

National Consultations Summary Report

Maylea Consulting





This project has been conducted on Aboriginal land across Australia. We acknowledge Aboriginal and Torres Strait Islander people as the first peoples and Traditional Owners and custodians of the land and waterways on which we live. We honour and pay our respects to Elders past and present.

We acknowledge people with lived experience of mental ill-health and recovery and the experience of people who have been carers, families, or supporters.

Suggested citation: Chris Maylea, Esther Le Couteur, Laura Cashman, Rebecca Leon, Melanie Sherrin, Vrinda Edan, Damien Linnane, Ailsa Rayner, Pan Karanikolas & Piers Gooding (2023) *With You National Consultations Summary Report*. Maylea Consulting



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Executive Summary

The document is a report on the national consultations undertaken for With You.

With You is a training package and toolkit for legal assistance organisations aimed at providing trauma-informed, rights-based legal services to individuals experiencing distress, poor mental health, or suicidality. The prevalence of trauma, distress and poor mental health amongst clients of the legal assistance sector is uncontested, especially at the point at which they require legal assistance. The training and toolkit will be freely available to Aboriginal and Torres Strait Islander Legal Services, Community Legal Centres, Family Violence Prevention Legal Services, and Legal Aid Commissions. The project is funded by the Commonwealth Attorney-General's Department and led by Legal Aid NSW on behalf of a consortium of Legal Aid Commissions.

The consultation process was conducted over a three-month period from April to June 2023, with a total of 433 individuals participating in focus groups or interviews and an additional 71 responses received through an online survey. The participants included clients who had used legal services, their carers, family members, supporters, kin, and lawyers and other professionals from a wide range of backgrounds and experiences.

The key finding from the consultations is that the *With You* training and toolkit for legal assistance organisations will be highly valued by all stakeholders. Many legal assistance clients had trauma histories that led them to need legal assistance, and many found the legal system re-traumatising. There is a clear consensus that trauma-informed, rights-based practice should be a core competency for all staff in the legal assistance sector. The report also details key themes from each stakeholder group, feedback on implementation approaches, and how to develop First Nations specialist content. The report also outlines feedback from consultations regarding systemic barriers to change.

The consultations revealed several key themes from different stakeholder groups. Clients emphasised the importance of having access to good lawyers and other professionals who listen, respect, and support them, particularly in relation to their mental health. They valued being treated with dignity and compassion and expressed a desire for more and better co-designed services. However, they also expressed concerns about the broader legal, health, and welfare systems not being trauma-informed and rights-based.

Carers, families, supporters, and kin felt excluded from the process and believed their involvement could be beneficial to all parties. They also expressed a need for resources to help them navigate the legal system. Lawyers, on the other hand, were cautious about involving these groups due to legal professional privilege and potential conflicts of interest.

Lawyers identified a need for an increased understanding of mental health, mental distress, and suicidality and expressed a desire for practical, applicable training. They also distinguished between skills-based training relevant to their daily work and compliance-focused training.

Other professionals, such as allied health professionals and administrative staff, also expressed a need for training, but their needs varied depending on their roles and experiences. Frontline workers, in particular, felt ill-equipped to respond to people in significant distress in short interactions or over the phone. The consultations underscored the need for culturally safe and appropriate services for First Nations people, taking into account their unique histories and needs. While there are existing resources for working with First Nations people in legal settings, few focus on legal service provision to those experiencing distress or poor mental health. Developing specialist content for First Nations requires deep community connections and time; hence this will be pursued separately while ensuring the main content remains culturally safe and appropriate.

Regarding the implementation of the training, there was no consensus on the preferred delivery mode. Three options were proposed, including online virtual synchronous sessions, a train-the-trainer approach, and self-guided group sessions. It was suggested that offering all three options would allow organisations to choose what best suits their circumstances.

Finally, systemic barriers were identified as challenges to the effectiveness of the training. These barriers are largely outside the legal assistance sector and include discriminatory practices in policing, judicial and correctional systems, and certain legislative frameworks. It was noted that trauma-informed, rights-based practice needs to be embedded across the system to genuinely change the way clients experience the legal system.

Recommendations

- Trauma-informed, rights-based practice should be a core competency for all staff in the legal assistance sector. All trauma-informed rights-based training should be co-designed with people with lived experience of poor mental health.
- Legal assistance organisations should be offered a range of implementation options tailored to their operating context to ensure content from online modules is embedded in practice.
- Trauma-informed, rights-based practice needs to be embedded across the legal system, including in the judiciary, policing and corrections. All trauma-informed rights-based training should be co-designed with people with lived experience of poor mental health.
- 4. Carer, family, supporter and kin advocacy organisations should advocate for more resourcing and support to help carers, families, supporters, and kin better navigate the legal system. Lawyers and legal assistance organisations are not well positioned to do this but should support and work in partnership with carer, family, supporter and kin advocacy organisations.
- 5. The legal assistance sector should develop and distribute resources to help guide carers, family members, supporters and kin through the legal system when they are not able to provide support directly.
- 6. *With You* should undertake further First Nations community-controlled co-design work to develop First Nations specialist content over a more appropriate timeframe.

Introduction

This report describes the consultation process and summarises the key findings from the national consultation undertaken for *With You*.

With You is a training package for trauma-informed, rights-based legal services to people experiencing distress, poor mental health or suicidality. *With You* training will be freely available to Aboriginal and Torres Strait Islander Legal Services, Community Legal Centres, Family Violence Prevention Legal Services and Legal Aid Commissions. The project is funded by the Commonwealth Attorney-General's Department and led by Legal Aid NSW on behalf of a consortium of Legal Aid Commissions.

In March 2023, Maylea Consulting was contracted to undertake the consultation and design of the training, develop a trauma-informed, rights-based practice toolkit for legal assistance organisations, develop an evaluation and monitoring framework and provide capability building in co-design to the Legal Aid NSW *With You* project team. Maylea Consulting partnered with La Trobe University to undertake evidence reviews underpinning the design work.

Consultations were conducted over a 3-month period beginning April 2023 and concluded in June 2023.

The consultation and design methodology reflects the three core principles of co-design, as articulated by Roper, Grey and Cadogan:¹

- 1. Clients are partners from the outset.
- 2. Power differentials are acknowledged, explored, and addressed.
- 3. Client leadership and capacity are developed.

The ten-person Maylea Consulting team reflects these principles, including people with experience in co-design, providing legal services and using legal services. Involving people with experience working in and using legal assistance services as key team members in decision-making roles underpins the co-design approach. Mental health consumer and family perspectives are represented, as are experiences of trauma and incarceration. The team also received expert cultural guidance from a First Nations cultural consultant with lived experience of using legal services and of experiencing mental distress.

The consultations focused on developing the proposed modules document and the trauma-informed, rights-based practice toolkit for legal assistance organisations. However, key findings from the consultations and considerations for implementation are summarised in this report.

¹ C Roper, F Grey and E Cadogan, 'Co-Production: Putting Principles into Practice in Mental Health Contexts' [2018] *Melbourne: University of Melbourne*.

Consultation process

The project team consulted with people across all Australian jurisdictions, both face-toface and online. The project team travelled to Melbourne, Ballarat, Sydney, Brisbane, Adelaide, Alice Springs, Katherine, Darwin, Hobart, Launceston, Burnie, Davenport, Perth and Kalgoorlie to conduct face-to-face consultations. Additionally, online consultations were conducted in all jurisdictions.

The national consultation aimed to consult with 120-150 people in interviews and focus groups. These targets were far exceeded. The team consulted with 95 clients who had used legal services and experienced poor mental health, mental distress and/or suicidality. The team also consulted with an additional 12 professionals, and 2 carers with mental health lived experience. There were 32 carer, family, supporter and kin participants, with an additional 7 professionals and 5 clients with that lived experience. A total of 306 professionals were consulted, bringing the total number of people who attended a focus group or interview to 433. In addition to focus groups and interviews, the consultation team distributed an online survey, which received 71 completed responses.

Training has been informed by all parts of the legal assistance sector nationally. Consultations included Legal Aid Commissions, Community Legal Centres, Aboriginal Torres Strait Islander Legal Services and Family Violence Prevention Legal Services. The *With You* consulted with lawyers, support professionals and allied professionals in crime, civil and family jurisdictions. Members of the judiciary and Mental Health Review Tribunals shared their perspectives.

These targets were exceeded for a number of reasons. The project undertook to hear from everyone who wanted to share their perspective while also striving to engage difficult-to-access groups, such as people who have experienced homelessness or those currently in forensic mental health facilities. Facilitating access to these groups took substantial time and effort. This also meant that even when the targets had been reached, additional consultations were undertaken to ensure meaningful and inclusive representation. As the consultations progressed into the design phase, the team were able to test material with professionals in different jurisdictions, practice areas and rural and remote areas. Consultations with professionals were undertaken in partnership with the Legal Aid NSW *With You* team, dramatically increasing the capacity to consult broadly.

Clients had a very wide range of service experiences across all practice areas and reflected a broad diversity of identities, perspectives and life experiences. All clients and carers, family, supporters and kin who expressed an interest in participating before 1st June 2023 were offered the opportunity to participate, with one exception being a person currently incarcerated who could not be consulted due to corrections policy. Some professionals were invited to complete the survey rather than an interview or focus group, as the project risked gathering more data than could be analysed in the time frame. Maylea Consulting employed two additional assistants to assist with processing the additional data.

More than 131 organisations were directly invited, with representatives from more than 50 organisations participating.

First Nations people were consulted, including 12 First Nations professionals, 56 First Nations clients, and 26 representatives of First Nations community-controlled organisations. The *With You* Expert Panel includes two First Nations experts. However, as noted below, the consultation timeframes were not appropriate to co-design culturally safe and appropriate First Nations content with First Nations people and communities. This content will be developed over a more appropriate timeframe in partnership with First Nations people and communities.

See Appendix 1 for the complete detail of the consultees.

All consumer, carer, family, supporter and kin interviews and focus groups were recorded, transcribed and analysed. As the consultations progressed, the consultations shifted from exploration of issues to testing material developed. As such, later professional consultations were analysed by recording salient feedback rather than detailed qualitative analysis.

The consultation process has a number of limitations, given the timeframe and rolling recruitment approach. Primarily, these relate to selection, acquiescence, reporting or cultural biases. However, the large number of people consulted from a wide range of jurisdictions and experiences means that these biases are reduced, although not eliminated. As with any project of this scale and time frame, the consultation process will impact the responses given. All care has been taken to account for this possibility, with specific hard-to-reach groups targeted to ensure the inclusion of commonly unheard voices, such as those in very remote and regional areas.

A secondary limitation relates to the demographic information of professionals. Client and carer, family, supporter and kin demographic data were reliably collected. However, professional focus groups were often ad hoc and opportunistic, meaning it was not always possible to collect consistent demographic data. Demographic data collection was optional, and not all participants provided this information.

Summary of findings

The key finding from the consultations is that the *With You* training and toolkit for legal assistance organisations will be highly valued by all stakeholders and that they come at a time when they are most likely to have a positive impact on service delivery, client experience and legal outcomes. There is a clear consensus that trauma-informed, rights-based practice should be a core competency for all staff. (Recommendation 1)

This section details other key themes from each stakeholder group and feedback on implementation approaches. This is followed by a brief description of the approach to developing First Nations specialist content. Finally, the feedback from consultations regarding systemic barriers to change is outlined.

Key themes arising from consultation participants

In general, all stakeholder groups reflected similar priorities. Professionals tended to focus on process, particularly on improving the quality of service delivery, while clients tended to focus more on outcomes – both legal and non-legal. Despite this, both professionals and clients noted that improved service delivery leads to improved

outcomes, so this is not a fundamental divergence. The only area of widespread tension relates to sharing information and other involvement with carers, family members, supporters and kin, which was not able to be resolved. This is discussed in more detail below.

Key themes from clients

The overwhelming theme from client interviews was that they valued good lawyers and support from other professionals. Clients had often used multiple lawyers and contrasted good lawyers with others that had not been as beneficial. Clients also described some traumatic experiences with lawyers and other professionals they did not feel were on their side. However, the quality of service a client wanted from a lawyer was not complex. Access to lawyers is so restricted that just having access to a lawyer at all was seen as a positive, but a lawyer or other professional who listened to them and treated them with respect was highly valued. Clients expressed their desire for lawyers and other professionals to believe and trust them, particularly when it comes to their mental health. Clients wanted support to make decisions and valued lawyers who provided them with this support. They valued being kept informed, having enough time, and having their instructions respected while being treated with dignity and compassion. Clients noted that the process of seeking legal assistance was inherently disempowering but that this could be mitigated by lawyers and other professionals engaging with them in respectful and compassionate ways. Most clients felt hopeful about the potential of the training to improve their experience of accessing legal assistance services.

However, clients' preferences for lawyers to be trauma-informed and rights-based were often overshadowed by concerns that the broader legal, health and welfare systems were not trauma-informed and rights-based. The most sustained criticism was for lawyers who were seen to be siding with the system that was inflicting trauma and inadvertently causing more harm. These systemic issues dominated the consultations with clients.

However, some clients were willing to tolerate lawyers who don't meet expectations as long as they achieve the desired legal outcome or are strong advocates for their rights. Other clients felt traumatised by their lawyers even if they did get the legal outcome they wanted or felt that the trade-off for the short-term outcome was not worth the long-term consequences. When the system was particularly disempowering, or when there was little chance of a good legal outcome, clients particularly valued respect, compassion and transparency from their lawyers. The desire to feel like someone was on their side and really listening was even more important in these situations.

Really listening to legal clients means engaging in active and empathetic listening, where the lawyer gives undivided attention, understands the client's concerns and emotions, asks clarifying questions, and reflects on what has been said. This is about building trust and rapport, respecting the client's unique perspective, and providing tailored advice based on a comprehensive understanding of their situation. This approach ensures that the client feels heard, valued, and supported, leading to more effective legal assistance.

Clients also shared that while legal outcomes are paramount, a trauma-informed legal practice would lead to better outcomes as lawyers could take better advice, give better instructions, make more informed decisions, and the outcomes they wanted would be

understood and respected. Non-legal outcomes were also a priority, such as access to housing.

Clients expressed the importance for lawyers to be aware of the lasting effects of involvement with the legal, health, and welfare systems. They highlighted the potential trauma that could arise from such engagement and the challenge of moving beyond these systems, especially when dealing with mental health concerns or legal problems. Clients hoped that lawyers would not only comprehend these long-term implications but also provide legal advice that took them into consideration.

Clients strongly supported the involvement of carers, families, supporters and kin when they requested and consented to this. Clients did not want lawyers or other professionals working with their carers, families, supporters and kin without their specific request or consent. Many clients noted that family violence or family conflict influenced their feelings about this.

Clients expressed a desire for more co-designed services, particularly those who had involvement in co-designed services in other sectors, such as in mental health service provision. These clients saw co-design as a way to address multiple other issues with service design and provision, including improving service flexibility and responsiveness to needs. For example, many clients sought more face-to-face interactions.

Clients also sought alternatives to traditional legal, health, and welfare systems. Additionally, many clients expressed a need for non-legal advocates and peer workers to be involved in legal services. Clients tended to focus on their experiences with lawyers rather than other professionals, but when prompted, did reinforce the importance of training for non-legal professionals. A small number of clients noted that integrated or multidisciplinary practices were positive models. However, most demands for additional support lay outside the legal assistance sector, relating to diverse health and welfare needs, indicating a need for better integrated legal services with health justice partnerships and similar models.

Key themes from carers, families, supporters and kin

Carers, families, supporters, and kin expressed being left out of the process. They believe that their presence is crucial as they can offer valuable assistance and support. They noted that their exclusion was often causing harm to the person and that if they were supported to be more involved, there would be benefits to all parties. A rights-based approach means clients have whatever support they require. Denying clients access to support by excluding carers, families, supporters, and kin may engage this right.

The exclusion of carers, families, supporters and kin was affirmed by lawyers. Lawyers consistently reiterated that they would not share information or work with a carer, family member, supporter or kin without instructions to do so from clients. In addition, they would, in many cases, advise clients against involving carers, families, supporters and kin in their legal proceedings. This was because carers, families, supporters and kin are not subject to legal professional privilege, could potentially be called to give evidence in the proceedings and could potentially be parties to the proceedings. Lawyers also noted that in some cases, family members needed to be excluded to ensure undue influence over clients, such as with guardianship or elder law matters. This was particularly difficult where lawyers were unable to screen for family violence. Lawyers noted that with scarce

resources, they would prioritise spending time with clients rather than carers, families, supporters and kin. The consultation team sought any areas of compromise, but none were forthcoming. This is an area of concern that the consultation team were unable to resolve and should be a focus for further work for carer, family, supporter and kin organisations into the future. (Recommendation 4)

The consultations also identified that there are very few, if any, supports available to help carers, families, supporters and kin to navigate the legal system. Those that are available, such as the <u>Legal Matters</u> page on the Carer Gateway website, direct carers to legal aid commissions where they are unlikely to receive the kind of assistance they identified as needing. This should also be an area that receives further attention, including the development of resources that can be provided to assist carers, families, supporters and kin in navigating the legal system. (Recommendation 5)

Carers, families, supporters and kin noted that they appreciated being consulted and that it was unusual that they had been asked to be consulted on a topic of this nature.

Key themes from lawyers

Many lawyers described practices that were clearly trauma-informed and rights-based, even if not explicitly described as such. These skills were largely learnt on the job, from experience, colleagues or mentors, rather than through explicit formal training.

Lawyers consistently identified a need for an increased understanding of mental health, mental distress and suicidality, with a particular focus on practical and applicable training. Some lawyers had done some relevant training, including in trauma-informed practice, mental health first aid, responding to suicide or cultural awareness, but this was rarely specific to lawyers or legal practice settings. Lawyers consistently identified the need for training that reflected their practice context and their specific legal and ethical obligations. This extends to law students, pro bono and panel lawyers, who were often identified by other lawyers as needing training.

In discussions about resourcing and workload, lawyers indicated that this training would be seen as very valuable and that they would make time to undertake it. They made a clear distinction between this skills-based training relevant to their daily work and other training, which they saw as compliance focused. This enthusiasm was evident in those lawyers who engaged in the consultations but may not be so widespread in those lawyers who declined to participate.

Key themes from other professionals

The consultations reinforced the importance of non-legal professionals receiving this training, although the broad mix of professionals in legal assistance organisations poses some challenges for training deployment.

Some professionals, such as allied health professionals, have extensive experience in working with people experiencing poor mental health, mental distress or suicidality. Many social workers and advocates who were consulted had previously or continued to work in acute mental health treatment settings. These professionals indicated that they needed to better understand how to do this in legal settings, particularly in relation to legal ethics and legal practice.

Other professionals without mental health training or experience, such as administrative staff, paralegals, intake workers, grants assessors and those in other client-facing roles, have different training needs. Often these frontline workers are the client's first point of contact with the service, but they described feeling ill-equipped to respond to people in significant distress, threatening self-harm and people calling from secure facilities, particularly in circumstances where time may be limited. Often these staff have short phone interactions and cannot make use of contextual cues to inform the interaction. This group described needing both the basic mental health training and to better understand how this needed to be adapted to legal settings. These participants regularly requested training in what to say or how to respond when someone is distressed.

Implementation

The consultations explored a number of considerations related to the implementation of the training. Primarily, these are related to delivery mode. All potential training participants who were consulted were asked what their preference would be. No consensus emerged, with a majority maintaining that some variety of face-to-face training was necessary to embed skills in practice and a substantial minority indicating that resourcing limitations necessitated an online-only delivery.

Three viable options arose from the consultation process. For each, online asynchronous self-guided modules would be completed prior to a virtual or face-to-face synchronous session.

- 1. Online virtual synchronous sessions for each module, conducted by the *With You* trainer who is located in Sydney.
- 2. Train the trainer, where staff are trained by the *With You* trainer in Sydney and return to their organisations to train colleagues. Organisations might collaborate to send one person who could return to train multiple organisations.
- 3. Self-guided group sessions. After each team completes each online module, the team conducts in-person sessions guided by *With You* exercises and resources.

No consensus was identified during the consultations, but all options received strong positive responses. The approach most likely to succeed appears to be offering all three options, with organisations able to choose which option best suits their circumstances. Many participants emphasised that organisational support for ongoing, structured reflective supervision was essential to embed the training content in practice. (Recommendation 2)

First Nations specialist content

Legal assistance services work extensively with First Nations people, including First Nations people experiencing distress, poor mental health or suicidality. First Nations people and communities have specific needs and unique histories that require tailored responses, particularly regarding intergenerational trauma and engagement with government and justice systems. First Nations people and communities have developed robust survival mechanisms and self-advocacy approaches to protect themselves from the harms of colonisation.

Consultations have clearly indicated that the *With You* project must train people to deliver culturally safe and appropriate services and be culturally safe and appropriate for First Nations training participants. Consultations have stressed that *With You* must be relevant to mainstream people and communities and be framed using language that is relevant to all potential clients. For example, First Nations communities tend to reference social and emotional well-being, while mainstream discourse is of mental illness and mental health. Mainstream consumers tend to identify individual rights-based approaches, while First Nations co-design includes Elders and community members from a broad range of stakeholder groups, while mainstream co-design places the consumer at the centre.

There are substantial existing resources regarding working with First Nations people in legal settings, but few specifically address working with First Nations people in legal settings who are experiencing distress, poor mental health or suicidality.

Developing training content for working with First Nations people requires a long process of building trust and deep connections with First Nations people and communities. The consultations indicated that this process is not possible in the current project timeframe.

With You will undertake further work to develop First Nations specialist content over a more appropriate timeframe, while the main body of the content will be developed to be as culturally safe and appropriate as possible. (Recommendation 6)

Systemic barriers to change

Virtually all consultees raised systemic barriers as challenges to the effectiveness of the training. The *With You* Toolkit will address some of these issues, but many sit outside the legal assistance sector in the legal, health and welfare systems. As noted above, clients generally already viewed their lawyers as potential allies with a crucial rights-protecting role in their engagement with these broader systems. Lawyers, including senior lawyers and executives, noted variable and limited resourcing prevented lawyers and other professionals from spending the time with clients that all agreed was necessary. Lawyers particularly noted that discriminatory practices in policing, judicial and correctional systems inflicted much more trauma than the legal assistance sector. Certain legislative frameworks, such as criminal law, tend to focus on a person's deficits and can contribute to experiences of stigma and discrimination. To genuinely change the way in which clients experience the legal system, trauma-informed, rights-based practice needs to be embedded across the system, including in the judiciary, policing and corrections. (Recommendation 3)

An overarching theme from nearly every consultation was that no amount of training lawyers and other legal assistance sector professionals could address the underlying issues identified by clients or reduce the distress these issues caused. Clients were commonly facing incarceration, separation from their children, deportation or other highly distressing events. Resource constraints mean that legal. Legal assistance organisations are typically unable to alleviate the distress of clients whose requests for legal aid are denied. This reality must be reflected in the training and in the monitoring and evaluation framework.

Conclusion

The findings from the consultations underscore the profound impact that a respectful, compassionate, and transparent legal professional can have on a client's experience, even within the constraints of systemic barriers. The ultimate aim of the *With You* project is to foster such qualities within the legal aid service, thereby contributing to a more empathetic and transparent society. This vision aligns with the Government's ambitions to shape a 'modern Australia', one that is inclusive, understanding, and responsive to the needs of its citizens.

Reflecting on the information gathered, it becomes clear that the journey towards this goal is multifaceted. It involves not only equipping legal professionals with the skills and knowledge to better understand and support their clients, particularly those experiencing distress, poor mental health, or suicidality, but also ensuring that these services are culturally safe and appropriate for diverse communities, including First Nations people.

Moreover, it requires acknowledging and addressing the systemic barriers that exist within the broader legal, health, and welfare systems. While these challenges are significant, they are not insurmountable. The consultations revealed a sense of hope and optimism among participants, fuelled by their positive experiences with lawyers and other professionals who had truly listened to and advocated for them.

In conclusion, the With You project represents a critical step towards transforming the legal assistance sector and, by extension, society as a whole. By fostering a culture of respect, compassion, and transparency, it has the potential to not only improve the experience of individuals seeking legal assistance but also contribute to a more empathetic and understanding Australia. This is a vision worth striving for, and the positive feedback from the consultations suggests that it is a vision shared by many.



