

LEGAL AID

Legal assistance services

Meaningful measurement and outcomes are considered by ANDREW CROCKETT and LIZ CURRAN

This Brief discusses a recent project that sought to realistically measure legal assistance services to reflect the diversity and complexity of delivering these legal services to clients experiencing disadvantage. The demand for legal assistance services across Australia always exceeds supply, and resources must be allocated in a way that guarantees effective and responsible services.¹ In that context, it is vital Governments do not impose new layers of reporting unless it provides useful information to inform and improve service delivery while creating an accurate picture for funders and the public, and does not unnecessarily increase the overall accountability burden for agencies.

The current framework for funding and delivering legal assistance services is set by the National Partnership Agreement on Legal Assistance Funding ('NPA') between the Commonwealth, state and territory governments, which commenced in July 2010. The NPA's aims include social inclusion, joined up service, holistic approaches to problem-solving, and client-centred approaches. This signals a shift in the operations of legal assistance services from a traditional legal service towards a more holistic service model. It will take time for the NPA's objectives to be embedded in practice.² It is important that in the initial years of the NPA's implementation the focus is on adopting and integrating practices that will enable the NPA's aims to be achieved. This must also be recognised by the current review of legal assistance services³ commissioned by the Commonwealth Attorney-General's department and being conducted by the Allen Consulting Group.³

In the drive for 'cost efficiency', effectiveness can be compromised or impeded by an insufficient understanding of how services are provided, what works well and why.⁴ Governments often seek quantitative data, which can be misleading for services like legal assistance services that are provided in a challenging and complex setting. For example, Victorian statistics reveal that reports of family violence have increased substantially.⁵ This might lead to a conclusion that there is more family violence, but deeper analysis reveals a range of proactive policy and legislative changes are leading to further reporting and enforcement. The raw numbers don't always tell the whole story.

This Brief discusses the implications for the NPA review of research undertaken by Liz Curran on behalf of Legal Aid ACT ('LAACT') in the latter part of 2011.⁶ We hope this research might help legal assistance services to develop efficient ways of monitoring service quality and effectiveness. The research methodology was designed by practitioners and informed by the realities of practice and academic theory rather than being driven

by government prescription. It is a practical approach, suited to use by an under-resourced legal sector and able to be tailored to the client characteristics and other contexts of the specific service.

The measurement of the outcomes or effectiveness of legal services is problematic if based solely on case 'results'. This research demonstrates there are ways to define and measure the quality or effectiveness of service outcomes, but only if care is taken in defining the outcomes to be measured prior to undertaking the task.

The research reveals the complex and technical nature of legal assistance work. Even within the broad legal assistance sector, specific programmatic responses must be delivered differently due to varying legislative and policy settings. Furthermore, government policy and funding decisions based on poorly defined outcomes and performance targets, or indicators that are not relevant to the outcomes they purportedly measure, can compromise the effectiveness of a service or program.

The research

Conducted in two phases, between August and December 2011, the research findings were published in late April 2012.⁷ The research model was developed after reviewing Australian and international research into measurement of service outcomes and informed by discussion of the nature of legal assistance services — their layers, complexities, contradictions and impediments — with the people delivering the services.

A participatory action research methodology was used.⁸ Under the guidance of the researcher, LAACT staff became designers and stakeholders in the research by making suggestions and critiquing the methodology. The research incorporated aims and objectives from LAACT's strategic plan. The project used focus group discussions to identify the service objectives of each practice area before identifying outcomes and the indicators of what was required to achieve those outcomes (See Table A below).⁹

There has been little previous research into measurement of the outcomes or quality of publicly funded legal assistance services in Australia.¹⁰ Accordingly, the research commenced as a trial of survey instruments and to establish a baseline against which to measure future progress.¹¹ Data for the trial was gathered by means of a 'snapshot' survey of family and criminal law services delivered by LAACT between 9 and 23 November 2011.

Phase One involved:

- the collation and analysis of relevant national and international research and LAACT's strategic

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2. Marisol Smith & Ash Patel, 'Using Monitoring Data: Examining Community Legal Advice Centres Delivery' (Legal Services Commission, London, June 2010).
3. This refers to the full range of services provided by Legal Aid Commissions, Community Legal Centres, Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Services.
4. Adeline Trude & Julie Gibbs, 'Review of Quality Issues in Legal Advice: measuring and costing quality in asylum work' (Information Centre about Asylum and Refugees, March 2010).
5. In Victoria, family violence incidents have increased since 1999–2000 by 109 per cent in 2011. There has been an increase in the laying of criminal charges from one in six in 1999–2000, to one in three in 2010–2011. Intervention Orders finalised since 1999–2000 have increased by 144 per cent. On their own, the statistics look as if there has been a significant increase in family violence. However, since implementation

- documents, including its strategic and operational plans;
- an introductory conversation with LAACT staff;
 - focus group discussions with legal, paralegal and support staff in LAACT's Legal Practice, Knowledge Services (community legal education) and Client Services (grants) areas;
 - feedback from a former client of LAACT; and
 - development of instruments to measure service quality and outcomes informed by the above processes.

Phase Two was a two-week trial 'snapshot' survey of services using the following instruments and methodologies developed in Phase One:

- eight lawyer and eight client interviews conducted by the researcher (interviews with lawyers and clients were conducted separately following a lawyer/client interview).
- entries in observation logs by seven staff.
- a voluntary client feedback questionnaire handed to all clients after receiving legal advice at LAACT's office.
- a telephone survey of clients following closure of their case files.¹²

- an online survey (using SurveyMonkey) of in-house lawyers and private lawyers who handle legally assisted cases.
- twenty-three case studies collected from open questions in observation logs, focus groups, client interviews with the researcher and the online survey.
- interviews with stakeholders identified by each practice area and with academics from the ANU College of Law, whose law students participate in LAACT's Youth Law Program and the Legal Aid Clinic advice service.

The various methodologies enabled responses to be checked and verified against each other and provided qualitative and quantitative data allowing comprehensive evaluation of the service experience. By capturing the viewpoints of service providers, clients and external stakeholder the research presented a '360 degree' view of LAACT's services.

A key concern was that the evaluative instruments should not impose an onerous additional record keeping or data entry burden on staff. It is designed so it can be adapted across a variety of organisations and applied with minimal resourcing.

of the *Family Violence Protection Act 2008* (2008–09 to 2010–11) and changes in policing, court responses and support for victims, there has been an increase in family violence incident reports to police and finalised family violence intervention order applications at court.

6. Liz Curran, 'We can see there's light at the end of the tunnel now: Demonstrating and Ensuring Quality Service to Clients' (LAACT, 2012). The Curran Report including the research methodology, survey data and findings is on LAACT's website for agencies to examine and adapt <<http://www.legalaidact.org.au>>.

7. Ibid 1–8.

8. Rory O'Brien, *An Overview of the Methodological Approach of Action Research* (1998) <<http://www.web.net/~robrien/papers/arfinal.html>>; Gail McCutcheon and Burga Jung, 'Alternative Perspectives on Action Research' (1990) 29(3) *Theory into Practice* 144; Bob Dick, *Action Research Tools* (Action Research & Action Learning, 8 May 2011) <<http://www.aral.com.au/resources/arphome.html>>

9. Jody Z Kusek and Ray C Rist, 'Ten Steps to a Results-Based Monitoring and Evaluation System: A Handbook for Development Practitioners' (The World Bank, 2004) 59.

10. *Overview of the UNDP's Approach to Measuring Capacity*, United Nations Development Programme ('UNDP') (June 2010) 10. The UNDP approach highlights difficulties of measuring outcomes/results

Selected findings from the research

Eleven legal assistance service outcomes were identified, which demonstrate qualities that the NPA aspires to deliver.

Table A

Outcome	Qualities demonstrated by outcome
1. A good client interview	Holistic, Joined-up, Quality, Problem Identification, Empowerment, Good Practice, Early Intervention, Prevention, Responsiveness, Client Centred, Alternative Dispute Resolution (ADR), Targeting, Expertise.
2. Clients with chaotic lifestyles attend interviews, appointments and court dates	Early Intervention, Prevention, Empowerment, Client Centred, Holistic, Targeting.
3. As appropriate, sentences are minimised or unsubstantiated charges are dropped	Rule of Law, Efficiency, Good Practice, Expertise.
4. Clients are better able to plan and organise their legal affairs	Early Intervention, Prevention, Empowerment, Quality, Good Practice, Client Centred.
5. Improvement in the client's interaction with the legal system	Early Intervention, Prevention, Empowerment, Client Centred.
6. Consideration of issues before a court or tribunal enhanced because the lawyer asked questions/raised issues and brought the client's story before the court	Rule of Law, Quality, Voice, Flexibility, Good Practice, Client-Centred, Responsiveness, ADR, Expertise.
7. Client is better able to understand their legal position and the options open to them	Early Intervention, Prevention, Empowerment, Good Practice, Quality.
8. A process is undergone where the client is listened to, respected and given fearless advice of their legal position	Quality, Client Centred.
9. Relationships and trust building with other legal and non-legal support agencies enabling client referral and support	Early Intervention, Prevention, Holistic, Joined-up, Good Practice, Quality.
10. Holding of authority to account	Rule of Law, Quality, Voice, Flexibility, Good Practice, Client-Centred, Responsiveness.
11. A holistic service delivered to the client through collaboration, networking, community legal education and joined-up services	Good Practice, Client Centred, Problem Identification, Collaboration, Prevention, Early Intervention, Holistic, Joined-up.

and the scarcity of such research. See also Smith and Patel, above n 2, and Trude & Gibbs, above n 4. See especially, for a review of the literature, Liz Curran, *A Literature Review: examining the literature on how to measure the 'successful outcomes': quality, effectiveness and efficiency of Legal Assistance Services* (2012) <http://www.ag.gov.au/LegalSystem/Legalaidprograms/Documents/Literature%20review%20of%20Legal%20assistance%20by%20Dr%20Liz%20Curran.pdf>.

11. A further six-monthly snapshot was conducted in June 2012 and a third is underway using the methodology developed in the research. Thereafter snapshots of all service areas of LAACT will be conducted at least annually.

12. This was the only unsuccessful instrument: client call back rates were low. Staff attributed this to clients' desire to put their cases behind them and 'move on'.

13. Kusek and Rist, above n 9. See also SurveyMonkey, LAACT Quality Legal Services http://www.legalaidact.org.au/pdf/Legal_Aid_ACT_Quality_Legal_services.pdf.

14. Ibid.

15. Kusek and Rist, above n 9, 117–122.

As the Table reveals, the research was able to integrate aspects of the NPA in its approach to measurement as well as processes reflective of quality.

The approach and methodologies are detailed in the report and SurveyMonkey are available on-line to assist other agencies engaging in outcome, quality and effectiveness measurement.¹³

LAACT scored highly and consistently on the outcome indicators across the different measurement tools.¹⁴ This suggests the 11 desired outcomes and quality service were present. The research also reveals the complex and complicated nature of Legal Aid work and Legal Aid clients. It also clearly demonstrates that autonomy, creativity and relationship building are critical in achieving 'successful outcomes'. Successful outcomes must be understood in the context of the realities of clients' lives and must be within the control of the agency given its role and function in society. LAACT's role or function, as defined in this research, upholding the rule of law, advising clients, providing information and education, representing clients, holding others to account, asking the right questions and knowing and applying the law.

The 23 case studies highlighted the effort and significant support and advocacy interventions that are necessary where clients have compounding legal and social issues.¹⁵ The lawyer must be persistent and, where

issues of trust are at stake, consistent. They highlight that clients often face a non-responsive system that is difficult to navigate and that having an articulate advocate in such cases can lead to improved outcomes.

Conclusion

The research demonstrates clients face legal problems which are often difficult and unpredictable. Any review or measurement of legal services must be able to capture this complexity, and the systemic issues that impact client casework. The current approach captures this complexity, while examining quality service delivery and improving our understanding of factors that deliver outcomes which address clients' legal issues. However, this process shows it is critical to take care in the methodology. This approach can be easily adopted and adapted by other legal assistance service providers to monitor how effective they are in their day-to-day work.

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LAW REFORM

Slavery and servitude within intimate relationships

ALLISON MUNRO considers the place of extreme family violence in Australian criminal law

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1. Cameron Cooper, 'An Inconvenient Truth' (2012) *UTS Tower Magazine* 7, 36.
2. *Slavery Convention*, opened for signature 25 September 1926, 60 LNTS 254 (entered into force 9 March 1927) art 2.
3. Explanatory Memorandum, Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012, 1.
4. Ibid.
5. *New ILO Global Estimate of Forced Labour: 20.9 Million Victims* (International Labour Organization, 1 June, 2012) <http://www.ilo.org/sapfl/News/WCMS_182109/lang-en/index.htm>.

While it is easy to believe crimes of slavery, servitude and people trafficking are present only in history or in developing countries, they are in fact prevalent in contemporary Australia. The true extent of human trafficking is unknown, however the 325 investigations run by the Australian Federal Police since 2004¹ provides some indication of its pervasiveness.

Australia has an international human rights obligation to bring about the complete abolition of slavery in all its forms.² Slavery and sexual servitude are criminal offences in the *Criminal Code Act 1995* (Cth) ('the Code'). Division 270.1 of the schedule to the Code defines slavery as:

the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person.

This definition derives from the slavery definition in article 1 of the *Slavery Convention*.

Division 270.4 defines sexual servitude as:

the condition of a person who provides sexual services and who, because of the use of force or threats:

- a) is not free to cease providing sexual services; or
- b) is not free to leave the place or area where the person provides sexual services.

'Sexual services' are defined in the Code's dictionary as the 'commercial use or display of the body of the person providing the service for the sexual gratification of others'.

However, the nature of slavery and exploitation in Australia is changing and the Criminal Code is not enough to protect all victims. People-trafficking syndicates are changing their mode of operation to avoid detection and to make the elements of the offence harder to prove.³ In addition, the types of slavery and slavery-like offences are diversifying.⁴ The International Labour Organization reports that there are approximately 20.9 million global victims of forced labour.⁵ Of these, 4.5 million are victims