

REFORMING APPROACHES TO EMPOWERMENT

**Looking inward
BEFORE
looking outward**

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Overview of presentation

- Outline ARC funded research project findings:
 - Self-help legal services in Australia;
- Focus on findings as they relate to the work of CLCs
 - Motivations and assessments of utility.
- Implications of findings for the way in which CLCs work with and for self-helpers
 - Creating “informed citizens” or “capable self-helpers”
 - Empowerment for those at the “point of exigency”

Some definitions

- **Self-help legal products:** tools and services which people may access to assist in sorting through their own legal problems;
- **Point of exigency:** A period of time in a person's life where they are required to take some legal steps in order to resolve an actual legal problem. The point may also be resolved by simply deciding to do nothing.

Some definitions

- **Empowerment:**
 - a process by which people, organizations and communities gain mastery over their affairs
 - the process of increasing capacity of individuals or groups to make choices and to transform those choices into desired actions and outcomes
 - a dynamic interplay between gaining internal skills and overcoming external structural barriers to accessing resources

The research project

- ARC Discovery Grant over 3 years exploring four case studies using qualitative research methods;
- Dearth of user focused research into self-help legal products;
 - Past research: impact of self-helpers on legal system;
 - LIPs in family and criminal law;
- Seek to gain
 - Clearer understanding of potential for/ limits of effective self-help;
 - Analyse relationship between legal self-help and existing support services to determine when special forms of assistance are needed.

The case study selection

- Selected to reflect variations in:
 - Context – litigious/non-litigious, compulsory/voluntary self-help;
 - Complexity – simple/complicated, administrative/highly legalistic
 - Characteristics and capabilities – of users themselves, socio-economic measures as well as capabilities mediated by context
 - *Eg., impact of highly emotional context on capabilities*

The case studies

- Probate application in the Supreme Court of Victoria – private for profit provider (Legal Kits of Victoria);
- Tenancy Disputes in the then SCT – statutory providers (Residential Tenancies Authority)
- Consumer claims in the then SCT – legal aid provider (Legal Aid Queensland)
- Child protection issues – CLC provider (South West Brisbane Community Legal Service)

The methodology

- Textual analysis of the self-help product;
- Semi-structured Interviews with users and non-users in the system;
- Stakeholder interviews;
- Comparative analyses across case studies and with other self-help products

Research findings – motivation matters

- Across all case studies single motivation of self-helpers
 - Quick, cheap and simple resolution to the legal problem at hand
- Self-helpers measured a product's utility by how much it:
 - Directed rather than informed/advised;
 - Privileged practical knowledge and skills over legal knowledge and skills;
 - Affirmed the self-helper's capacity to engage in the process
- Sense that these attributes created a more “capable self-helper”

Research findings – motivation matters

- Varying motivations by self-help providers:
 - Making money;
 - Fulfilling statutory obligations;
 - Managing demand with limited resources;
 - Engaging in “community legal education”;
 - Filling a gap because “anything is better than nothing” or political expediency in highlighting the gap.
- Provider motivations matter in determining:
 - Product development, design and review; and
 - Content.

Research findings – motivation matters

- Self help kits by private provider and statutory provider scored highly with self-helpers because those products:
 - Worked with existing knowledge levels of the self-helpers;
 - Directed self-helpers on process without seeking to “contextualise” it;
 - Affirmed self-helper’s capacity to work through process
- Self help kits by legal aid providers and CLC providers scored less highly with self-helpers because those products:
 - Contextualised the legal process – a focus on why rather than how;
 - Focused on required “legal knowledge” from a lawyer’s perspective;
 - Regularly affirmed self-helper’s need to “get more advice”

Working with empowerment

- CLCs and legal aid bodies work within a framework of **empowerment** which motivates approach to particular forms of service delivery
 - Community legal education (CLE) premised on “informing” with a view to:
 - *Allowing people to recognise problems before they arise;*
 - *Allowing people through process of recognition to avoid problem arising;*
and
 - *Fore-arming people with knowledge to deal with problem when it arises*
- Creating the “informed citizen”
 - but not necessarily the capable self-helper.

Working with empowerment?

- Self-help tends to fall within the CLE activities of CLCs
 - Inevitably of “empowerment” as the default framework for self-help products/services
- Potentially an ill-fitting framework
 - Seeks to work at empowering through information when people’s capacity to process information is at most limited – the point of crisis itself
 - Tends to privilege legal knowledge
 - Because it “invites” participation, tends to advise/inform rather than direct

Potential lessons/discussions

- Suggests a real role for CLCs/Legal Aid to play in educational and transformative activities which are clearly delineated from self-help products;
- A need to disengage from law-centric development of self-help materials;
- Need to confront and deal with discomfort of being directive rather than empowering in self-help product development;
- An opportunity to consider whether empowerment still has something to offer in self-help legal products.