

# **A PRACTICAL MODEL FOR DEMONSTRATING AND ENSURING QUALITY LEGAL AID SERVICES: A CASE STUDY IN APPLIED RESEARCH**

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## **1. INTRODUCTION**

This paper is about how the Legal Aid Commission of the Australian Capital Territory (Legal Aid ACT) - a relatively small legal aid provider with an annual budget of \$12 million and 65 staff - has gone about measuring the effectiveness of its services and how it plans to measure service efficiency. These are highly topical issues in Australia at present because of a national review of legal assistance services that is due for completion in June 2013.

The paper is both a case study in applied research (how researchers and administrators can work together to improve legal aid services) and a practical demonstration of the value that individual agencies can gain from measuring service quality and effectiveness.

The paper also considers a hypothesis that if the characteristics of a quality service responsive to people's needs are present then the service is also likely to be cost-effective.

## **2. BACKGROUND TO RESEARCH**

The research was undertaken as part of Legal Aid ACT's Strategic Plan for 2008-2012 and against the backdrop of a national review of legal assistance services.

### *a) Strategic Plan*

Improving service effectiveness and efficiency were key goals in Legal Aid ACT's strategic plan for 2008-2012 the theme of which was 'New Directions for Legal Aid'. Among the projects designed to move the organisation in new directions was the Service Measurement and Report Tracking (SMART) project. The aim of SMART was to develop a robust monitoring and reporting capability so that Legal Aid ACT was able to:

- continuously improve the services it provides to clients and the community
- routinely monitor and evaluate its performance against agreed legislative, policy and service standards
- assess predictors of case complexity and benchmark performance of private and in-house legal practices
- demonstrate to its funders and other stakeholders the effectiveness and efficiency of the services it delivers
- benchmark its services with other legal aid commissions.

Before you can usefully measure the cost of providing services and use that information to improve service efficiency, you need to establish the service outcomes you want to achieve.

This is because an 'efficient' service is not the service provided at least cost, but the service that achieves a desired outcome at least cost.

It is also important that before applying resources to measuring the cost of services you have a plan for using the information obtained. You need a means of identifying inefficient components of service delivery and a strategy for reducing the cost of those components while maintaining desired service outcomes. Measuring cost without a plan for identifying and addressing inefficiencies is a largely pointless exercise.

While quantitative information about services is important, funders are increasingly requiring social and other human service providers to measure service outcomes. Funders are recognising that quantitative measures alone do not provide a picture of the impacts of services on the community.<sup>iii</sup> Recent research in the United Kingdom has argued that an over concern with cost efficiency can come at the cost of effectiveness and quality of the legal service.<sup>iv</sup> It is important for funders to allow for service autonomy because flexibility and the freedom to innovate enables services to be responsive and avoid the revolving door of client problems by addressing issues at their source leading to more efficient and better outcomes.<sup>v</sup>

#### *b) National review of legal assistance services*

The research was also undertaken against the backdrop of an impending national review of legal assistance services conducted under the National Partnership Agreement on Legal Assistance Services (NPA). The NPA is an agreement between the Australian Government and the eight state and territory governments for the provision of Commonwealth funded legal assistance services in Australia.<sup>vi</sup>

The NPA states that the performance of legal assistance services will be evaluated against the broad goals of sector reform which promote a client-centred focus and include:

- comprehensive access to information
- seamless referral
- improved coordination and targeting of services between legal assistance providers
- the linking of legal assistance services with other services to ensure 'joined up' service delivery.

The NPA also states that the evaluation of the performance of legal aid commissions will focus on how they increase their delivery of successful 'service outcomes', how they increase and direct their service delivery towards prevention and early intervention services as well as increasing the efficiency of their operations.

Because the NPA itself contained few outcome measures that were appropriate or useful, it was thought that the Legal Aid ACT research would provide a timely contribution to the NPA review by identifying some practical measures of service quality and outcomes.

### 3. THE RESEARCH

The primary purpose of the research was to determine what qualities lead to an effective service outcome.

Because of the limited resources available to Legal Aid ACT and other legal assistance providers for the collection and reporting of service data there was a need to develop a methodology that was not unduly costly or administratively burdensome. Much of the research conducted in the United States and the United Kingdom into measuring legal services has received significant funding, an example being the excellent research conducted by the Legal Services Research Centre.<sup>vii</sup> This has not been the case in Australia and while there is recognition by governments of the need to avoid imposing unreasonable reporting burdens on legal assistance providers, this has yet to result in a streamlining of reporting requirements or the provision of additional resources to help meet those requirements. Our aim was therefore to develop an approach that could be adapted for use by a variety of legal assistance services and conducted with minimal cost and disruption to service delivery. Hence the development of a periodic 'snapshot' survey approach.

The research also sought to avoid imprecise indicators that bear little relationship to the desired outcomes in the NPA. We did this by defining what an outcome looks like in the context of legal assistance services by investigating what steps or activities are undertaken to achieve an outcome. This is no easy task. Social researchers and others have been trying to ascertain for some years how to measure outcomes and the impact of services on people's lives without relying solely on numerical measures.

We conducted the research 'bottom up' using a participatory action research approach informed by those who provide the services and those who receive them. This has been described as a reflective process of progressive problem solving led by individuals working as part of a 'community of practice' to improve the way they address issues and solve problems.<sup>viii</sup>

This kind of research is done by taking action, guided by a professional researcher, with the aim of improving strategies, practices, and knowledge of the environments of practice, in this case, legal practice. The participatory action research approach uses a cyclic or spiral process which alternates between action and critical reflection and, in the later cycles, continuously refines methods, data and interpretation in the light of the understanding developed in the earlier cycles.<sup>ix</sup>

In this research the staff of Legal Aid ACT became designers, stakeholders and collaborators in the research, with staff making comments and suggestions that were informed and guided by the research as explained to them by the researcher. We took this approach because the nature of the service is so varied. The clients are often very disadvantaged with complex and multiple legal and other needs. This not only complicates the application of the law but also requires services to be tailored to individual client's circumstances. The research approach ensured that the instruments of measurement were relevant and realistic and that the data was useful and led to greater trust by staff in the process.

The research model was designed after examining international and domestic research and, importantly, by discussing the nature of the service – its layers, complexities, contradictions and impediments – with the people on the ground. Warnings from focus group participants and international research about the dangers of using outcome-based measurement when outcomes are not controllable by an agency were heeded. Outcomes and outcome indicators must be consistent and realistic, taking into consideration the roles and functions of legal aid agencies operating within diverse policy and legislative frameworks.

The following table shows the service outcomes identified in the research and the qualities demonstrated by each outcome.

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

The project had two phases. Phase One was to ascertain what has been done in the research arena, obtain staff and client input to shaping the research and developing the survey instruments and methods to be trialled in Phase Two. A review of existing research into outcome measurement was followed by a general conversation with staff, focus group discussions with each section of Legal Aid ACT engaged in delivering legal services, and an interview with a former client. The information gained through the staff conversation and focus groups informed the development of instruments which were trialled during a two-week trial 'snapshot' survey of services in November 2011. The snapshot and its findings are discussed later in this paper.

The participatory action research methodology also drew on Legal Aid ACT's strategic plan and incorporated the plan's goals and strategies into the survey questions and outcome indicators to test whether they were being achieved in practice.

Because legal aid agencies have limited resources and already bear heavy reporting burdens the project was designed to deliver multiple practical benefits at an affordable cost in staff time and other resources. Accordingly, we needed a sustainable way to capture and measure data. We did this by taking a representative 'snapshot' of services over a two week period rather than attempting to survey services continuously. The snapshots will be repeated at intervals of six to 12 months, allowing time between snapshots to reflect on measures that might need to be taken to improve outcomes, to implement those measures and then evaluate their effectiveness.

Phase Two of the project was the two week snapshot survey during which the following survey instruments and methods developed in Phase One were trialled.

- An on-line survey (using SurveyMonkey) of private and in-house lawyers handling legally-assisted casework.
- Feedback obtained by means of questionnaires administered to all clients receiving advice from in-house lawyers during the survey period.
- Lawyer and client interviews conducted separately after the same legal interview.
- Observation logs (similar to a professional journal) kept by selected staff members.
- Case studies collected from logs, focus groups and the on-line survey.
- Interviews with stakeholders identified by each practice area.
- Feedback sessions with staff and members of the Legal Aid ACT board.

These multiple research methods were used to compare and verify responses against each other. They enabled different stages and parts of the services to be examined and measured against quality and outcome indicators. The methodology enabled us to observe different aspects of the service through the eyes of clients, staff and external stakeholders in order to assess its relationship with and impact on clients, courts, other parties, significant networks and community agencies. The research thus provides a '360 degree' perspective of services.

#### **4. RESEARCH FINDINGS AND CONCLUSIONS**

Legal Aid ACT scored highly and consistently on the outcome indicators in the different measurement tools indicating that the 11 desired outcomes in the table on page 4 and the characteristics of quality service were present in the services surveyed. The findings are detailed in the research report which can be accessed on Legal Aid ACT's website.<sup>x</sup>

It is critical that limited legal aid resources are applied to service delivery to the greatest possible extent. While accountability to funders and other stakeholders is important, it should not divert scarce resources from serving the needs of the most disadvantaged members of society. Accountability requirements tend to become more complex and onerous over time. For example, at one community legal service in Victoria where all three staff members were engaged in direct service delivery, 36% of staff time was dedicated to measurement and accountability.<sup>xi</sup> This situation arises in many legal aid services in Australia which have more than one funder<sup>xii</sup> each with different reporting and other accountability requirements. Those responsible for setting accountability criteria must ensure that measurement tasks are efficient, provide useful data, and do not unduly divert resources from service delivery.

The research reveals the complex and complicated nature of legal aid work and legal aid clients. It clearly demonstrates that autonomy, creativity and relationship building are critical in achieving effective or '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 and its functions. It has been suggested that outcomes could be defined more broadly in terms of 'saving lives' or 'finding housing'. However, such outcomes are beyond the role of a lawyer and many factors beyond a lawyer's control may intervene to influence such outcomes. To define successful outcomes in such terms is not only unrealistic but may set legal assistance services up to fail.

#### **5. APPLYING THE RESEARCH FINDINGS**

Over the past 18 months, Legal Aid ACT has conducted three snapshot surveys of its services and the extent to which the outcomes defined in the research are being achieved. The snapshots were taken over two week periods using the survey instruments developed in the research.

The surveys have confirmed research findings in Australia and elsewhere that disadvantaged and vulnerable people often experience multiple legal problems with severe consequences and that unresolved legal issues frequently impact on people's health and wellbeing.<sup>xiii</sup> For example 75% of clients in one survey had other legal problems linked to their presenting problem and identified their legal problems as causing, being linked to, or increasing their stress levels.<sup>xiv</sup> The surveys have also been a rich source of case studies which illustrate the complexity of legal aid work and the difference that timely provision of legal advice and other assistance can make to the resolution of legal problems with positive flow on effects to people's health and wellbeing.

While the results of the surveys have been very positive overall they have also identified aspects of service delivery where there is scope for improvement. Here are three examples.

*a) Community Legal Education (CLE) programs*

Interviews with external stakeholders revealed the need to refocus CLE programs to improve targeting and effectiveness and to ensure the mode of delivery is suited to the audience. Feedback included the following.

- The lecture style of delivery is not suited to most audiences and may alienate rather than engage clients and workers.
- Workers in many non-legal agencies do not understand the role of lawyers and it should not be assumed that they will initially trust or want to work with lawyers.
- Television stereotypes of lawyers inform public perception of lawyers. These barriers need to be broken down or workers will not always see the value of a lawyer, nor will their client groups.
- A priority should be the training of workers who work with people experiencing disadvantage on how to identify legal problems and how to refer clients for legal advice.

As a result of this and other feedback about its CLE programs Legal Aid ACT created a new position of Community Legal Education and Information Coordinator to plan and develop, in consultation with internal and external stakeholders, effective educational strategies and programs to address the priority legal needs of vulnerable and disadvantaged members of the community

*b) Ensuring clients understand the advice they are given*

While all the lawyers interviewed in one survey thought their clients had a better sense of how the law operated in regard to their case following the advice session, only 75% of the clients agreed. This suggested that lawyers should allow more time for clients to ask questions and ask clients to explain back to the lawyer in their own words what they think are the next steps. This will give the lawyer a better indication of whether the client understands than relying on a nod of the head or other affirmative response.

*c) Referrals to other agencies*

Fifty per cent of clients approaching the Legal Aid Helpdesk <sup>xv</sup> received a referral to another service. In one case the referral took 75 minutes to arrange, highlighting the fact that 'warm' referrals can be time-consuming, particularly in the absence of effective referral protocols. A holistic approach to service delivery is desirable and may ultimately save time and cost, but it can add to the cost of legal aid services.

A working group of legal assistance providers in the ACT has recently developed improved protocols for referral between agencies and developed an online directory of free legal services in the ACT.

Hence the value of these surveys lies not only in the positive feedback that affirms what the service is doing well and in doing so helps sustain staff commitment and morale, but also in the negative feedback that reveals service weaknesses which might otherwise be overlooked and not addressed.

## **6. ESTABLISHING COST-EFFECTIVENESS**

We observed earlier that before you can usefully measure the cost of providing services and use that information to improve service efficiency, you need to establish the service outcomes you want to achieve. This is because an efficient or cost-effective service is not the service provided at least cost, but the service that achieves a desired outcome at least cost. The research has provided the means of establishing desired service outcomes and improving service effectiveness. In this final section of the paper we focus on cost-effectiveness and the approach Legal Aid ACT is now taking to improve service efficiency.

### *a) Measuring the cost of legal services*

The customary method of measuring legal service costs is time recording which is used by private law firms to provide a basis for charging professional fees and to monitor performance. However, time recording has been identified in Australian research as one of a number of causes of high stress levels amongst lawyers<sup>xvi</sup> and it has also come under challenge as a basis for costing because it does not necessarily reflect the value of the service to clients and may reward inefficiency.<sup>xvii</sup>

Another problem with time recording is the difficulty of ensuring lawyers record time accurately rather than resort to making estimates of time spent.

A third issue, which applies particularly to legal assistance services, is a lack of motivation for staff to time record when they perceive no direct benefit to themselves or their clients in doing so. It can be seen as yet another administrative impost.

Activity costing is another approach to measuring productivity. It originated in the manufacturing sector and is mainly suited to measuring the cost of manufacturing and other processes where there is a high degree of commonality of tasks. Unlike manufacturing goods or providing repetitious and routine services, the provision of legal services, especially casework, is influenced by a variety of factors and rarely are two cases alike. The facts of a case, the applicable law, the attitude of the parties and judicial officers are all variables that make the establishment of standard timeframes for more substantial or complex legal tasks arbitrary, if not impossible.

Faced with a less than ideal choice, Legal Aid ACT is investigating a costing model that combines elements of time and activity recording but avoids some of their drawbacks by using technology to automate the recording of time or activities wherever possible.



## *b) Using cost data*

The principal use of the costing model will be to develop measures of service efficiency for internal management and benchmarking purposes. Australia has a mixed service delivery system in which publically-funded legal services are provided by private lawyers and the salaried staff of legal aid commissions, community legal centres and Aboriginal and Torres Strait Islander legal services. An issue that periodically surfaces is which provider type is least costly. Comparing the cost of services provided by private and salaried lawyers has been the subject of research and reports over the past 30 years, but an acceptable methodology has yet to be found.<sup>xviii</sup> The question may never be conclusively answered because of the complexities involved in comparing the cost of the different modes of service delivery required for services to effectively meet the diverse needs of particular client groups and operating within different legislative and policy frameworks.

Furthermore, since efficiency does not necessarily equate with lowest cost, even if it was established that one provider type was less costly than another, this would not justify the exclusive use of the less costly provider to deliver those services.<sup>xix</sup> If this were the paradigm, then governments would be at risk of funding ineffective services which would be an inefficient use of public money.<sup>xx</sup> An analogy may be drawn with competitive tendering where the lowest tender price is not accepted without regard to factors such as quality and reliability.

Cost comparisons raises further issues. Even if it could be established that private lawyers could deliver particular types of legal services of equivalent quality and reliability to salaried lawyers but at less cost, it might not be desirable for all services of that type to be provided by private lawyers. The Australian experience has been that salaried legal aid practices provide a number of non-financial benefits which would be lost if all services of a particular type were assigned to private lawyers.<sup>xxi</sup>

## *c) Reducing service costs*

Another issue that should be considered when contemplating a comparative exercise is whether the intended benefits of the exercise justify the investment of time and resources involved. On the assumption that the ultimate purpose of the exercise would be to ensure that legal assistance services were provided in the most cost-effective manner, the question arises whether it would be better to invest limited resources in improving service efficiency than in measuring comparative cost. Measuring comparative cost might identify the less costly provider, but since it is only measuring cost and not service quality or effectiveness it will not tell you which service is more cost-effective,<sup>xxii</sup> or how the more costly provider might reduce service costs.<sup>xxiii</sup>

Improving service efficiency is principally a matter of improving work practices and providing an efficient support infrastructure. In the context of legal services, the key to improving work practices is upgrading professional skills such as interviewing, negotiating, drafting, advocacy and file management and providing efficient information retrieval and case management systems. Improving work practices through skills development enables staff to provide better quality services without wasting time or effort.

Take interviewing clients as an example. Taking instructions is the first step in most legal services. A skilled interviewer will adopt a strategic approach to the interview: first establishing rapport and trust and then ascertaining the relevant facts through use of open and closed questioning. A less skilful interviewer might eventually obtain the same information from the client, but will invariably take longer to obtain it and may leave the client confused about the relevance of much of the information they have provided. They may also miss information and compromise the development of an effective case strategy. A skilfully conducted interview demonstrates the characteristics of quality service identified in the table on page 4. Since the time taken to conduct client interviews or perform other aspects of a legal service is the fundamental determinant of cost, the less skilled the lawyer the costlier the service is likely to be.

Similar considerations apply to negotiation, drafting, advocacy and file management. The more skilled you are, the more efficient use you will make of time, and the better the quality of service you will provide.

While Legal Aid ACT has yet to decide whether investment in cost comparison exercises would be an effective use of resources, it has committed in its strategic plan for 2013 to 2017 to invest more in staff skills training and development. The theme of the new plan is 'Excellence through Innovation and Collaboration' and the focus for the next five years will be on further improving the effectiveness and efficiency of services by applying learning and innovation to improve business processes and work practices.

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<sup>ii</sup> Andrew Crockett is Chief Executive Officer of the Legal Aid Commission of the Australian Capital Territory. He was previously a senior lecturer in the Faculty of Law at Monash University and a former Director of the Legal Aid Commission of Victoria.

<sup>iii</sup> A Ebrahim and V K Rangan, 'The Limits of Non Profit Impact: A Contingency Framework for Measuring Social Performance', Harvard Business School Working Paper, 2010, p. 4.

<sup>iv</sup> A Trude and J Gibbs, 'Review of Quality Issues in Legal Advice: Measuring and Costing Quality in Asylum Work', Information Centre About Asylum and Refugees, London, 2010.

<sup>v</sup> See L Curran, 'Solving Legal Problems: A Strategic Approach – examples, processes and strategies- a report examining community legal centre practice', Melbourne, 2013. <http://law.anu.edu.au/legalworkshop-gdhp/publications>

<sup>vi</sup> The NPA commenced in July 2010 and expires on 30 June 2014. While the objectives of the NPA relate to the provision of legal assistance by all services funded by the Commonwealth (including community legal centres and Aboriginal and Torres Strait Islander legal services) the NPA only makes provision for funding and reporting in relation to services provided by legal aid commissions. A term of the NPA is that the agreement will be reviewed by 30 June 2013 with regard to progress made by the parties in respect of achieving the agreed outcomes, objectives and outputs of the agreement. The review is being conducted by a private consulting group and commenced in May 2012.

<sup>vii</sup> Sadly, the Legal Services Research Centre ceased to exist on 31 March 2013.

<sup>viii</sup> B Dick, 'Action Research Tools' in *Action Research, Action Learning*, 1999 (updated 8 May 2011). <http://www.aral.com.au/resources/arphome.html>

<sup>ix</sup> R O'Brien, 'An Overview of the Methodological Approach of Action Research', Faculty of Information Studies, University of Toronto, 1998, <http://www.web.net/~robrien/papers/arfinal.html>. G McCutcheon and B Jung, 'Alternative Perspectives on Action Research', *Theory into Practice* vol. 29, no. 3, 1990, 144-51. B Dick, 'Action

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Research Tools' in *Action Research, Action Learning*, 1999 (updated 8 May 2011), <http://www.aral.com.au/resources/arphome.html>

<sup>x</sup> L Curran, 'We Can See There's A Light At The End Of The Tunnel Now: Demonstrating and Ensuring Quality Service to Clients', Curran Consulting: Enhancing Justice and Human Rights and Legal Aid Commission (ACT), 2012, <http://www.legalaidact.org.au/>

<sup>xi</sup> This Service was the West Heidelberg Community Legal Service where the researcher was Director for two years. A 2010 survey into staff time allocation revealed that 36% of the service's funding was spent on compliances. This was consistent with other community legal services across the North Eastern region of Victoria that conducted similar surveys at the time.

<sup>xii</sup> For example, Commonwealth Government, Territory/State Government, local government and law society grants.

<sup>xiii</sup> See for example, C Coumarelos, D MacCourt, J People, H McDonald, Z Wei, R Iriana & S Ramsey, 'Access to Justice and Legal Needs: Legal Australia Wide Survey Legal Need in Australia', Law and Justice Foundation of New South Wales (Sydney, August 2012).

<sup>xiv</sup> In the June 2012 survey clients were asked whether the problem they spoke to us about had caused them and/or their family any stress and, if so, how the stress affected their family. They were also asked whether as a result of the advice they received the stress been reduced, stayed the same, or increased. Responses included: *Yes, massive, increased blood pressure and my wife has a bad heart. Feel a bit eased now. Huge amounts, adverse effects to mental, physical and emotional well-being. Stayed the same but feeling more empowered – know my options.*

<sup>xv</sup> The Legal Aid Helpdesk is the first contact point for people telephoning or attending Legal Aid ACT's office seeking information or advice. It operates as a legal 'triage' service to ascertain the nature and urgency of problems and either arrange legal advice, or referral to an appropriate agency.

<sup>xvi</sup> See for example N Kek, G Luscombe, S Medlow and I Hickie, 'Courting the Blues: Attitudes towards depression in Australian law students and legal practitioners', Brain and Mind Research Institute, University of Sydney, 2009, [47sydney.edu.au/bmri/research/mental-health-clinical.../lawreport](http://47sydney.edu.au/bmri/research/mental-health-clinical.../lawreport) and 'S Fortney, 'The Billable Hours Derby: Empirical Data on the Problems and pressure Points', 2005 *Fordham Urban Law Journal*, Volume 33, Issue 1.

<sup>xvii</sup> The Hon Wayne Martin, 'Billable Hours – past their use-by date', address to the Perth Press Club, 17 May 2010 at <http://chisconsult.com/articles/billable-hours-past-their-use-by-date/>

<sup>xviii</sup> Andrew Crockett was engaged by the Commonwealth Attorney-General's Department in 1995 to develop a cost comparison methodology. A methodology was developed with the assistance of a costing expert and in consultation with the directors of the eight legal aid commissions, but the methodology failed to gain the acceptance necessary for it to be trialled.

<sup>xix</sup> It is acknowledged by legal aid commissions that some legal services, particularly more substantial types of casework, may be handled by private legal practitioners at less cost simply because the fees paid by commissions are so low (up to two-thirds below normal market rates). Declining legal aid budgets in real terms since the mid-1990s have prevented most commissions from increasing fees in line with inflation and fees have sunk to historically low levels to a point where an increasing number of private law firms (often the better firms) refuse to handle legal aid work because the fees do not cover practice overheads. Through their control of fees commissions can determine whether private practitioner services are less costly, but the current situation is unsustainable and we are close to a tipping point where any further decline in the real value of fees will cause more firms to exit the legal aid market. Since the better law firms tend to quit the legal aid market before less commercially competitive firms which need legal aid work to survive, there is a risk of quality declining combined with increasing pressure to raise fees to maintain a viable pool of private practitioners prepared to handle legal aid work.

<sup>xx</sup> In March 2013, L Curran completed a report that examined how to shape and ensure the impact of a service and its ability to prevent the revolving door of client cases. The report examines some examples of how this has been done in the context of two Australian community legal centres over the past decade. It highlights that often an over concern with activities can shift the focus away from a service's overall ability to make a positive difference for clients and can lead to fragmented and silo-based assistance that may not actually lead to an impact for the client or community. One of the key aims in funding a service is that it makes a positive difference to client lives, as the Legal Aid ACT survey findings reveal. See L Curran, 'Solving Legal Problems: A Strategic Approach – examples, processes and strategies- a report examining community legal centre practice', Melbourne, 2013, <http://law.anu.edu.au/legalworkshop-gdhp/publications>.

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<sup>xxi</sup> The non-financial benefits of salaried legal practice were identified in a discussion paper prepared by the Legal Aid Commission of Victoria in 1994. The benefits included: addressing through innovation the needs of vulnerable and disadvantaged people; providing competitive stimulus, benchmarking and other information which assists the containment of costs and improves service quality; providing specialist services to children and others with special needs; providing advice in relation to the development of legal assistance policy and legal assistance programs; providing independent and informed input to law reform; and increasing the availability and accessibility of legal services to vulnerable and disadvantaged people. Salaried services are also particularly suited to running test cases and conducting community legal education programs which are strategies that help reduce the revolving door of legal problems. They are also able to provide informed submissions for the reform of laws and procedures that impact adversely on disadvantaged people. Many of these initiatives are less likely to occur in a single provider model, particularly a private practitioner model which has a fundamentally different set of operational imperatives and lacks the autonomy, flexibility and motivation to undertake non-profitable, strategic work of this kind.

<sup>xxii</sup> 'Cost-effective' is used in preference to 'efficient' to describe services that achieve a desired result or objective at the least cost.

<sup>xxiii</sup> C Coumarelos et al, 'Access to Justice and Legal Needs: Legal Australia Wide Survey Legal Need in Australia'.