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# Understanding the Legal Information Experience of Non-lawyers: Lessons from the Family Law Context

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*Parties to legal disputes, now more than ever before, are able to access information about the law. This article reports on an empirical study of experiences in relation to accessing legal information in a family law context. A thematic analysis of qualitative interviews with people who rang the Australian Federal Government's Family Relationships Advice Line indicated five key issues: first, parties struggle with the complexity of the information experience; secondly, parties have difficulty in assessing the credibility and reliability of sources of information and the information provided; thirdly, parties indicate clear source preferences; fourthly, parties have difficulty applying the information retrieved from various sources to their individual situation; and, finally, parties tend to use language that is no longer reflected in family law legislation or practice. These findings are discussed and analysed with reference to the specific voice of the study participants. The findings should assist government agencies, family dispute resolution providers and others to improve the ways legal information and advice on post-separation issues is provided. The findings are also applicable to other contexts of legal information provision.*

## INTRODUCTION

Legal information is now more readily accessible to the public than ever before.<sup>1</sup> Today, it is possible for anyone with an internet connection to access statutes, case law and secondary legal materials. Through government and non-government sources, a vast array of legal information is available. This information takes the form of, for example, websites, factsheets, self-help guides and other material, and assists non-lawyers to discover what the law is, as well as to understand how the law applies to their situation. The context of family law is no exception. The current rate of relationship breakdown and separation amongst parents in Australia means that this is an area of acute legal need for millions of Australians.<sup>2</sup>

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<sup>1</sup> See, eg M Castells, *The Information Age: Economy, Society and Culture*, 3 vols (Blackwell, 1996–1998).

<sup>2</sup> For example, the Australian Bureau of Statistics reports that “[t]here were 118,401 marriages registered and 46,604 divorces granted in Australia in 2016”: Australian Bureau of Statistics, “Marriages and Divorces, Australia, 2016” (2017) <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/3310.0>>.

Even a cursory online search reveals a huge range of formal and informal sources of information and support for people needing to negotiate post-separation arrangements.

It is widely acknowledged that informed participation in the legal system is integral to the operation of the rule of law and to the achievement of access to justice.<sup>3</sup> Nevertheless, there is still relatively little known about how non-lawyers access and use legal information in times of need.<sup>4</sup> Consequently, providers of accessible legal information, such as government agencies, legal and dispute resolution service providers and community groups, have a limited evidence-base from which to design and deliver information that will best assist individuals dealing with legal dilemmas.

The study reported in this article is a contribution to the currently small but increasingly expanding body of scholarly research and literature exploring how people access legal information and how they make sense of that information. This area of research is typically referred to as the *legal information experience*.<sup>5</sup> Research into the legal information experience can be categorised as a subset of legal needs research, but it differs from much existing work on legal needs in its focus and methodology. Legal needs research typically seeks to identify the prevalence of particular types of legal problems, the interaction between different types of legal problems, and the consequences of legal problems for the wellbeing (physical, mental and financial) of individuals. Legal needs studies may also examine the sources that individuals have consulted in order to address their needs, but this is usually from a perspective of satisfaction with the available options.

Research into the legal information experience, by contrast, focuses on the lived experiences of people accessing legal information, including how they locate sources of information, engage with those sources and use them to understand their situations. Existing work on how people access legal information focuses primarily on the information needs of law students<sup>6</sup> and lawyers,<sup>7</sup> without looking deeply at the surrounding information experiences. This research extends this body of work through a focus on the experiences of non-lawyer consumers of legal information in post-separation family law contexts.<sup>8</sup>

A number of studies have explored the sources of information used by parties in a family law context,<sup>9</sup> but none of this research looked in detail at the parties' legal information experiences. Further, such studies are now somewhat dated as the world of legal information accessibility has changed rapidly in recent years, for example due to the rise of smart phones. The present research therefore responds to a relative lack of currently relevant empirical data in the existing literature. The research builds upon the

<sup>3</sup> See, eg International Commission of Jurists, "The Rule of Law in a Free Society – Report of the International Congress of Jurists" (1959); Lord Woolf, "Access to Justice: Interim Report" (UK Government, 1995); Lord Woolf, "Access to Justice: Final Report" (UK Government, 1996); N Stephen, "The Rule of Law" (2003) 22(2) *Dialogue* 8; Lord Bingham, "The Rule of Law" (2007) 66 *Cambridge Law Journal* 67; B Tamanaha, "The History and Elements of the Rule of Law" [2012] *Singapore Journal of Legal Studies* 232; Productivity Commission, *Access to Justice Arrangements: Report Volume 1* (Commonwealth of Australia, 2014); W Martin, "Access to Justice" (*Notre Dame University Eminent Speakers' Series Inaugural Lecture*, Fremantle, 26 February 2014).

<sup>4</sup> S Scott, "How Do People Access and Use Legal Information on the Internet?" (2000) 25 *Alternative Law Journal* 24.

<sup>5</sup> For further discussion, see J Crowe et al, "Bargaining in the Shadow of the Folk Law: Expanding the Concept of the Shadow of the Law in Family Dispute Resolution" (2018) 40 *Sydney Law Review* (forthcoming).

<sup>6</sup> See, eg G Kerins, R Madden and C Fulton, "Information Seeking and Students Studying for Professional Careers: The Cases of Engineering and Law Students in Ireland" (2004) 10 *Information Research* 208; YP Jones, "'Just the Facts, Ma'am?' A Contextual Approach to the Legal Information Use Environment" (PhD Thesis, Information Science and Technology, Drexel University, 2008).

<sup>7</sup> See, eg S Davidson, "Way Beyond Legal Research: Understanding the Research Habits of Legal Scholars" (2010) 102 *Law Library Journal* 561; S Makri, "A Study of Lawyers; Information Behavior Leading to the Development of Two Methods for Evaluating Electronic Resources" (PhD Thesis, School of Informatics, University College London, 2008).

<sup>8</sup> The research focused on the information experiences of callers to the Family Relationship Advice Line, a national telephone service operated by Relationships Australia.

<sup>9</sup> See, eg R Kaspiew et al, *Evaluation of the 2006 Family Law Reforms* (Australian Institute of Family Studies, 2009) App C1, 10; D Bagshaw et al, "The Effect of Family Violence on Post-Separation Parenting Arrangements: The Experiences and Views of Children and Adults from Families Who Separated Post-1995 and Post-2006" (2011) 86 *Family Matters* 49.

few existing Australian studies on legal information experiences, including Scott's work on how people access legal information via the internet,<sup>10</sup> and Edwards and Fontana's review of the legal information needs of older people.<sup>11</sup>

The article begins by explaining the project's design and methodology. It then analyses and discusses the key issues arising from thematic analysis of the project data to inform the future design of legal information for non-lawyer participants in the post-separation family law context. These issues include: first, parties struggle with the complexity of the information experience; secondly, parties have difficulty in assessing the credibility and reliability of sources of information as well as the information they provide; thirdly, parties indicate clear source preferences, with informal sources (such as websites or family and friends) most heavily relied upon; fourthly, parties have difficulty applying the information retrieved from various sources to their individual situation; and, finally, parties tended to use language that is no longer reflected in family law legislation or practice. These findings hold important implications for providers of legal information in family law contexts as well as in other areas of the legal information experience. The article concludes by offering a number of policy-oriented good practice suggestions for the design and delivery of services, focusing on ways to help support the legal information needs of individuals.

## PROJECT DESIGN AND METHODOLOGY

The empirical research that forms the basis for this analysis was gained through an exploration of the information experiences of people who had phoned the Family Relationships Advice Line (FRAL), a national telephone service funded by the federal government and operated by Relationships Australia, providing relationship and separation advice and information. The FRAL does not provide legal advice, offering instead general information about the family law system, advice on the process of separation, support and advice on post-separation parenting, and referrals to dispute resolution providers, Family Relationship Centres and other social support services.<sup>12</sup>

The project was funded through a grant from the Australian Institute of Judicial Administration. The interdisciplinary project team consisted of researchers from both the law and information science disciplines engaged in information experience analysis. Information experience analysis is now a distinct domain of information science research, adopting a "holistic approach to understanding peoples' engagement with information", taking "into account the interrelations between people and their broader environments in a manner which considers people and their world as inseparable".<sup>13</sup>

The information experience approach adopted as the methodology for this project was pioneered by some of the information science project team members in previous work.<sup>14</sup> This approach is established as methodologically robust, bringing a unique analytical perspective to the concept of legal information, and to an analysis of the legal information experience. It is a qualitative, interpretive research method that assists with exploring and understanding the phenomenon of the legal information experience. In-depth interviews are conducted with participants to appreciate their perspective and to reveal the meaning of the experience from their point of view.<sup>15</sup> Kvale describes interviews as "a conversation that has structure and

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<sup>10</sup> Scott, n 4.

<sup>11</sup> S Edwards and A Fontana, *Legal Information Needs of Older People* (Law and Justice Foundation of New South Wales, 2004).

<sup>12</sup> Australian Government, *The Family Relationship Advice Line* <<http://www.familyrelationships.gov.au/Services/FRAL/Pages/default.aspx>>.

<sup>13</sup> C Bruce and H Partridge, "Identifying and Delineating Information Experience as a Research Domain: A Discussion Paper" (*Social Media and Information Practices Workshop*, University of Boras, 10–11 November 2011) 1 <<http://eprints.qut.edu.au/47204/>>.

<sup>14</sup> See, eg Bruce and Partridge, n 13; S Bunce, H Partridge and K Davis, "Exploring Information Experience Using Social Media During the 2011 Queensland Floods" (2012) 61 *Australian Library Journal* 34; C Yates, H Partridge and C Bruce, "Exploring Information Experiences Through Phenomenography" (2012) 36 *Library and Information Research* 96; C Yates et al, "Exploring Health Information Use by Older Australians Within Everyday Life" (2012) 60 *Library Trends* 460.

<sup>15</sup> S Kvale and S Brinkmann, *InterViews: Learning the Craft of Qualitative Research Interviewing* (SAGE, 2<sup>nd</sup> ed, 2009).

a purpose determined by one party – the interviewer”.<sup>16</sup> Such in-depth interview conversations provide a “unique opportunity to uncover rich and complex information”,<sup>17</sup> allow participants an opportunity to express their personal narrative, and deliver valuable and detailed data about the participant’s views, opinions, ideas and experiences.<sup>18</sup>

As indicated above, the participants for the study were drawn from members of the public who had called the FRAL seeking relationship or separation information and advice. A screening process ensured that all participants were adults and involved at that time in the negotiation of post-separation parenting arrangements. It was not a requirement that legal proceedings were current or anticipated.

After the conclusion of the phone conversation with the FRAL operator, callers were asked if they were willing to participate in a research project. If they agreed, their call was transferred to a member of the research team for an interview or to arrange a later call-back time. Participants were assured of anonymity. A small gift voucher was offered to participants as an acknowledgment of their time and contribution to the research. Participants were therefore selected predominantly on the basis of their availability and preparedness to take part in the research, rather than geographic or other factors. Ethical clearance was obtained through the Queensland University of Technology and the project was reviewed internally through the processes of the project partner, Relationships Australia.

The target sample size was originally 12 interviews, a fairly standard sample size for qualitative research and based on the established research practice in the field of information experience over the past decade. However, there is some controversy within the field as to the appropriate sample size, with Åkerlind maintaining that the objective is to “represent the full range of possible ways of experiencing the phenomenon in question, at this particular point in time, for the population represented by the sample group collectively”<sup>19</sup> and others arguing that saturation is a relevant reference point for sample size.<sup>20</sup> Consequently, in order to satisfy both of these potential measures, a sample size of 20 interviews was used. The resulting data, in the words of Yates, Partridge and Bruce, is “of sufficient size to gather suitably rich descriptions of people’s varying conceptions about the phenomenon of interest”.<sup>21</sup>

The final sample comprised 20 participants (including 13 men and seven women). Six of the interviewees had accessed a mediation service. Data was collected through in-depth, semi-structured interviews. Kvale and Brinkmann define the semi-structured interview as a “planned and flexible interview with the purpose of obtaining descriptions of the life world of the interviewee in order to interpret the meaning of the described phenomena”.<sup>22</sup> All interviews were conducted by telephone only and were audio recorded. To maximise consistency and minimise variations in the interview process, only one member of the research team conducted the 20 interviews. Most of the interviews were conducted immediately following the warm transfer from the FRAL personnel, with only three being rescheduled to suit the interviewees.

The duration of interviews ranged from 20 to 50 minutes. The research team developed a predefined set of questions as the framework for the interviews and to stimulate discussion. However, the researcher conducting the interviews altered the questions as necessary to facilitate the conversation in keeping with semi-structured interview guidelines.<sup>23</sup> The first tranche of questions explored: what sources of legal information were used by participants to assist with making post-separation parenting arrangements;

<sup>16</sup> S Kvale, “Doing Interviews” in U Flick (ed), *The SAGE Qualitative Research Kit* (SAGE, 2007) 7.

<sup>17</sup> R Cavana, B Delahaye and U Sekaran, *Applied Business Research: Qualitative and Quantitative Methods* (Wiley, 2001) 138.

<sup>18</sup> H Arnskey and PT Knight, *Interviewing for Social Scientists* (SAGE, 1999) 32–33.

<sup>19</sup> G Åkerlind, “Variation and Commonality in Phenomenographic Research Methods” (2005) 24 *Higher Education Research and Development* 321, 323.

<sup>20</sup> For discussion of sample size, see J Cresswell, *Qualitative Inquiry and Research Design: Choosing Among Five Approaches* (SAGE, 3<sup>rd</sup> ed, 2012) 157.

<sup>21</sup> Yates, Partridge and Bruce, n 14, 103.

<sup>22</sup> Kvale and Brinkmann, n 15, 327.

<sup>23</sup> Kvale and Brinkmann, n 15, Ch 7.

whether the information found was useful or not useful; the nature of the participants' prior knowledge of post-separation parenting; and what other types of information may have better assisted them. A second tranche of questions was created for those participants who had already used a mediation service. These questions specifically asked for participants' experiences in relation to that process. These questions explored: what sources of information the participants accessed in the lead up to the mediation process; what they found useful or not useful when engaging in the process; and what other information they would have liked to have had. In addition, follow-up, clarifying and probing questions were used throughout the interview to explore the participants' responses and experiences. These included prompts such as, "Could you explain that further?", "Could you tell me more about that?" and "Could you please give me an example?"

The recording of each interview was transcribed verbatim, with a pseudonym assigned to each participant to de-identify the data. The data was analysed using thematic analysis. This is an analytical method that identifies patterns or themes within a data set,<sup>24</sup> providing insights in relation to their "relationship within the phenomenon being researched".<sup>25</sup> The data analysis process was an iterative one, consistently grounded in the interview data. The researchers identified emerging themes by listening to the audio recordings of the interviews, and by coding and reviewing the transcripts. Additionally, coding was used to identify similarities, differences and potential connections among keywords, phrases and concepts within an interview and among the data set, including concepts and themes directly and indirectly revealed by the interviews.<sup>26</sup>

Data was analysed using first and second cycle coding methods. In the first cycle, structural coding was used to allocate basic labels to the data that would provide a topic inventory.<sup>27</sup> In the second cycle, focused coding was used to categorise the data according to thematic or conceptual similarity. Eventually, the most prominent and significant categories were identified from the data.<sup>28</sup> A codebook was developed and maintained during data analysis, containing a list of all the codes that had been created, together with their descriptive meaning. As new codes emerged during the analysis, these were added as necessary following discussion among the research team members.

The findings, presented in the following section, focus specifically on aspects of the interviews that are salient to the participants' experiences of finding and accessing legal information in relation to post-separation parenting arrangements. The data revealed a range of distinctive information experiences, as described by the participants, but a number of recurring themes were also identified. These themes suggest several common elements of the legal information experience, which are analysed in detail below.

## UNDERSTANDING NON-LAWYERS' LEGAL INFORMATION EXPERIENCES

The interview transcripts revealed five interrelated themes concerning the participants' legal information experiences in a post-separation parenting context. First, parties struggled to negotiate the complexities of the information environment, including identifying and reconciling different sources of information. Secondly, parties experienced difficulty evaluating the credibility and reliability of the different sources they encountered. Thirdly, parties expressed clear source preferences, guided not so much by the expertise or authority of the source but by its accessibility, familiarity or trusted nature. Fourthly, parties consistently struggled to apply the information obtained to their individual circumstances, leading to a preference for concrete or tailored information over general sources, independently of their reliability. Finally, parties tended to use language that is no longer reflected in family law legislation. This resulted in

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<sup>24</sup> V Braun and V Clark, "Using Thematic Analysis in Psychology" (2006) 3 *Qualitative Research in Psychology* 77.

<sup>25</sup> Cavana, Delahaye and Sekaran, n 17, 69.

<sup>26</sup> Rubin and Rubin note that researchers "may discover themes by looking at the tension between what people say and the emotion they express": HJ Rubin and IS Rubin, *Qualitative Interviewing* (SAGE, 2<sup>nd</sup> ed, 2005) 210.

<sup>27</sup> J Saldaña, *The Coding Manual for Qualitative Researchers* (SAGE, 2013) Ch 3.

<sup>28</sup> Saldaña, n 27, Ch 5.



parties employing outdated or incorrect language to describe the legal framework, as well as misnaming key institutions and services.

## Complexity of the Information Environment

The digital era offers great possibility for parents to access resources online. As Brian observed:

Google has been the best friend and I've Googled absolutely everything there is to do with um separating families, um with family law from the Family Law Courts ... um webpage, Relationships Australia. I couldn't quote you all the organisations but anyone who's sort of come up on the Google searches and has got information about it.

However, the ubiquity of parenting information online means that those who "turn to Google" as a starting point will find large amounts of information. For example, searching for "law parenting orders" on Google returns 1,710,000 results, comprising a combination of paid advertising, government-funded resources and commentary from law firms. Using the more vernacular "custody of children" returns an astounding 60,900,000 results from similar sources and a range of jurisdictions. A term such as "my rights as a father" will return 9,980,000 results, predominately from the US and the UK, with very little Australian or government-funded content. It is therefore unsurprising that participants found information acquisition online to be extremely complex.

Several participants reflected on the challenge presented by obtaining a clear picture of their legal position when faced with conflicting or confusing sources. A number of participants used language depicting their search for information as a journey or quest, presenting obstacles that required significant effort to overcome. Almost all participants began with online sources. However, these sources often proved inconsistent or confusing, leading to a desire for clearer or more personalised information. For example, Fran recounted:

I went on the Family Law Court website ... it came up with a phone number so that's why I called them ... that I really couldn't find what I was searching for. To be perfectly honest, I find those websites extremely difficult to navigate ... I find them really hard to work out.

Some participants had a generally positive experience of accessing online materials in combination with other formal and informal sources to meet their overall information needs. For example, Noel commented:

I found more than enough on the internet ... I virtually had everything I really needed. In between the Family Care Centre, my solicitor, and the internet, I found all my answers really ... There's more than enough information out there, there's more than enough sorts of people to help you out there, there's more than enough.

More commonly, however, participants reported a struggle to reconcile different sources. Ingrid's initial encounter with online information, along with a call to a telephone helpline, left her feeling tired and overwhelmed:

I had spoken to Legal Aid but then I was recommended on a website, and also by someone who's been through something similar, that speaking to Family Relationships actually helped them move forward better than anything else did ... [T]hey gave me the number of the Family Mediation Council which I was going to ring today, but then because I've only just done the other thing today, I felt like I needed a bit of a breather. ... I think I did Google early on to what was necessary ... I found a lot of it wasn't really clear.

Overwhelmingly, participants gave the sense that they lacked clear strategies to identify how their current situation interacted with the law. The participants' information experience might be characterised as one of *immersion* in the sense that they were looking for anything that might appear relevant, and an individual piece of information might lead to or suggest the next step to locate further information and eventually lead them to a relevant piece of material. As one participant observed:

[W]hen you're looking for stuff, you're looking for information that relates to your situation ... And there's a lot of information. It's just ... you're just jumping down rabbit holes looking for stuff, and popping out the other side going, 'No, that's not what I was looking for.'<sup>29</sup>

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<sup>29</sup> Interview with Tom.

This comment suggests that some participants assume that a single legal answer exists, if only they could find it, rather than viewing the law as a set of guiding principles that must then be applied to an individual situation, with the possibility of multiple interpretations.

## Evaluating Credibility of Sources

A related concern raised by several participants related to the difficulty of evaluating the credibility of online or other informal sources, particularly when multiple sources of different kinds were used in combination with one another. Several participants eventually relied on face-to-face or telephone information to supplement or bring clarity to online sources. For example, Noel reported:

I believe first and foremost, I went to my solicitor when this happened and we just had a good old chat ... And then I think from there, I researched on the internet, 'Mediation Centres' near me. And from memory, the Catholic Care Centre popped up and some others as well, but I picked up one that was close to me. And being a Christian, I thought I'd go to a Catholic one, it's a good idea, so why not. And it went from there. ... [T]here was a receptionist was quite handy at the Catholic Care Centre, and that's what I've asked ... I asked her a couple of questions, I said 'Look, how does this work? What's it all about?' and she gave me some pointers on how it works.

According to Ethan, friends and acquaintances were an important source of information, enabling him to bypass the complexity of other sources:

[P]retty much word of mouth from other people, asking people and all that sort of stuff, those that have been through this stuff before ... mainly people who've gone through this before, just what I'm entitled to and, I don't know, just all the other stuff I suppose. I just asked them – there's people at work, people I know from friends, and I'd ask people. ... They've done the research and I've just listened to them because they've obviously researched it and they've just passed it on to me.

However, these more personal interactions also gave rise to further confusion for some participants. Bobby expressed his frustration: "I've been asking people and it's just been confusing and people are saying different things."

Some participants sought formal legal advice in an attempt to bring clarity to the information. However, this was rarely the sole or even the most important source of information; rather, it was critically evaluated alongside other sources. This may reflect the limited time lawyers have to give detailed advice, particularly in a Legal Aid context. David, for example, reported on relying on advice from Legal Aid alongside other sources:

I've called Legal Aid and I have called a few like help ... men's helplines and stuff like that and they have given me a bit of information ... It has given me an understanding of what I need to do because this is the first time ... so everything so far has been really useful ... I had to look for it and like call up, like certain phone numbers like men's help-lines and stuff to put me in the right direction.

Tom also recounted a similar experience:

Just the internet, and I just started Googling stuff. And then I did speak to a friend who actually works for Legal Aid, he's a lawyer for Legal Aid and I gave him a call and asked him for advice ... I couldn't get onto him first actually, but yeah, I tried to get onto him and then I called the ... what was the original place Family Relationships, yeah, yeah, that – I called that line and then they've put me onto the place at Tweed, they gave me their number to make an appointment for a mediation time.

Darius' response directly addressed the complexity of reconciling different sources, where he observed:

I have done so much homework [using Google], I couldn't decide which one is not useful and which one is useful ... I'm currently kind of overwhelmed. I still couldn't figure out which information is helpful and which information is not.

## Source Preferences

A number of participants expressed clear preferences for particular kinds of information sources. A recurring theme was a preference for personalised information over general sources and a related bias towards face-to-face or telephone communication as a supplement to the range of online materials.

The confusing and overwhelming nature of online sources often led participants to fall back on more personalised sources of advice in an attempt to obtain clarity or reassurance. Bobby expressed this desire directly:

I haven't really understood a great deal of everything. And I guess that I sort of have to sit down with someone, face-to-face and sort of understand my rights with child support, child custody and my financial ... you know, what I'm entitled to with money. So if someone just sat with me face-to-face, I think I could understand a lot more. But as I said before, I'm not really understanding a lot from the internet.

Subsequently, Bobby described the reassurance she felt when receiving telephone advice from a Family Relationships Centre:

I'm sort of really not understanding a lot of what I'm reading ... But the lady that I spoke to yesterday from the Family Centre, she was quite thorough with what she was telling me, so I could sort of understand a little bit more as to what I was reading on the internet ... I was quite terribly relieved that I had someone that was going to call me back in a week or two and sort of guide me and advise me as to what my rights are.

Ethan also reported that he felt a strong desire for personal interaction, both to obtain more concrete information and for human contact:

I just found a phone number and called ... I just knew I needed to call someone and I just wanted to find a phone number to be honest. I didn't really care about the information ... I'm in the military so we have easy access to legal advisors. So, all I have to do is just ring them up ... I've just got to ring them up and they'll give me the appropriate information.

The search for relatable and concrete information led some participants to rely significantly on the advice of friends, family and community leaders. Darius explained:

I used Google search ... I talked to my friends... he advised me to make some calls ... and advised me to seek information online and from government website... It's always nice to have somebody who you actually feel close to, to talk about all these issues.

Kerry similarly recounted relying on friends and family for relatable information, commenting:

Friends are vital, you know, because they've been through it and there's no doubt, you take a great deal of information through them. ... [M]y brother has been through it as well many, many years ago and you know, you take notice of what they have to say.

## Applying Information to Circumstances

Several participants commented on the depth and breadth of information available on the internet, but expressed frustration about knowing how it applied to their specific circumstances. This concern can be seen in the comments of Bobby and Ethan above. Brian similarly commented that despite the breadth of information on the internet, much of it was challenging to apply:

Look all of it, in terms of it ... every, every little bit would be helpful in some way, but the scope of the information available at the moment is not just an easy walk-up start, to say 'Here are the ... here ... if you are a separating family, here are the things that you need to consider and here are the procedures that you need to follow, and here are the things that might be important if you have children'. It wasn't ... like, there's no prescribed format or something like that to follow.

Darius expressed a similar desire for tailored and concrete information beyond what can be accessed on the internet:

[S]ome hotlines, like men's lines, and then they ask for you to call and you can actually discuss your case – some information of your case with the people behind the hotline. And you can actually talk to them and they will actually provide you with some further information from that.

Some participants sought formal legal advice in an attempt to understand how the law applied to their situation. However, other participants reported not obtaining legal advice for a variety of reasons, including financial concerns or waiting times. For example, Bobby said: "I haven't spoken to any solicitors as yet ... they require money which I don't have. So mainly it's been information from friends



and also the internet.” Steve reported a similar concern: “I did get some advice through a solicitor, but in the end Legal Aid was rejected.” Elle expressed frustration with waiting times: “I need some legal advice but I have to wait for the lawyer to call me, so it’s just the timeframe.”

In some cases, participants reported discounting or overriding legal advice based on what they viewed as more directly applicable or concrete advice from other sources. Steve reported becoming frustrated with formal legal advice and turning to informal sources (with questionable results):

I, again, wasted a lot of time with this Legal Aid solicitor until I spoke to my cousin, who um had been in a similar situation and she, she basically advised me to not waste time, that it’s ... that it is quite easy and acceptable to represent yourself.

Some participants reported relying on information from friends or family that included substantive (and potentially unsound) advice about legal options or strategies. For example, Vinnie reported initially consulting websites “like the Centrelink website and the Child Support”, but found they contained similar information, leading him to rely on informal advice from his social circle:

I mean they’re all linked pretty closely together so they had some pretty good articles on there. ... [B]ut I had advice from a friend of mine who is a mortgage broker to just go through and document that we want to share 50/50 custody of our son ... I’m in the middle of organising to see, probably, I think to see a mediator to draw up a parenting plan. I’m pretty sure that’s through Relationships Australia.

## Discrepancies in Language

One of the most interesting findings of the study was in relation to the language used by participants to describe the legal framework. While the focus of the study was on information, it soon became clear that the language used by participants to describe aspects of their dispute revealed a lot about the information experience itself. In some areas, there was relatively limited transition of the interviewee’s language to match the contemporary terms used in legislation and in mainstream legal sources.

This is a particularly important point in the family law context. Legislative changes to the *Family Law Act 1975* (Cth) over a number of decades have been consciously designed to move away from a proprietary view of children as objects. In its 1992 report, for example, the Family Law Council identified concerns with the terminology of “custody” and “access”, noting that they had proprietary connotations, facilitated an adversarial mindset and reinforced the idea of parental rights rather than responsibilities.<sup>30</sup> It is now 25 years since the 1995 amendments to the *Family Law Act* and the current terminology refers to “parental responsibility”,<sup>31</sup> “the person or persons with whom a child is to live”<sup>32</sup> and “the time a child is to spend with another person or other persons”.<sup>33</sup> However, the present study suggests that these terms have not found their way into the language used by parents. Terms such as “child custody”, “shared custody” and “visitation rights” were commonly used by participants to describe the legal framework applicable to them.

The data from this study suggests that the term “custody” is not easily replaced as a common descriptor, as several parents used it to describe care arrangements:

- “I was just aware that we needed to agree on some sort of custody ruling in the beginning.” (Tom)
- “[T]hat was more just regarding uh the custody ... yeah, like my shared arrangement custody, um, issues.” (Malcolm)
- “I went on there, couldn’t really find any specific relevance to ages of custody, ‘cause I had heard that, I think, that they can make their own decisions somewhere between 10 and 12.” (Fran)
- “So when it came to custody of my child ...” (Ethan)

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<sup>30</sup> Family Law Council, *Patterns of Parenting After Separation – A Report to the Minister for Justice and Consumer Affairs* (April 1992) Ch 4.

<sup>31</sup> *Family Law Act 1975* (Cth) s 61B.

<sup>32</sup> *Family Law Act 1975* (Cth) s 63C.

<sup>33</sup> For further discussion of the legislative framework, see J Crowe and L Toohey, “From Good Intentions to Ethical Outcomes: The Paramountcy of Children’s Interests in the Family Law Act” (2009) 33 *Melbourne University Law Review* 391.

In her interview, Jodie appeared to be searching for the correct terminology, but was unable to find the correct term:

I was talking to Child Support yesterday and they gave me the Family Relationships number to, like, help, like, sort out the whole ... well, custody – no, it's not custody, the kids have been with me fulltime-like arrangement.

As discussed below, this data illustrates the difficulty of choosing appropriate legislative language that can cover complex legal arrangements and is also precise, neutral and usable. The data from these interviews also shows the need for a more detailed examination of language use in parenting disputes, in order to more thoroughly identify the reasons for parents' choice of language. The limitations of the study meant that it was not possible to identify the reason for the choice of terms such as "custody" – a term that is not only historically used in Australia, but also remains prominent in movies and television shows, and is still used in the US and elsewhere.

In addition, rights-based talk also had some prominence, particularly in relation to the capacity of non-resident parents to spend time with their children. This was in contrast to an absence of language around responsibility, which did not feature in any of the interviews. Parents in this study, even those who had attended mediation, still tended to view parenting arrangements in adversarial terms and from the perspective of what they could achieve as parents rather than using a child-focused perspective:

- "I went to clarify what I should be doing as far as, like, you know ... I'm trying to work out – because I've currently got 100% care of the children, but I want to make sure that I can continue on with that." (Ingrid)
- "What my rights of visitation are and what I can ask for, because I am really in the deep end with that." (David)
- "What rights have I got, how many days would I get my daughter, how many days would my husband get our daughter." (Bobby)
- "So, yeah, we discussed that this morning and she's going to give the contacts, or they're going to contact me – the legal section of whatever the affiliation is – so that I know my legal rights when I'm fighting for the children ... Oh ... without taking them away from their father, I probably should have fought for them a little bit harder insofar as that I have more jurisdiction over them." (Fran)
- "I knew that I was entitled to my son." (Ethan)

A number of participants reported relying on popular media to gain an initial understanding of the law applicable to their circumstances. Tina, for example, relied on media depictions to identify initial sources:

I think it was on the television or ... I know it's a media ... I think it's on television that there are a couple that separate and then she doesn't know what to do. So, it was introduced to her by a best friend about the Family Relationships. So yeah, that's what I saw ... that's how I saw Family Relationships. That's how I started searching through the website. And the Family Relationships was ... I think they arranged me to call ... someone to call me about the legal side.

Ethan similarly reported forming beliefs about his legal options and position based on a combination of observing other people's experiences and drawing on television or media depictions, leading him to use positional and possessive language at odds with the child-centred focus of the *Family Law Act*:

I knew that I was entitled to my son. And as for involvement, I knew I had to pay child support for the times that he wasn't with me, which is fair enough. That's pretty much about it ... seeing other peoples' relationships ... through what other peoples' relationships went through and learn from them, and just stuff you see on the TV or, I don't know, you read about it online or in the paper ... I know there is information out there, there's plenty of websites, you know, dads' rights websites – I know they exist.

## CONCLUSIONS AND RECOMMENDATIONS

We are said to live in the age of information, and it is well acknowledged that this age brings with it particular challenges. As Wurman has observed:

We are like a thirsty person who has been condemned to use a thimble to drink from a fire hydrant. The sheer volume of available information and the manner in which it is often delivered render much of it useless to us.<sup>34</sup>

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<sup>34</sup> RS Wurman, *Information Anxiety 2* (Que, 2001) 15.

While the preponderance of information presents great opportunities for individuals to access information about the law, it also presents challenges.

One of the clearest lessons that can be drawn from this study is that information providers such as government agencies, courts and mediation service providers need to be actively conscious that their information is consumed by end users alongside a host of other information sources, such as friends and family, chat rooms and popular media. Whereas lawyers are trained to recognise that these are not authoritative sources of legal information, for non-legally trained consumers these provide an important reference point for vocabulary and key concepts and frame consumer expectations more than information providers may initially realise. An explicit communication strategy about the acquisition of legal information would be beneficial to consumers in navigating an information-dense environment. For example, video material could be used to explain that the law has changed, and that relying on knowledge from movies, overseas websites or friends may lead to incorrect understandings about parenting arrangements.

The study also shows that despite (or perhaps because of) the vast amounts of online material, parents highly value advice from human sources. This has important implications for policy-makers, who in times of resource scarcity may invest more in written information at the expense of helplines and face-to-face resources. At the same time, however, the concern of many participants in this study was with finding information relevant to their situation. In this regard, artificial legal intelligence may be a way of meeting some of the needs of consumers, while containing costs. Branched and non-branched types of artificial intelligence have the ability to use natural language questions and answers to elicit facts and point consumers in the direction of accurate and relatively tailored sources of information about legal rights and strategies – and even suggest options for resolution.<sup>35</sup>

The recurring use of outdated terminology suggests that legal amendments aimed at shifting the focus of family law matters towards the best interests of the child may have limited effect on the way that family law is framed or understood by the parties. Participants also misnamed key services that they consulted, further showing the lack of uptake of formal terms and language within popular understandings.<sup>36</sup> Interestingly, however, other specialised legal terms, such as “child support”,<sup>37</sup> appeared much more commonly in the participants’ responses, perhaps reflecting their longevity or level of uptake in television shows and other media. The data does suggest that parents have not adopted the more generic language now used to describe the post-separation roles of parents – who might previously have been referred to as the “parent with custody” and “parent with access”. While this was something of an incidental finding from this study, it is worthy of future attention and research. Language used in legislation should be capable of being adopted by the users of the law, and have some degree of user-friendliness. It would therefore make sense to include user testing as part of the legislative reform process, to ensure that terms can be adopted easily into common use, as well as making sense to lawyers and other stakeholders.

The legal information experience is a critical part of the ever-expanding discipline of legal needs analysis, and forms an important pillar of access to justice and the rule of law. This study has provided one of the first comprehensive, albeit small-scale studies of the legal information experience in the family law context. It provides a foundation for more wide-ranging research, both qualitative and quantitative, to further explore how individuals obtain and interact with legal information in times of legal need. It highlights the importance of intentional design and accessibility of legal provisions and terminology to legal consumers. The study therefore shows the importance of taking account of the information experiences of non-lawyers in designing sources of legal information, as well as considering the needs of skilled intermediaries, such as legal professionals.

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<sup>35</sup> For further discussion of the possible applications of artificial intelligence in provision of legal services, see T Sourdin, “Justice and Technological Innovation” (2015) 25 JJA 96.

<sup>36</sup> See interviews with Noel, Bobby and Darren.

<sup>37</sup> See, eg *Child Support (Assessment) Act 1989* (Cth).