁶⁴ Upon review by auditors, those complaints were found to pose no material or substantial harm to consumers.⁶⁵

In summary, Utah's Sandbox is a work in progress. However, the early signs are promising and if it continues to operate and extend its impact, it may provide a model for access to justice innovation elsewhere.

V. CONCLUSION: PROGRESSING LEGAL SERVICES REFORM IN AUSTRALIA

Legal services reforms in the UK and Utah are designed to address unmet legal need in their respective communities. Despite different reform approaches and ongoing challenges, both models offer valuable insights for Australia. The UK model is broad, reserving certain types of legal activity for regulated persons while allowing unregulated persons to provide unreserved legal services. In contrast, Utah's model is more targeted with individualised review of Sandbox applicants. Both models seek to protect consumers and ensure the provision of reliable, quality legal services. They present alternatives for addressing unmet legal need, potentially complementing existing access to justice initiatives in Australia.

A recent recommendation by the *Independent Review of the National Legal Assistance Partnership* proposed a 'Justice Technology Innovation Fund to ... [support]... the development, trial and evaluation of technological solutions and digital tools for the legal assistance sector, including the application of artificial intelligence technologies ...[and]... explore technology partnerships between legal assistance providers, governments and other community organisation'.⁶⁶ If implemented, this could potentially create an environment conducive to a legal regulatory sandbox trial in Australia through a combination of Federal and state financial incentives and a governance framework.

However, any such initiative must also be complemented by additional legal services reform, similar to those in the UK and Utah. This is essential to fully harness the potential of innovation and technology to improve access to legal services and reduce the prevalence of unmet legal need for a broader range of individuals and communities.

A comprehensive review of legal services must consider not only potential gains, but also what protections may potentially be diluted or lost with deregulation, what legal services could safely be deregulated, and which legal services could effectively become lawyerless. Compared to purely commercial relationships, traditional modes of legal service delivery offer additional protections to clients, such as lawyers' ethical and fiduciary duties and professional indemnity insurance. However, these protections also contribute to the overall cost of delivering legal services.

⁶⁴ *Utah Office of Legal Services Innovation* (n 54) 6.

⁶⁵ *Ibid* 7.

⁶⁶ Mundy (n 3) xix, 194.

Finally, further discussions about legal services reform in Australia should be driven by legal industry regulators and law reform bodies in conjunction with other key stakeholders and will likely require amendment of the *Legal Profession Uniform Law*.⁶⁷ This approach will ensure the options are explored in a balanced and comprehensive way, promoting the best outcome for those with unmet legal needs.

⁶⁷ *Legal Profession Uniform Law 2014* (NSW).