

**Literature Review on the Legal Assistance National Partnership Review
Phase 1 for the Commonwealth Attorney General's Department**

A Literature Review: examining the literature on how to measure the legal assistance sector in Australia under the National Partnership Agreement and the Legal Assistance National Partnership Review as to 'successful outcomes'; quality; effectiveness and efficiency.

27 January 2012

By Dr Liz Curran

Curran Consulting: Enhancing Justice and Human Rights



CURRAN CONSULTING: ENHANCING JUSTICE AND HUMAN RIGHTS

ABN 17509929143 RBN B2384236M

Email: legalaidthumanrights@gmail.com

Ms Marjorie Todd
Assistant Secretary
& Garry Burlingham,
Legal Assistance Branch,
Attorney General's Department
3-5 National Circuit
Barton ACT
2600
27 January 2012

Dear Marjorie and Garry,

Please find attached the electronic version of the Final Literature Review by 27 January 2012 as agreed in our email exchanges of 10 November 2011 and 8 November 2011.

I will be forwarding a hard copy by post today.

Please can you thank (on my behalf) the many legal aid services that provided me with their very helpful reports, submissions, letters and the relevant articles.

This 'literature review project' as a part of Phase One of a Review of the National Partnership commenced in the week of 12 December 2012 (with 12 hours allocated per week for the project over six weeks) with a completion date of 27 January 2012.

Please note that any Evaluation Reports received by me on and after 23 January 2012 by mail were not able to be read, analysed or included so as to be able to finalise the report in time for the 27 January 2012 deadline.

I hope this Literature Review will be of assistance to the Commonwealth Attorney General's Office in shaping the approach that will be taken by any successful tender for Stages 1-4 of the Review of the National Partnership Agreement pursuant to the Terms of Reference of 30 November 2011.

Many thanks for the opportunity of contributing to the discussion about the Australian community's valuable legal assistance sector.

Should you have any queries or questions please do not hesitate to contact me.

Yours faithfully,

Dr Liz Curran
Curran Consulting: Enhancing Justice and Human Rights

Contents

Project Brief

Definitions

Abbreviations

Executive Summary

Scope of this Literature Review

Introduction and Background

A Review and Analysis of the Literature

- The National Partnership Agreement (NPA) and Terms of Reference (TOR)
- Identifying Methodological Approaches to Examine the 'appropriate targeting of legal assistance services to people who experience...social exclusion'
- Measuring 'successful outcomes'
- The Role of Lawyers, Advice and Representation or legal and information and referral services only – Dangers of 'client satisfaction' tools in legal aid services measurement.
- Measuring Quality of Legal Assistance Services
- Measuring Effectiveness
- Measuring Efficiency
- Legal Aid Commissions
- Community Legal Centres
- Aboriginal and Torres Strait Islander Legal Services
- Family Violence and Prevention Services
- Collaboration Community Strengthening and Community Legal Education
- 'Respecting Diversity, Keeping the Flexibility and the Range of Ways to Best Respond to it'
- Integrated Service Delivery

Conclusion – An Overview of the Findings of this Literature Review

Project Brief

This is a literature review as per the brief from the Attorney General's Department in email exchanges and discussions on and around 8 and 10 November 2011 is as follows.

As part of phase one of Legal Assistance National Partnership Review (LANPR), this literature review will examine what has been done both nationally and internationally around legal assistance service evaluations on the following:

'Successful Outcome'

Quality

Efficiency

Effectiveness

Definitions

Legal Aid – This refers to Legal Aid Commissions set up under statute around Australia. There are eight legal aid offices around Australia.

Legal Aid Services – This refers to legal aid services provided by Legal Aid Commissions, community legal centres and Aboriginal and Torres Strait Islander Legal Services.

Community Legal Centres – These are independently operating not-for-profit community organisations providing legal and related services to the public focussing on disadvantaged people and people with special needs.

Community Legal Education (CLE) – This is the provision of information and education to members of the community on an individual or group basis, concerning the law and legal processes and the place of these in the structure of society. The community may be defined geographically, by issue or specific need. CLE increases the ability of community to understand and critically assess the impact of the legal system on them and their ability to deal with and use the law and the legal system.¹

Early Intervention - Early Intervention is defined by the National Partnership Agreement (NPA) between the Commonwealth, State, Territory and Legal Aid as legal services provided to assist people to resolve their legal problem before it escalates, such as legal advice, minor assistance and advocacy other than advocacy provided under a grant of legal assistance.

Prevention - Preventative legal services are defined by the National Partnership Agreement as legal services that inform and build individual and community resilience through community legal education, legal information and referral.

Holistic Service – this is where a service that looks at the client as a whole for legal, non-legal issues and wellbeing and empowerment and case manages the service to tailor it to assist the person and their issues.

Commonwealth matters – these are the areas that have been determined by the Commonwealth Attorney General's Department as areas of Commonwealth concern and are

¹ CLEWS Working Group, National Association of Community Legal Centres, 2009, <http://www.nclc.org.au>

usually identified in the funding and service agreements between the Commonwealth, States/Territories and Legal Assistance Services.

Abbreviations

FDR - Family Dispute Resolution

DV - Domestic Violence

NPA – National Partnership Agreement

VLA – Victoria Legal Aid

LAC – Legal Aid Commissions

LA NSW - Law Access NSW

LA ACT – Legal Aid ACT

TOR – Terms of Reference

NPA – National Partnership Agreement

LANPR - Legal Assistance National Partnership Review

DV – domestic violence

ADR – Alternative Dispute Resolution

Executive Summary

- Significant difficulties identified in much of the domestic and international literature in the measurement of outcome/results, quality, efficiency and effectiveness.
- The literature domestically and internationally, identifies the lack of a common language with which to articulate results, the lack of a framework in which to capture them and the difficulties in being able to measure and prove success and where it does exist the need often for it to be descriptive, subjective and the risk that cannot be avoided of its being anecdotal and vague. Each program must be understood to better inform how to identify and define outcomes and measure these (not an easy task) and ensure adaptive learning and management processes rather than being fixed and remote from the realities of practice.²
- Any approach must be able to adapt and hear and incorporate changing realities and demands on the services being examined.³
- This Literature Review has highlights that legal assistance work is not only complex but that it is also complicated. There is no one way which can make it easy to achieve a successful outcome. Good practice informed by good training, cultural awareness and sensitivity and adaptability and flexibility are key factors in effectively reaching and targeting vulnerable and disadvantaged groups.
- Legal aid services are complex and operate at different levels. Within a legal aid service different objectives and intentions can sit behind each program. Therefore, they cannot be measured as a 'lump' without first understanding the very nature, diverse ways of engaging that are required to target different client groups, complexity, layers and imperative and funding requirements that drive each of the many parts. This process of understanding must be undertaken for each service if any review/evaluation is to be accurate and realistic.
- Accountability and transparency are important, but the measurement of legal assistance services should not come at the cost of diverting essential and scarce resources away from service to the most disadvantaged.
- If data is only quantitative and concerned with aggregated statistics that drive an efficiency agenda, they risk compromising programs of service delivery that work effectively and make inroads.
- Any evaluation for the LANPR must try to reconcile the noble aims and objectives of the NPA in the context of the actual realities of what legal aid services provide and can provide by way of realistic measurement and of things that are within a legal aid services' function and ability to control and within their resources to provide.
- The NPA requires a shift in operations of legal aid services that is more holistic and this differs from traditional legal service delivery. Some services have already embraced this approach or it has informed their approach for some

² See M Barendrecht, J Mulder, T Giesen & the Study Group Access to Justice, 'How to Measure the Price and Quality of Access to Justice', November 2006, 21. They examine the significant hurdles for measurement and conclude 'measuring access to justice is a challenge.'
<<http://www.tilburguniversity.nl/faculties/law/research/tisco/research/projects/access/papers/06-11.pdf>>; 'Overview of the United Nation's Development Programs's (UNDP) Approach to Measuring Capacity' Capacity Development Group, Bureau for Development Policy, United Nations Development Program, June 2010 and Dr P Downes, 'Measuring Outcomes in Relation to SCP Core Elements, NEWB, Green Street, Educational Disadvantage Centre, St Patricks College, UK, 13 January 2011.

³ 'Overview of the UNDP's Approach to Measuring Capacity' Capacity Development Group, Bureau for Development Policy, United Nations Development Program, June 2010

time. For others, it requires a difference in approach. For this reason, the NPA will need time to be embedded in practice and for the initial years of its implementation a focus should be on practices that are adopted and integrated that enable the key planks of the NPA to be achieved rather than expecting outcomes prematurely.

- Legal aid services collect significant data (some more than others) for a range of instrumentalities as many have to report to various levels of government and statutory authorities. Some including Legal Aid Commissions and ATSILS already report on cost efficiency and effectiveness e.g. Australian National Audit Office (ATSILS), Auditor General (LACs), Various Government Departments, Parliamentary Committees (ATSILS), Annual Reports. Community Legal Centres (CLCs) are already often evaluated by the Legal Aid Commissions which administer their funding. Rather than duplicate this information and waste scarce resources, Curran suggests that there is no need to re-measure these features under the LANPR and NPA this information as it already exists should be considered but not replicated. Also, Annual Reports already contain useful data⁴ especially on efficiency and 'cost efficiency'. Some, but not all Annual Reports also reveal case studies and impacts the service has which may be useful for any successful tender in examining outcome, efficiency and effectiveness.
- Other instrumentalities and agencies can also affect how legal assistance service can meet NPA aims and take the control to effect change out of the hands of the legal assistance sector.
- With surprising consistency, the evaluations studied in the course of this literature review noted that often despite very committed and relentless endeavours by legal assistance services to bring about better outcomes for their often poor, vulnerable or disadvantaged clients these could be significantly hampered because of limited resources, few staff, lack of additional support service access which these client need, uncertainty due to short term or irregular funding or overwhelming legal need
- The somewhat limited but cumbersome statistics kept by LACs, ATSILS and CLCs currently, reveal little about the contexts, challenges and rationales behind why and how the services are delivered.
- That any tender to be successful must meet the following three criteria, firstly, a fundamental understanding of the role, duties and obligations of a legal professional so that the questions/statements that form a part of the design are drafted with this in mind; secondly, an understanding of the nature of working with vulnerable and disadvantaged groups and thirdly, an understanding of legal aid service delivery.
- The NPA and the LANPR are critical as they have the potential through the LANPR to deepen the information currently kept. The successful tender for the LANPR can conduct additional work to study and reveal through qualitative methodologies materials that can inform better understanding of the nature and calibre of the actual work done and how it affects clients and community. The research notes these are the key ways to monitor quality/outcomes and results. This monitoring/measurement should be done in a way which does not require the service delivery agency to collate the data internally therefore increasing

⁴ For example see the Annual Report, Prisoners' Legal Service Queensland 2010 – 2011 and Annual Report, West Heidelberg Community Legal Service, 2009-2010, Annual Report of the Footscray Community Legal Service 2010-2011; Annual Report of the Redfern Community Legal Service 2010-2011.

their burden. It would involve the successful tender undertaking the research to collect the data in collaboration with the agencies. A participatory action research model is suggested.

- Studies that involve 'Client Satisfaction Surveys' are problematic if applied to the legal assistance sector.
- A framework for defining what is good practice CLE which explores different models and approaches needs to be developed, models examined and their effectiveness and impact should be undertaken or commissioned.
- What is needed is the examination of the process legal services engage in/undergone with client /community (e.g. a good client interview, holding authority to account, providing voice for clients, holistic responses) and their examination against quality assurance criteria which is developed and clearly articulated. This is what can lead to improvements in the quality of legal services and accordingly, good outcomes. If quality legal work is undertaken this is the most likely way of affecting better or 'positive' outcomes.
- It is suggested therefore that the LANPR process has an inbuilt expectation that the successful tender will be able to undertake much of the research themselves to overcome the gaps in data as well as being mindful of the challenges of keeping such data in a busy practice where the focus is and should be on service delivery.
- It is therefore suggested that methodologies which adopt the following processes in combination are likely to lead to the information desired by the TOR, the NPA and services themselves and yet which can also inform community and other parts of government including treasury of the value of the work to community cohesion that is undertaken by the legal assistance sector.

How to Measure Quality/outcome and effectiveness

- a. Strategic Plan and operation plans of the legal assistance service and Annual Reports be reviewed and understood as part of setting the scene for the evaluation.
- b. A 'Conversation' with agency staff and management being undertaken to improve understandings of the role and function and scope of the service and what is within its control and attributable to it.
- c. Focus Groups held with the support staff/practitioners providing the on-the ground service/program to identify and define the outcomes particular to the service under examination and what are the elements or surrogate indicators of such an outcome including what quality assurance measures are relevant to ensuring such quality and outcomes. This would include ascertaining what quality assurance mechanisms are in place and how these are adhered to. Some agencies may not have any 'good practice or quality assurance frameworks in place and so these may need to be development as part of the research process.
- d. Stake-holder interviews informed by 2 & 3 above.
- e. Interviews with clients and lawyers after the same client interview informed by 2 & 3 above.
- f. Survey/Questionnaire of client feedback about the service's treatment of them at interview and in the course of the matter but which are NOT based on or using the language of 'client satisfaction surveys' (for reasons set out in detail later in this literature review).

- g. An on-line survey on quality and approach in service for practitioners both private and public who deliver legal aid services. (This should not be a tool used for clients as on-line surveys can risk missing many of the target clients of legal aid and given difficulty with on-line surveys as discussed later in this literature review). See a model for such a survey in the Appendixes of Curran's LAACT Report.
 - h. Case Studies derived from the service providers or from clients about their experiences through the interview, survey and focus group tools discussed in 2,3,4,5,6, and 7 above.
- The starting point for any LANPR must be the determination of the definition of outcome for the specific service being examined. The research consistently state that to be effective measures/indicators need to be:
 - Relevant
 - Useful and measurable
 - Achievable
 - Practical to measure
 - Within the service or practitioner's control and influence.

Scope of this Literature Review

A literature review is a critical survey and assessment of the existing materials dealing with research, knowledge and understanding in a given field. In this case, the evaluations around legal assistance services and their 'successful outcomes', quality, efficiency and effectiveness will be considered as stated in the project brief dated 8 and 10 November 2011 and early discussions in late October 2011.

This literature review has been informed by Terms of Reference (TOR) dated 30 November 2011 which were provided by the Attorney General's Department to the author on 3 December 2011. These revised TOR (differing from an earlier version cited by the author in October 2011) state that the focus of the Review will be of Commonwealth areas only. Accordingly, the focus of this review will also be on Commonwealth areas. The literature review does however examine some good methodological approaches that pertain to evaluations of areas of State jurisdiction for example, the 'Review of the Children's Court Assistance Scheme' Matrix on Board for Legal Aid NSW.⁵

The author notes that this literature review will not be examining evaluations or methodological approaches that best measure 'cost efficiency' as identified in the Terms of Reference (TOR 1.3.1) as discussions and emails between the Department and the author confirm that the author is concerned that such assessment would require a familiarity and expertise in economics which the author does not have and as such it was ought not be within the remit of the project brief. This project will however examine 'efficiency'.

As well as examining the literature including the NPA, TOR, policy frameworks including the Attorney General's 'Strategic Framework on Access to Justice in the Federal Civil Justice System'⁶, the COAG Reform Agenda as to social inclusion and indigenous disadvantage, academic and evaluations undertaken by and of legal services both domestically and internationally.

The review will identify standout contributions, analyses and evaluate the most appropriate methodologies and approaches for a review of legal assistance services under the National Partnership Agreement (NPA), the TOR and the LANPR mindful of the limited resources of the service agencies which are subject of the proposed review by the Attorney General's Department.

This literature review will set up the theoretical framework and place the research in context. It aims to extend the work of others but to also avoid their mistakes.

It will:

- Examine what approaches were taken and conclusions reached in the various studies being considered, by whom and when.
- Will ascertain whether these approaches/conclusions are in agreement or in conflict with each other.
- Discuss and identify the main issues or controversies which surround the issue of evaluating legal assistance services.
- Identify significant gaps, patterns and links in previous research and possibilities.
- Identify the most important studies, concepts and methods in the field.

⁵ C England and P Porteous, Managements Support Services NSW, Matrix on Board, 'Review of Children's Court Assistance Scheme', Final Report, Legal Aid NSW, September 2011.

⁶ See <http://ag.gov.au/a2>

- Look at research design and methodology with a critical eye.
- Investigate the best approaches and any new approaches which emerge from the literature review and
- Draw conclusions around how one might best approach the evaluation of legal assistance services by identifying the useful, reliable and feasible studies given the contexts of legal aid services.

A letter to Community Legal Centres and Legal Aid Commissions was sent by the Attorney General's Department in mid December 2011 asking the services to provide any of their own evaluations along the lines of the above either in the immediate, past or upcoming by 23 December 2011. The author made comment on a draft letter to these services. Where this documentation was not forthcoming in the timeline for this literature review, the literature review could not cover such studies.

This literature review will be used to inform and guide the consultant from a tender (mid February 2012) on their methodology and approach and is due by 27 January 2012 having commenced work in the week of 12 December 2011.

Introduction and Background

It is hoped that this literature review will inform the public debate and help shape realistic accountabilities, policy development and most importantly, good and effective service delivery on behalf of clients of the legal aid service sector and the wider community.

Whilst accountability and transparency are important, the measurement of legal assistance services should not come at the cost of diverting essential and scarce resources away from service to the most disadvantaged. One service can have a number of funders each with their own accountability requirements such as Territory/State Governments and the Commonwealth Government. This literature review reveals that many legal aid services are already reporting on how they deliver legal aid services in terms of 'cost efficiency and effectiveness.' For example, the Legal Aid Commissions are audited by the state Auditor's General and Aboriginal and Torres Strait Islander Legal Services are already having facets of their work examined and measured by the Australian National Audit Office and the Department of Finance and Deregulation. The author strongly urges the Commonwealth Attorney General's Office to acknowledge these other measurement processes and not to duplicate these and impose significant burdens on service agencies but rather to incorporate and include the materials already gathered in these forums by the Attorney General's Department analysis. Then Service Agencies will then be better placed to better target their services to the disadvantaged and vulnerable people as required by the NPA rather than diverting further resources and duplicating existing measurement of services.

A Review and Analysis of the Literature

The National Partnership Agreement and Terms of Reference (30/11/11) (TOR)

In many ways, the NPA requires a shift in operations of legal aid services that is more holistic and this differs from traditional legal service delivery. Some services have already embraced this approach or it has informed their approach for some time. For others, it requires a difference in approach. For this reason, the NPA will need time to be embedded in practice and for the initial years of its implementation a focus should be on practices that are adopted and integrated that enable the key planks of the NPA to be achieved rather than expecting outcomes prematurely. These practices should explore approaches which include

the NPA's stated aims of social inclusion, joined up service, holistic approaches to problem solving, client centred approaches.

Any measurements and reviews need to take into consideration the fact that the NPA suggests a new mode of operation for many legal services that will take time to develop if they are going to be realistic, relevant and fair. All of these requirements need to be actioned in a way that acknowledges the importance of the quality of legal services. 'Quality legal services' is not specifically mentioned in the NPA but has been included as a consideration for the review in this project brief and in Clause 1.3.4 of the TOR for the Review.

In this researcher's experience, if there is a good quality of service delivery, this in and of itself, will lead to effective, efficient and relevant service delivery. But any evaluation or analysis of legal assistance services must critically be mindful of the setting and of the role and obligations of lawyers both under legislation, rules of conduct and their legal ethic and responsibilities that flow from these as detailed later in this literature review with a caution against 'client satisfaction' surveys that can distort the role and picture of the function of legal services.

The NPA expires on 30 June 2014 and requires legal assistance services to:

- Increase their focus on early intervention and prevention services
- Encourage greater collaboration among legal and other service providers
- Finding better ways to help people resolve their legal problems
- Address social exclusion including indigenous disadvantage
- Adopt a more holistic approach to resolving people's legal problems
- Improve targeting of services to disadvantaged communities and the wider community
- Support the principles of the Australian Government's strategic framework for access to justice.

This project aims to find the way for legal aid services to measure successful outcomes, quality, efficiency and effectiveness which are requirements under the new LANPR. However, this literature review is also designed to identify possible ways of ensuring quality service and continuing improvement.

In a recent research report by Curran for Legal Aid ACT into the quality of their legal services and outcome measurement entitled, "'I can now see there's light at the end of the tunnel', Legal Aid ACT: Demonstrating and Ensuring Quality Service to Clients" due for release in February 2012⁷, service providers stipulated that because the disadvantaged and vulnerable are the people legal aid is targeted to assist and due to the challenges this present - quality service is imperative.

Interestingly, not only are legal assistance services being asked to measure and report on 'outcomes' but other service delivery and humanitarian agencies are increasingly being

⁷ L Curran, "'I can now see there's light at the end of the tunnel', Legal Aid ACT: Demonstrating and Ensuring Quality Service to Clients", Legal Aid ACT, February 2012.

asked to report and measure results based outcomes world-wide. Surprisingly, very little outcome/results based measurement has actually been undertaken internationally or domestically although there is some literature on how one might go about it which is discussed in this literature review.

The NPA states its 'Objective' in Clause 15 of the Agreement as to ensure 'A national system of legal assistance that is integrated, efficient and cost effective, and focussed on providing services for the disadvantaged Australians in accordance with access to justice principles of accessibility, appropriateness, equity, efficiency and effectiveness.'

Clause 16 identifies what the Commonwealth considers to be the 'successful outcomes' of 'legal aid commissions providing efficient and cost effective legal aid services for disadvantaged Australians in accordance with Commonwealth legal aid service priorities:

- a. Earlier resolution of legal problems for disadvantaged Australians that, when appropriate, avoids the need for litigation.
- b. More appropriate targeting of legal assistance services to people who experience, or are at risk of experiencing, social exclusion.
- c. Increased collaboration and cooperation between legal assistance providers themselves with other service providers to ensure clients receive 'joined-up' services provision to address legal and other problems, and
- d. Strategic national responses to critical challenges and pressures affecting the legal assistance sector.

In answering the questions posited in the TOR, Stage 4 discusses the need to 'report on the adequacy of the NPA...' whilst Clause 1.1.3 requires evaluations with a view to incorporate robust findings. Pre-empting Stage 4, some preliminary observations about the NPA, as it is currently drafted, there are some aspects which cause difficulty in any proposed review to evaluate legal assistance services. These have been identified by this author as she has encountered difficulties due to the phraseology of the NPA in identifying robust methodologies to gain the necessary findings for this Literature Review. It is hoped these observations by the author may be of assistance in guiding the Commonwealth Attorney General's Department in its review and the consultants successful in the tendering process.

Firstly, the difficulty with the items described as 'outcomes' in the NPA is that many of the items described as 'outcomes' are actually 'indicators' rather than 'outcomes' of something that could be measured more broadly, namely, the positive and actual results that came about as a result of earlier resolution of legal problems, more appropriate targeting and increased collaboration and cooperation that led to outcomes for clients/community or the legal system. The recent research report by Curran⁸ identified the outcomes sought to be achieved by first defining what the 'outcome' is before working out how it is achieved so that it can be measured, this produced more precise and exacting indicators that, if they are present, are a surrogate indicator that the outcomes as defined and relevant to legal aid services are being achieved.

The NPA identifies a number of ways/outputs by which the objectives and outcomes of the Agreement will be achieved:

⁸ L Curran, "I can now see there's light at the end of the tunnel", Legal Aid ACT: Demonstrating and Ensuring Quality Service to Clients", Legal Aid ACT, February 2012.

- legal assistance providers increasing the delivery of preventative, early intervention and dispute resolution services.
- comprehensive legal information services and seamless referral for preventative and early intervention legal assistance services within each State and Territory
- delivery by State and Territory legal aid commissions of efficient and cost effective legal aid services provided in accordance with Schedules A and B, consistent with the access to justice principles of accessibility, appropriateness, equity, efficiency and effectiveness, including:
 - i. preventative legal services such as community legal education, legal information and referral
 - ii. early intervention legal services such as minor assistance and advocacy and other advocacy other than that provided by a legal aid grant
 - iii. dispute resolution services, duty lawyer services, litigation services and post resolution support services.

None of these 'outputs' which are supposed to guide how the successful outcomes are to be achieved, actually tell us about the quality of the service provision or how effective they were in supporting the clients. They are also vague in terms of the guidance they provide as to how to measure for the suggested items. For example, what constitutes a 'seamless referral' and how do you know it has occurred and how do you measure it?

Another example is output a) which involves an 'increase' in services rather than any requirement that good practice occurs. It reveals little about the quality or the effectiveness of this increase in early intervention or dispute settlement services that are to be reviewed. A proliferation of a service does not mean it works or is having its intended outcome or result. If the services exist without good practice models in place they are likely to be ineffective, costly and inefficient. Once they increase the measuring and evaluation becomes more difficult and roll back of a program becomes more difficult. It would be better in this author's view to better refine that 'outputs' or indicators that lead to the result that is intended rather than assuming that a mere 'increase' is the end to be achieved.

The NPA outputs could lead to the identification of the number of activities being done, but not actually represent the quality, the effect or likely positive result of the intervention by the service. The question therefore remains, as to whether the suggested outputs are an accurate and realistic indicator of whether the objectives of the NPA Commonwealth and Legal Aid Commissions are in fact being achieved? It is the researcher's view that they are not and that the task could be better crafted so as to reveal to - Legal Aid, their Boards, the Commonwealth, the staff of the service and the community - information that is richer and far more revealing. This research has tried to overcome this disconnect to suggest to any successful tender of the LANPR outputs/indicators that are in fact connected to the desired result or outcome.

The NPA states (Clause 18-20) that performance will be evaluated against the broad sector reform which promotes client- centred focus and includes comprehensive access to information, seamless referral, improved coordination and targeting of services between legal assistance providing and linking legal aid services with other services to ensure 'joined up service delivery. In the researchers view some of the elements identified here also pertain to the quality of services provided. These become relevant when examining issues

around the quality of the legal service provision. Arguably, this view makes the TOR consistent with the NPA although the NPA as discussed earlier is not explicit in its mention of 'quality'. Clause 19 states that the evaluation of the performance of legal aid commissions will focus on how service providers 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.

Whilst the objectives and outcomes of early intervention, prevention and joined up legal and non-legal services, targeting to disadvantaged people and avoidance of social exclusion are all important aims, the NPA gives the services little guidance on how these are to be measured to actually reflect the outcome itself. The objectives and 'outcomes' which as stated are more likely to be 'indicators' of an outcome still which thus remains undefined, are not linked to actual measurement that directly reflect those outcomes and remain vague in terms of guidance to the legal aid services sector.

The suggested indicators and benchmarks in the Table under Clause 20 for legal aid services are number focussed and bear little correlation or connection to the actual outcomes to be measured. The literature discussed in this literature review highlights the significant danger in setting indicators/benchmarks that are unrelated to the outcome sought to be achieved which can in the end have little relevance and make the measurement meaningless or worse, can even contradict or jeopardise the outcome sought if not specific enough to the actual outcome sought.

Clause 20 highlights the dangers of indicators and performance benchmarks being set that are ill defined, not directly related to the practices needed to achieve and outcome. The example of a measure or indicator for a reduction in recidivism contained in the performance indication of the current NPA that 10% of clients of legal aid do not return for legal advice on the same matter could cut across the NPA's attempts to encourage people to get advice earlier and prevent escalation. This is a crude measurement and could actually be counter productive. Also once a client leaves the legal aid service other factors outside the service's control can intervene that cause a client to re-offend.

As indicated in the discussion of international literature and research below, social researchers have been trying to ascertain how to measure outcomes as a results based measurement of impacts on people's lives in a way that goes merely beyond numerical measurements which are very limited in what they tell us about the nature and effectiveness of the service being delivered. This is no easy task and is probably why the drafters of the NPA struggled to identify and define outcomes and the performance benchmarks associated with them.

The NPA and the TOR refer to the 'more appropriate targeting of legal assistance services to people who experience, or are at risk of experiencing, social exclusion' and 'the needs of Australia's disadvantaged and vulnerable people.' 'Disadvantage' in legal aid services can be described as involving or including the presence of some or one of these factors:

- Drug addiction
- Mental illness
- Language difficulty
- Literacy
- Intellectual Disability
- Indigenous (ATSI)
- Refugee/ Asylum seeker

Newly arrived person
Poor
Inter-generational disadvantage including poor education, low income, poor health,
no-one with a job in immediate family, lack of connectedness
Chronic disease
Ill Health
Fragmented or non-existent family support
Age young – old
Gender
Sexuality
HIV/Hep/Aids
Institutionalisation from a young age
Repeated prison stints in adult- youth life cycle
Unwanted/unloved
Conflict of cultures
Domestic violence
Child abuser
Child abuse victim
Physical disability – mild to severe

In some cases the clients of legal aid services may have multiples of these issues. The complex nature of legal aid service clients is recognised in international research.⁹

Identifying Methodological Approaches to examine the ‘appropriate targeting of legal assistance services to people who experience ...social exclusion’

The United Nations Development Program (UNDP)¹⁰ has developed a series of indicators that could be a useful starting point for any successful tender for the LANPR suggesting the following:

1. The defining of capacity development strategies.
2. Defining baselines for each indicator.
3. Defining targets for each indicator.

⁹ A Buck, N Balmer and P Pleasence, ‘Social Exclusion and Civil Law: Experience of Civil Justice Problems among Vulnerable Groups’ (June 2005) 39(3) *Journal of Social Policy and Administration* 302, 318-320; R Moorhead, M Sefton and G F Douglas, ‘The Advice Needs of Lone-parents’ (2004) 34 *Family Law* 667 and A Buck, P Pleasence, N Balmer, A O’Grady and H Genn, ‘Lone-parents and Civil Law: An Experience of Problems and Advice-seeking Behaviour’ (2004) 38(3) *Journal of Social Policy and Administration* 253-269; S Ellison, L Schetzer, J Mullins and K Wang, *The Legal Needs of Older People*, New South Wales Law and Justice Foundation, New South Wales (2004) (The New South Wales Law and Justice Foundation <http://www.lawfoundation.net.au/report/older>); C Cournarelous, Z Wei and A Zhou, *Justice Made to Measure: New South Wales Legal Needs Survey in Disadvantaged Areas*, New South Wales Law and Justice Foundation <<http://www.lawfoundation.net.au/report/survey2006>>; New South Wales Law and Justice Foundation, ‘On the Edge of Justice: the legal needs of people with a mental illness in New South Wales (2006); ‘No Home, No Justice? The legal needs of homeless people in New South Wales (2005) and ‘The Legal Needs of Older People in New South Wales (2004); ‘Access to Justice and Legal Needs, Stage 1, Public Consultations (2003) and Qualitative Legal needs Survey: Bega Valley (Pilot) (2003). See <<https://www.lawfoundation.net.au/publications>>.

¹⁰ ‘Capacity Assessment Methodology User’s Guide’, Bureau for Development Policy, Capacity Development Group, United Nations Development Program, New York, January 2008.

Within this User's Guide they provide a table on 'Inclusion, Participation, Equity and Empowerment' enabling environments and many of the items on page 47 could be utilised in any examination of legal assistance services' community development and community legal education evaluations.

The 'theory of change' which underpins some of the move towards results based or outcome evaluations gaining currency amongst service and government alike is in essence about examining what sort of a difference a service makes. The theory is based around post-positivist approaches which believe that science and knowledge provide the impetus for change and progress.¹¹ By analysing situations, the theory believes, we can understand it plan for it and act on it and then evaluate these based on an original plan or strategic document. It is a 'top down' problem solving approach that involves determining what tools and techniques are necessary to get desired outcomes and assumes that agencies can control the change process. This approach has been discredited in recent studies discussed below.

There needs to be a note of caution. Recent work looking at working with the most socially excluded and the disadvantaged has argued strongly that managerial approaches including setting targets are exceedingly dangerous and can actually set service agencies up to fail by being disconnected from the reality of what actually has to be done or what is realistic to be done in the context of the available resources and staffing.¹²

Mowles, Stacey and Griffin¹³ warn funders and agencies trying to report and comply with measurement of outcomes and results of the dangers. They note that managerial methods have been adopted often uncritically from the private sector and are now ubiquitous across a wide range of organisations and in expectations from funding bodies. Mowles, Stacey and Griffin observe that when applied to processes of social interaction like human development (or services)¹⁴ these methods have severe shortcomings. The methods overlook or 'fail to understand unanticipated contextual and contingent circumstances unforeseen in the more abstract and de-contextualised planning processes to be such 'noise' which needs to be managed away.¹⁵ They note that staff tends to be rewarded by managers on the basis of being able to deliver since they are bound by the public promises of transformation their organisations have agreed they will make and under contractual obligations with funders.

¹¹ Evaluation Framework, Program Effectiveness Team, World Vision Australia, February 2008, 8.

¹² For interesting discussion from the United Kingdom about barriers to service delivery see the following 'Time Well Spent' - articulating the value of the local, one-to-one advice relationship in achieving both better outcomes and value for money; 'Nottingham Systems Thinking Pilot'. <<http://www.lawcentres.org.uk/publications/category/Research/>>. The latter document notes over 40 per cent of the capacity of advice agencies is spent dealing with work generated by the failure of external organisations.

¹³ C Mowles, R Stacey and D Griffin, 'What Contribution Can Insights From the Complexity Sciences Make to the Theory and Practice of Development Management', *Journal of International Development*, Vol, 20 804-820 Copyright 2008, John Wiley & Sons Ltd.

¹⁴ Brackets inserted by the author.

¹⁵ C Mowles, R Stacey and D Griffin, 'What Contribution Can Insights From the Complexity Sciences Make to the Theory and Practice of Development Management', *Journal of International Development*, Vol, 20 804-820 Copyright 2008, John Wiley & Sons Ltd, 808.

Mowles, Stacey and Griffin observe that such approaches do not accept or deal with the realities of practice and should be appreciative of the unexpected, more tolerant of ambiguity, paradox and acknowledge the power differentials and imbalances at play. They argue for new tools of genuine dialogue and holistic analysis which may be uncomfortable because it is. They note that attention to the inherently paradoxical and transformative nature of everyday experience is needed.

This author's many years of research into access to justice, legal need and advice seeking behaviours and the research examined for this literature review has revealed that the work of legal assistance services is subject to significant 'unanticipated contextual and contingent circumstances unforeseen' and 'of the unexpected... of ambiguity, paradox and.. the power differentials and imbalances at play.'

Any research as part of the LANPR must attempt to address the concerns raised by Mowles, Stacey and Griffin and ensure that their methodology reflects the environment and reality of the contexts within which many legal aid services have to operate. This is not straightforward and will be complex and complicated but, so too, are the situations of the disadvantaged and the vulnerable that the NPA sets out to address.

A number of approaches to evaluations have been identified by this author. 'Experimental Design' involves the use of questionnaires and structured interviews to explore relationships between variables. It does this by comparing experimental groups with control groups and or random selection of participants in both the control group or in the experimental group. This approach is not suited to legal assistance evaluations which involve an analysis of so much complexity and diversity. In fact one study examined in the United States failed as it could not find a 'control group'. Accordingly, it is not an approach suggested for legal assistance services who work within this context. If what is being examined is quality, outcome, and effectiveness such research will not deepen understandings around what brings about and assists in positive developments.

Other identified approaches to evaluation are 'The Most Significant Change Technique' which is a participatory form of evaluation that uses a story approach to explore the impact of a service or program. This challenges the conventional evaluation focus so commonly used which focus on predefined indicators. It is a process that ensures that the many stakeholder, including client, community, service providers, government, and other players are involved in deciding on what kind of impact and change is important and will record and reflect on these. Case studies are often used in this approach.

'Survey Research' involves a use of questionnaires and structured interviews to collect quantitative data at a single point in time which is examined to identify patterns and relationships.

The 'Case Design Approach' involves a range of qualitative and quantitative evaluation methods including interviews, questionnaires, participant observation (difficult in legal assistance research due to client professional privilege issues) and document analysis. It focuses on a very in-depth analysis of a case or service program and examines these to develop in depth understandings rather than causal explanations. Such approaches reveal particularity and diversity and are good at enabling greater sense to be made of a situation that might not be evident with a more superficial study.

'Participatory action research' has been discussed earlier. It involves the evaluator working with the client/service/community to identify research questions, to collect the data and

analyse it. This approach sits within a critical theory which is designed to contribute to learnings and empower people in the process and into the future by learning about their situation and working with the service/community/client to work out ways of making improvements. It uses 'quality criteria' which involves reliability, measurement validity, credibility, transferability, dependability, confirmability, requires participation is authentic and ensures that the cause and effect relationship holds.¹⁶

A blend of these last four approaches is favoured by this author and these were utilised in the 2012 study for LAACT discussed earlier.

In looking at social exclusion it is important to note that some clients cannot read or write; cannot speak the language or read and write in their own language; some clients may not be amenable to responding to written requests for information such as people with a mental illness; live in remote and isolated parts of the country or are homeless or have multiples of these issues. Given large proportions of legal assistance clients fall into the categories of disadvantage the use of surveys and written questionnaires may mean these client's miss out on giving feedback altogether. Given they are the target of legal aid service delivery and the delivery of quality legal services it would be unfortunate and miss valuable insights from these client's perspectives if methodologies did not include them. Focus groups, interviews or forums appropriate for the relevant client groups to give feedback might be appropriate in these cases. Such difficulties needed to be factored into any evaluation design.

The Shearer Report commissioned by the Commonwealth Attorney General's Department and reported on in late 2010 stressed the importance of data being provided with information about the quality of services and the quality of outcomes. This author agrees with this element of Shearer's report and she is pleased that this literature review has as its focus the quality of legal services and how these might be measured even though 'quality' was not referred to specifically in the NPA.

This author however disagrees with the need to collect data about 'client satisfaction' for reasons which will be outlined in detail in this literature review. The key danger with the Shearer Report and the Attorney General's Department's response to this in November 2010, is that it could push the burden of further reporting back onto legal service agencies to do more data collection thus diverting their resources and energies which are already extremely stretched away from the business of direct service delivery.

Given many of the agencies being reviewed have minimal staff and there are significant difficulties with staff retention this may be counterproductive of the actual aims of the NPA and the effecting of the COAG Reform agenda. Whilst the government's response states it does not want to 'create an unnecessary burden' what it details in the response to the Shearer report is concerning. As a former Director of a community legal centre (CLC), this author is well aware of the impact on the ground of a service having significant compliance reporting requirements that often duplicate materials gathered elsewhere and are time intensive and often not utilised effectively or refined enough to be useable in understanding or reflecting the actual work done.

¹⁶ Evaluation Framework, Program Effectiveness Team, World Vision Australia, February 2008, 10 and 11-13.

Measuring 'Successful Outcomes'

The World Bank 'Handbook' recommends a participatory approach involving key stakeholders.¹⁷ Why? Because setting goals in isolation from what is being done and what has to be done and by those who do it might lead to a 'lack of ownership' on the part of the main internal and external stakeholders. The World Bank Handbook recommends that this participatory and consultative process must be done in all stages in the identification of goals, objective, what outcomes look like and the steps necessary to get there i.e. building the indicator system. This trend towards 'outcomes' measurement has been met with some trepidation in Europe.¹⁸ The tension between a 'top down' and 'bottom up' approaches has been identified in the setting of targets and indicators to balance the need for a national picture but the need to draw meaningful conclusions from the measurement.

David Bunham¹⁹ has also written about the vexed issues of measuring 'outcomes'. He warns that defining the outcome is critical before it can be measured but that this is not an easy task and notes it has not been tackled as it is so difficult. He states that outcomes can be influenced by factors external to a service, can impose significant burdens on service providers to gather data that can distract from the service delivery itself and once obtained such data can be difficult to interpret. He notes that the funder, service and client may all have different views on what constitutes an outcome. He stresses that views of a service user are critical in any discussion.

In determining an outcome Dawn Smart states an 'outcome' needs to be:²⁰

- Relevant
- Useful and measurable
- Achievable
- Practical to measure
- Within your control to influence

Paul Bullen²¹ observes the following need to be considered as a starting point:

- What are the outcomes we are trying to achieve (and any unintended outcomes)
- The extent to which we are achieving these outcomes (including showing a cause and effect link between the services provided and the outcomes achieved).

Bullen notes that clients will have a more accurate and reliable picture of what has been achieved by a particular service. This is likely to allow them to make better judgments about

¹⁷ J. Z Kusek & R C Rist, 'A Handbook for Development Practitioners: 10 Steps to a Results Based Monitoring and Evaluation System', The International Bank for Reconstruction and Development, The World Bank, 2004, 58.

¹⁸ 'Key Messages From the Debate so far', The Four Countries Adult Care Information Network (ACIN) United Kingdom, November 2006.

¹⁹ D Bunham, 'Measuring Success: How can we Develop an Evidence base for Measuring Outcomes' Lancashire County Council and Community Service, 14 August 2011.

²⁰ D Smart, 'Ask the Expert' USA National Resource Centre, 2004.

²¹ Paul Bullen, Management Alternatives for Human Services
<http://www.mapl.com.au/evaluation/eval4.htm>

the value of the service and also make better choices about services. Practitioners will be better able to monitor and reflect on their work because they will have measures of what has been achieved. Services that want to continuously improve the quality of their services will have information about the effectiveness of the services provided. This information can be used to monitor the effects of improvements to service processes.

Bullen also warns:

1. Where it is not possible to prove cause and effect relationships **do not use outcome measure to judge your performance**. Rather **use outcome measures to help you ask good questions**.
2. Don't just focus on the outcomes to be achieved, have processes in place to **identify and document unintended outcomes**.

The useful World Bank Handbook suggests that a careful institutional assessment of the service/agency being examined should occur before any measurement is undertaken to ensure that there is a real capacity of the users to actually create, utilise and sustain the system. The World Bank Handbook endorses an approach which is responsive to the needs of its users (which in this case includes the staff delivering the services and the clients who use the service), determines the resources available to build and sustain the system, and assess the capacities of those who both use and produce the information.

The World Bank Handbook warns against approaches that try to set indicators in a vacuum from what the desired outcomes might be because it is the outcome not the indicators that will produce the best benefits. This is why it is not advisable to try to decide to use measures such as time costing or activity reporting as a measure unless those approaches are exact measures for demonstrating what the organisations is seeking to achieve and whether it has achieved it. They may measure time and the number of actions taken but do they demonstrate that such time and activity was of a kind that lead to a quality outcome that aligns with the strategic aims and objectives of the organisation.

The World Bank Handbook suggests an approach which first examines what it is that you want the strategic priority, the desired outcome and then works out the steps that are likely to get you there, that is, the indicators as a more useful approach. Time recording and activity reporting may be important to record a breakdown of tasks but will not be of much value unless they are realistic measures of the reason/purpose for the data.²²

One Harvard Business School article by Ebrahim and Rangan states such measures of outcome/ results need to align with the actual goals of the organisation and be reasonably within the control of the organisation to influence. They note that 'organizational efforts beyond this scope are a misallocation of scarce resources'.²³ The article warns that a key challenge in such measurement lies in the 'thorny issue of causality: impacts are likely to be affected by multiple factors and multiple actors'²⁴ They state therefore that ability to

²² J. Z Kusek & R C Rist, 'A Handbook for Development Practitioners 10 Steps to a Results Based Monitoring and Evaluation System', The International Bank for Reconstruction and Development, The World Bank, 2004, 57.

²³ A Ebrahim and V K Rangan, 'The Limits of Non Profit Impact: A Contingency Framework for Measuring Social Performance', Harvard Business School Working Paper, May 2010, 4.

²⁴ A Ebrahim and V K Rangan, 'The Limits of Non Profit Impact: A Contingency Framework for Measuring Social Performance', Harvard Business School Working Paper, May 2010, 4 at 8.

attribute long term results to interventions is severely limited as so many other factors can be involved.

Ebrahim and Rangan²⁵ also observe that outcomes that are harder to measure in areas such as policy advocacy and civil rights both areas that community legal centres, ATSILS and legal aid commissions have as their core work. They note that making a difference in these spheres can take a long time, and in some cases, decades. They note that having influence' is a vague concept and that often a coalition of actors is involved. An attempt was made in 2007 to measure the impact of law reform activities of CLCs but this study demonstrated many of the difficulties in measuring policy and law reform impact. Despite this the study was able to identify some significant reforms which CLCs had affected over a 20 year period.²⁶

The need for the documentation of work done such as submissions, responses made, legislation resulting and administrative changes brought about also often involve other players. With the limited archiving space (most legal services needed to keep client advice and case files for seven years) and resources to record law reform activities over the time that it often takes for reform to occur presents huge issues as to administrative burdens for agencies such as CLCs. This was raised in recommendations to the report by Curran. CLSIS data does not currently adequately collect or ask for such data. Good law reform often involves galvanising and convincing other players and takes time, often over 20 years to achieve change.²⁷ To expect legal assistance services themselves to measure such work may be too onerous given current funding levels and the fact that some of their policy work is not funded by the Commonwealth, for example, the Aboriginal and Family Violence Prevention Legal Service Victoria (AFVPSV). With the expectations around actually delivering the services and the significant time in the law reform and policy takes to change as identified by Ebrahim and Rangan.

Perhaps the solution is to also address issues of space, storage and archiving so that the history of campaigns and law reform activity can be filed and to retain an external researcher who could then do a document analysis and provide an overview over ten years of some specific campaign and law reform work of legal assistance on developments and impacts of their work and collaboration on the issue over time. When Curran conducted her research in 2007 the biggest issue was that most legal centres had thrown out many of their campaign files away due to a lack of space and requirements under the Legal Profession Act 2004 to retain client files. The peak body for CLCs the Federation of Community Legal Centres (FCLC) had retained some materials but it relied on centres providing these to them regularly which had not occurred over the two decade period under examination and the FCLC had also had to cull material that would have been relevant due to its own space issues. This presents further challenges for rural remote and outreach services with minimal office space but who may do or contribute to important policy work.

Goldberg and Predeoux²⁸ have actually completed a study looking at outcomes and seeking to measure these. This becomes relevant as it is one of the few attempts internationally in

²⁵ A Ebrahim and V K Rangan, 'The Limits of Non Profit Impact: A Contingency Framework for Measuring Social Performance', Harvard Business School Working Paper, May 2010, 4 pp 9- 32.

²⁶ L Curran, 'CLCs Lead on Law Reform, Law Institute Journal, Melbourne, April 2008.

²⁷ L Curran, Making the Legal System More Responsive to Community: A Report on «SCONTITLE», La Trobe University, May 2007

²⁸ J Goldberg and S Predeoux, 'Maryland Legal Aid Outcomes Survey – Measuring the Impact of Legal Aid's Services for Older Adults', Maryland Legal Aid, July 2009

the legal aid services field. Care must be taken though in taking research from a jurisdiction like the United States of America which is so different to Australia particularly in terms of the history, funding and context of legal aid services and extrapolating from such research can be dangerous. Their model of legal aid services is quite different following the legal service reforms by President Reagan in the 1990s which limited funding and proscribed and limited the nature of services that would be provided. It also lacks a similar 'mixed model' of service delivery akin to the one at Legal Aid ACT, Victoria Legal Aid and Legal Aid NSW which means the blend of salaried and private lawyers who share legal aid work. Their CLCs suffered greatly from the 1990 reforms with many folding and many of the services to the poor and disadvantaged are run through law school clinical legal education programs rather than government funded programs as in Australia.

Nonetheless, a solid attempt was made in Goldberg and Predeoux's research to identify outcomes and to measure them. Their research highlights how difficult it is to determine outcomes and measures in legal aid services. Many of the outcomes identified are useful. However some of the outcomes they used have the problems of attribution and are hence inexact and risky. As such they can set a service up to fail if the delivery is not within the agencies control but relies on other external factors outside the agencies control or sphere of influence. For example, one noble but overstated outcome was whether as a result of legal aid services 'clients of legal aid services have an increase in security in achieving and protecting their basic needs and human rights including food, shelter, health care, safety and family relationships'.

Outcomes which are utilised by Goldberg and Predeoux and are utilised in this research included:

- whether clients gained knowledge to solve problems
- whether clients obtained a legal resolution
- whether clients obtained access to the legal system or an intended benefit of the law
- whether clients had their voice heard in the legal system.

Case studies of these outcomes were also collected. These were based on lawyer feedback.

The results based research examined consistently reiterates the dangers of outcomes being decided upon that are unconnected and divorced from the nature of the actual work and functions of the service that is being measured.

In this case therefore, any research model/evaluation undertaken should first fully investigate the nature of the type of legal aid service in all of its complexity and diversity is the critical first step before one can effectively, accurately and efficiently measure its impact, results or outcomes.

The intent and rationale behind each part of a service can be so different and the outcomes sought vary from section to section (given the rationale and different policy settings); the nature of the work is difficult, technical and complex. This means that for any outcome to be realistic and for any measurement to be reasonably linked to the outcome sought, then the full appreciation of the nature of the services provided becomes critical/essential before any imposition of a definition of outcome or its measurement can be imposed. This no doubt equally applies to other providers of human services who are being asked to measure

outcomes and quality and is also advocated by the World Bank in terms of measurement in the development sphere.

Although much of the international material on outcomes and or results based measurement is still in its infancy some useful web sites which have started working on how to approach outcomes/results based reporting and to start finding indicators. These sites are footnoted below.²⁹

The Legal Services Board of Victoria also has a useful guide to community service evaluations³⁰ as does Clare Keating of 'Effective Change'. These do not however specifically pertain to outcome, quality, effectiveness and efficiency measurements relevant to the LANPR but may assist a successful tender in the process of undertaking evaluations.

The Productivity Commission's 'Measurement Framework' was also considered in this literature review. The Productivity Commission also struggles to give concrete suggestions as to how to conduct such 'outcome' or 'impact' research. Some of its key suggestions are themselves vague and offer no guidance on how a outcome based measurement would occur, for example 'exerting influence, connecting community and expanding networks' (for example you might expand the network but is it actually having an impact?), 'enhancing community endowment in skills and knowledge assets' (again, no guidance on how to measure this although a noble suggestion.) The Productivity Commission rightly observes that engagements which facilitate the connection of community members and networks be measured.³¹ This literature review agrees with the Productivity Commission's recommendation that any evaluation include interviews with stakeholders in evaluating/measuring performance. This is therefore included in the proposed methodologies that and a successful tender ought to undertake these as one of the multiple approaches to measurement.

Ebrahim and Rangan³² discuss the need to gather data that is meaningful and has purpose otherwise it becomes a time and resource intensive but useless exercise. They also warn

²⁹ Howard Family Research Project Evaluations <http://www.hfrp.org/publications_resources>. This work mainly looks at school based and some family communications issues and is not so relevant to legal assistance services. There is a word document on the site which explores advocacy evaluations that may be of some use. Also see <<http://www.evaluationinnovation.org>> It has some articles which may be relevant around advocacy evaluation which may be worth examination. The Julia Hoffman Composite Model Tools also may be relevant in relation to planning for continuous progress monitoring but again caution as this could be very burdensome on the legal aid sector for reasons detailed below in this literature review section on policy and law reform evaluation, <<http://www.aspeninstitute.org/policy-work/apep>>. There is an advocacy progress planner tool and a useful document on basic background to evaluation but note that this is within a USA context, see <<http://www.fip.continuousprogress.org/node/57>>. There is also some international work on indigenous legal need, see <<http://www.jcu.edu.au/ilnp>>. See also the national evaluation of the Legal Assistance Institute for Law and Justice with a caution that this is a United States jurisdiction in Alexandria, Virginia <<http://www.wilj.org>>. It is noted that Libby Maynard from the CLCs sector was embarking on a study tour looking at evaluations of advocacy at the time that this literature review was being finalised. She may be worth contacting to discuss her findings.

³⁰ See <http://www.lsb.vic.gov.au/documents/LSB_Evaluation_resource>.

³¹ Contribution of the Not-for-profit sector, Ch 3 'A Measurement Framework' Productivity Commission, 11 February 2010, 41, <http://www.pc.gov.au/__data/assets/pdf_file/0010/94555/07-chapter3.pdf>

³² A Ebrahim and V K Rangan, 'The Limits of Non Profit Impact: A Contingency Framework for Measuring Social Performance', Harvard Business School Working Paper, May 2010, 1- 35

that any attempt to measure must be aligned with an agencies strategy and mission and the systems and measurements which support such alignment. They warn that the problems (discussed earlier in this literature review) with causal logistics and strategy make socially driven organisations fundamentally different to a profit driven ones.³³ These can be easier to measure as a result of savings and profits where social outcomes can be difficult to gauge especially with limited resources and the limits to the ability to measure outcomes. They observe that many outcomes can often only occur over a longer time than most accountability measures are concerned with. This is consistent with the views of Smith and Patel outlined earlier in this literature review.

The researcher is also wary of 'Performance Monitoring Matrix' suggested in the ARTD Report.³⁴ Some of the suggested indicators of success and performance indicators for measurement are beyond the scope of what a legal service can realistically be expected to achieve. For example, % of matters by impact level (matter complexity) in family law, family law violence – again what is considered to be the 'impact' is undefined and how will it be measured/evaluated still remains vague. The researcher is concerned of the need for the measures to be:

- Relevant
- Useful and measurable
- Achievable
- Practical to measure
- Within the service or practitioner's control to influence

Bullen warns, where it is not possible to prove cause and effect relationships do not use outcome measure to judge your performance.³⁵ Rather he suggests should not just focus on the outcomes to be achieved, but should set up and have processes in place to identify the elements for the outcome to be achieved and also document unintended outcomes.

Smith and Patel state that any evaluation report must be read in conjunction with the other client focussed studies, which together provide a more comprehensive picture of what services have delivered for clients. One of the performance standards for Community Legal Advice Centres in the United Kingdom is that the outcomes of cases achieve 'substantive benefit' for the client. Whether a client has received a substantive benefit is based on the outcome reported for the client.³⁶

In determining an organisation with a 'mature, functioning results based monitoring and evaluation system' (often referred to as an M&E system) the World Bank identifies the following need to be present:

1. A prepared workforce
2. A secure workforce
3. Quality workplaces

³³ A Ebrahim and V K Rangan, 'The Limits of Non Profit Impact: A Contingency Framework for Measuring Social Performance,' Harvard Business School Working Paper, May 2010, 35

³⁴ ARTD Consultants, 'Developing a Performance Monitoring Framework for Community Legal Centres', Final Report October, 2008.

³⁵ Paul Bullen, Management Alternatives for Human Services
<http://www.mapl.com.au/evaluation/eval4.htm>

³⁶ M Smith and A Patel, 'Using Monitoring Data: Examining Community Legal Advice Centres Delivery', Legal Services Commission, London, June 2010, 14.

The World Bank discusses 'tunnel vision' as an obstacle to good M&E systems. They state that data results should shed light on areas previously unknown and not fully understood. In the researcher's view often this element can frighten government but if improvements are to be made and real outcomes achieved then an ability to face up to and shed light on areas previously unknown is essential.³⁷

The Australian Research Alliance for Children (ARAC) has examined outcomes measurement for community organisations such as those in the legal assistance sector and is a critical document for this literature review to consider as it raises the many challenges involved in 'outcome based' measurement.³⁸

ARAC identified the following barriers to outcome measurement in the community sector:

- * There are a varied range of clients, programs and services influencing outcomes measurement and achievement.
- * A range of complex social issues are being addressed.
- * The system is in a constant state of change with needs with circumstances changing this includes those of clients and services and the funding of programs.
- * There is a culture of non-measurement in some community organisations
- * The motivation and capacity to measure outcomes is affected by their size and specificity of focus.

Like Smith and Patel, the ARAC also warns against attempting to measure outcomes too early and before sufficient time has elapsed for elapsed changes to be observable. They state that such premature measurement could lead to measurement of outputs instead of outcomes. They note that many studies do not take a forward looking approach and rely instead on retrospective measurement and data collection. This limits what can be extracted from existing data. This is a problem that has been identified as in issues in much of the research and evaluations examined for this literature review. Much of the data required to inform outcomes measurements or quality or service provision is not kept by the courts or the agencies or if it is it is incomplete or not in the form that the research needs.

ARAC argues that any measurement of outcome needs to have its focus on explaining how rather than identifying what and that services needed practical support and resources to be able to participate in such studies. They argue the key factors influencing outcome achievement should be the focus and that descriptive measurement within frameworks is useful. For example case studies. This aids understanding how the effects have occurred in a way that quantitative data cannot.

Qualitative data of its nature gives a capacity to delve more deeply into the reasons behind the statistics. It enables a deeper understanding of the processes undergone, impediments experienced and what works well, when and why. It provides much richer information to guide how results are achieved and how aims can founder. For this reason, a methodology with involves the successful tender working with the relevant legal assistance agency using of focus groups and case studies to understand the nature, complexity and diversity ought to be one of the multiple approaches in measurement under the LANPR. Such focus groups could be facilitated with the service providers and or with clients.

³⁷ J. Z Kusek & R C Rist, 'A Handbook for Development Practitioners: 10 Steps to a Results Based Monitoring and Evaluation System', The International Bank for Reconstruction and Development, The World Bank, 2004, 125-145.

³⁸ 'Measuring Outcomes of Community Organisations', the Australian Research Alliance for Children and Youth, 2009.

Interviews with lawyers after interview and with clients after the same interview/advice session are a good method of seeing whether a good interview as an outcome took place and whether holistic approaches, early intervention and prevention and effective problem solving and good client communication were demonstrated in practice. Such focus groups are incredibly useful for understanding the service and gaining feedback on why and how things are done and interviews can act as a compliment as they provide rich and informative mechanisms for an evaluation.³⁹

Good policy is informed not just by quantitative data and yet traditionally quantitative data is what is relied on as it is easier to measure and gather. Its limitation is that it tells little about the story of how results are achieved and the journeys necessary.

Role of lawyers, advice and representation or information and referral service only – dangers of ‘client satisfaction’ tools in legal service measurement

As well as the international literature warning about the significant difficulties involved in measuring access to justice,⁴⁰ care also needs to be taken in assessing whether the relevant legal assistance service or part of that service being evaluated/examined is in fact engaged in the provision of legal advice or merely information and referral. This has significant implications for how a service might be measured and does not bring into play the issues around confidentiality and professional indemnity insurance that some evaluations have identified as issues that need to be considered in advice and representation.⁴¹ It is critical that services set up to provide information and referral only do not inadvertently stray into providing legal advice due to the insurance and legislation guarding against such intrusions to protect clients in the various legal professional regulations in each state and territory.

There are also dangers in any approach involving taking feedback from clients which does not fully reflect the function/duties of a lawyer. Some clients may not like what they hear. They will be sure that they are right and the other side is wrong; that the law ought not work the way it does or that the lawyer’s role is just to be a ‘mouth piece’ for the client and so they will not be happy with the advice.⁴² The role of a lawyer is to give a client accurate and honest advice on their position at law. This may not always meet the client’s expectations. Fundamentally, lawyers are officers of the court. They are given license to practice at the behest of the court and as such, have duties to the court not to mislead it or misrepresent the law. They also have duties that relate to the integrity of the legal system. This is higher

³⁹ For assistance with a design approach utilising these see L Curran, “‘I can now see there’s light at the end of the tunnel’, Legal Aid ACT: Demonstrating and Ensuring Quality Service to Clients”, Legal Aid ACT, February 2012.

⁴⁰ M Barendrecht, J Mulder, T Giesen & the Study Group Access to Justice, ‘How to Measure the Price and Quality of Access to Justice’, November 2006.

<<http://www.tilburguniversity.nl/faculties/law/research/tisco/research/projects/access/papers/06-11.pdf>>. See also in relation to civil justice J Verdonchot, M Barendrecht, L Klaming and P Kamminga, ‘Tisco Working Paper Series on Civil Law and Conflict Resolution Systems’, No007/2008, Netherlands, 10 November, 2008 Version:1.0 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1298917. The latter authors note the ‘problems associated with neutral evaluations of outcomes, the ambiguity of outcomes, and the relative weight of each criterion in different settings.’ Again the Verdonchot et al report’s remit is broader than legal assistance services but the issues they grapple with many of which remain terribly complicated demonstrate the challenges of measuring outcomes and access to justice.

⁴¹ C England and P Porteous, ‘Review of the Children’s Court Assistance Scheme’, Final Report, Legal Aid NSW, Matrix on Board, 20 September 2011, 29-40.

⁴² This would be contrary to the *Australian Solicitor’s Conduct Rules*, Rules 1-11, 30.

duty than those to the client.⁴³ This is not commonly understood by the wider community including clients and can be a cause of 'client dissatisfaction'. This is why this author is concerned about the use of this terminology in any instruments.

Often in such scenarios the client is angry with the advice and will walk away unhappy. It is not uncommon for such client to shop around for legal advice that suits them and then when no lawyer will do so they often find themselves self represented.⁴⁴ In such a case the client will not be 'satisfied' with the legal service but the lawyer has done exactly what a good lawyer should do.

Many of the international and domestic studies analysed in the course of this literature review used the language 'client satisfaction'. 'Client satisfaction surveys' are often used to evaluate simple services that provide market research on clients of simple services such as the provision of retail services like clothing or cosmetic sales or help-lines for computer customers. Often they relate to a service received on-line or by phone by a telecommunications company or financial service.⁴⁵ Borrowing approaches from such industries, unless they are very limited in the scope and there is a simplicity service or goods being delivered, are likely to distort findings. Such nomenclature is important as it can distort people's perception of what is being evaluated, and in the legal assistance sector, the actual role and function of a lawyer becomes confused as it is not always going to 'satisfy' a client or be their 'mouthpiece'. This is explicitly discouraged by the conduct rules and duties of the legal profession. Rules and duties often formulated to protect the client in the longer term. Where the evaluation responses required are 'satisfied' 'not satisfied' they further distort client understandings of the role and function of legal services. In using any models from other evaluations therefore, considerable care and sophistication in approach in the design of questions and their relevance to the legal assistance service sector needs to be taken. Many of the studies using the phraseology 'client satisfaction' examined were from private law firms whose focus was on commercial marketing. Concerning is that some legal aid instrumentalities have also utilised this nomenclature.⁴⁶

Bacica and Winram in Canada have conducted a Legal Services Society 'Client Services Survey'.⁴⁷ They use the problematic 'client satisfaction' phraseology and get into difficulty when clients are asked about the court representation and advice aspects of the service. Although some of the questions around helpfulness and having things clearly explained are

⁴³ *Legal Profession Act* (2006) ACT, *Legal Profession Act* 2004 (Vic) and *The Australian Solicitors Conduct Rules* <<http://www.lawcouncil.asn.au>> and the various legal professional regulations across the country.

⁴⁴ A Lamb and J Littrich, 'Lawyers in Australia,' Federation Press, Second Edition, 2011, Ch 8, 155.

⁴⁵ For example, many 'free' trial on-line 'client satisfaction' surveys are made available by various companies such as <[https:// about.com](https://about.com)>; or <<https://www.surveymshare.com/templates/basicdemographics.html>> but these may not be appropriately converted to a legal aid service context without considerable care being taken in design and questions for the reasons reflecting the make-up of disadvantage of many legal aid clients referred to earlier in this literature review.

⁴⁶ 'LAO Common Measurement Tool Overview of 2009 Results', Quality Service Office, Legal Aid Ottawa, March 2010; Queensland Legal Aid Report Card, Annual Report 2009-2010; LSS Client Services Survey, M Bacica and J Winram, Legal Services Survey, Synovate, Canada October 2007; A Munday and A Rutkay, 'Client Satisfaction Survey and Measurement', Legal Aid WA & Data Analysis Australia Pty Ltd, June 2004 and Idaho Legal Aid Client Satisfaction Survey, Idaho Legal Aid Services, 2011 <http://idhaolegalaid.org/ClientSatisfactionSurvey>.

⁴⁷ A Munday and A Rutkay, 'Client Satisfaction Survey and Measurement', Legal Aid WA & Data Analysis Australia Pty Ltd, June 2004.

useful, the study by using the term 'satisfaction' and examining case outcome ventures into heavily perception based and risky areas without sufficiently grappling enough with the complexity of the legal process make this study unhelpful. (See question results to F2 on page 37 of their report on the findings.) This author would argue that it is better to describe client feedback in terms of an examination of the level of 'quality' of the service or as 'client feedback on the service' rather than as a 'client satisfaction survey'.

In the author's experience, client's responding to surveys/questionnaires when framed in this way think more reflectively on the service rather than their own wants and wishes, the win or loss of the unwinnable case which might not always be within the remit/scope or function of the service being delivered. It is also important to think carefully about using a simple survey format to glean information about what is a complex and lengthy court process with so many variables affecting a 'case outcome' as the responses to F2 indicate.

A Munday and A Rutkay in their survey work for Legal Aid WA looked at the Alternative Dispute Resolution Family Conferencing Program with 252 clients participating surveying clients from 1 July 2003 – 30 April 2004.⁴⁸ The study also examined Legal Aid Advice and Grants of Aid surveys examining 3,653 for legal advice and 406 grants of aid. There was also an Online and print Publications Users CLC Survey conducted as part of the study. Munday and Rutkay asked some useful questions around the way in which a service treated their clients and delivered their service. Again the problem with this survey is that it uses the 'satisfaction' with the service as the test as opposed to the experience by the client of the service. Question 5 for example reveals again the difficulty with use of a survey tool for complex areas of the practice of law with the statement, 'Overall, I felt confident my lawyer was looking after my interests'. Although the lawyer must act in the 'best interests of the client' this is trumped by 'duties to the court' and 'duty to advise' as discussed above.

In a recent Idaho Survey⁴⁹, although called 'Client Satisfaction' it avoided using the term 'satisfaction' in most of its questions (save for a statement ranking of 'I am completely satisfied with the ILAS service'. This the survey is a useful one as some of the statements put to the survey participants were good and centre around the explanation of the process and whether the clients felt better off as a result of using the service.

This author suggests that any tender to be successful must demonstrate a fundamental understanding of the role, duties and obligations of a legal professional so that the questions/statements that form a part of the design are drafted with this in mind. Not an easy task.

Other mechanisms than survey are perhaps better where the complexity and complicated aspects are being examine such as in depth interviews or focus groups, otherwise the risk is that the statistics gathered are not in fact representative of the information there are seeking to gather and hence have little empirical value or precision.

Again, this author stresses the importance of recognising the strengths and weaknesses of different approaches and of using multiple approaches to compliment each other or reduce distortions. Surveys cannot gather detailed information about context and circumstances unless extensive open questions are used and many survey tools have limited capacity for

⁴⁸ A Munday and A Rutkay, 'Alternative Dispute Resolution Family Conferencing Program Review', Legal Aid WA, 2004.

⁴⁹ 'Idaho Legal Aid Client Satisfaction Survey', Idaho Legal Aid Services, 2011
<http://idhaolegalaid.org/ClientSatisfactionSurvey>

this. Qualitative may be a better compliment where such complexity is evident. Perhaps even 'snap shots' rather than ongoing reporting requirements for legal assistance services may be appropriate ways to measure given legal assistance services cannot afford intensive reporting requirements given limited staffing, resources and the need to deliver the actual service to community.

In summary, there dangers in gaining client feedback that is not carefully designed to avert such views on what the lawyer should do/not do and their 'dissatisfaction' arising where the lawyer clearly is responding to their actual legal professional duties. There are better alternatives as there is international research around asking what clients expect from a quality service rather than suggest in questions that 'case outcome' is the winning or losing of a case the latter where often results that are not within the control of a legal assistance service.

Measuring Quality of Legal Assistance Services

An excellent report in terms of evaluating quality issues in legal advice was released by Trude and Gibbs in March 2010 entitled, 'Review of Quality Issues in Legal Advice'.⁵⁰

The report although based in the United Kingdom (which as stated earlier does not have a tradition of the 'mixed model' of legal aid service delivery as in Australia) has some relevant suggestions for any successful tender for the LANPR. It is important to note that this report is largely critical of the approach in the United Kingdom. Trude and Gibb's view is that in the drive for 'cost efficiency', quality has been compromised. Any consideration of this report should be mindful of the different context in the United Kingdom with recent cuts in 2011 to the legal aid budget of one-third.

Trude and Gibbs note that quality of legal representation and advice are important in asylum seeker cases as they relate often to life and liberty. Although the report is specific to asylum seekers and refugees and thus relevant to the LANPR (as these are areas of Commonwealth Government concern) the broader findings on what is needed for quality advice, effective and efficient representation in this author's view are applicable to the legal assistance sector in general.

Their methodology for the study was as follows:

- analysis of costs and quality of the work of a number of legal aid providers in three regions of the United Kingdom
- in-depth interviews with stakeholders including decision-makers
- an examination of the findings of the Solihull evaluation.⁵¹

The Trude and Gibbs literature review draws on existing evidence to identify the key elements indicative of high quality legal service. They also examine findings from an

⁵⁰ A Trude and J Gibbs, 'Review of Quality Issues in Legal Advice: measuring and costing quality in asylum work', Lawyers Defending Human Rights, Refugee and Migrant Justice undertaken by the Information Centre About Asylum and Refugees and the Immigration Advisory Service, City University, London, March 2010.

⁵¹ J Aspden, 'Evaluation of the Solihull Pilot for the United Kingdom, Border Agency and the Legal Services Commissioner', The Stationary Office, London, 2008.

evaluation of a pilot early advice service in Solihull.⁵² Trude and Gibbs identify three key elements of quality legal advice and representation as:

1. Professionalism and expertise enabling the full factual and evidentiary basis of a case at the earliest opportunity.
2. Quality of the one-to-one relationship creating trust and confidence in the legal representative as, if this exists, the client is more likely to be confident in the case outcome but also to assist cooperate in achieving it.
3. Representation and advice which have time to present the case and do items 1 & 2 above.

Trude and Gibbs also note that good indicators of quality should also include the professional obligations of lawyers.⁵³ This is also the view of this author and was discussed earlier in this literature review in the section on the role of lawyers and adopted in her research in 2011 for LAACT. In addition, evidence of the following was found to determine quality:

- * the identification of legal and evidentiary issues
- * instructions of appropriate experts and advocates to avoid delays in preparation and dissatisfaction leading to non-cooperation by clients.
- * use of tactical judgement.
- * exploration of every reasonable legal avenue.

A critical finding of this report, relevant to the LANPR, is that 'poor quality work costs much more in the longer term to the public purse and in human terms to individual asylum seeker applicants'.⁵⁴

The Report is critical of the Legal Services Commission's (LSC) Graduated Fee Scheme, introduced in 2007 with hourly rates, for short term cost saving which ends up costing more in the longer term. The problem identified in such a structure is that it pays providers identical fees, reducing incentive to strive for higher quality forcing the choice between financial survival and responsibility to clients thus incentivising low quality work. They state that the LSC's method of setting the fees had little historical data on which it was based and that they refused to heed the warning of those with actual experience of legal service delivery.

Trude and Gibbs in discussing how quality might be measured lament the failure of the LSC to proceed with the 'Carter Reforms' which were to provide and implement key quality assurance safe guards which underpinned the Carter recommendations for the reform of legal aid work (remembering most of legal aid is undertaken by private firms in the United Kingdom model).⁵⁵ The authors of the report note Lord Carter's warning that ***a failure to***

⁵² J Aspden, 'Evaluation of the Solihull Pilot for the United Kingdom, Border Agency and the Legal Services Commissioner', The Stationary Office, London, 2008.

⁵³ A Trude and J Gibbs, 'Review of Quality Issues in Legal Advice: measuring and costing quality in asylum work', Lawyers Defending Human Rights, Refugee and Migrant Justice undertaken by the Information Centre About Asylum and Refugees and the Immigration Advisory Service, City University, London, March 2010, 8.

⁵⁴ A Trude and J Gibbs, 'Review of Quality Issues in Legal Advice: measuring and costing quality in asylum work', Lawyers Defending Human Rights, Refugee and Migrant Justice undertaken by the Information Centre both Asylum and Refugees and the Immigration Advisory Service, City University, London, March 2010, 1.

⁵⁵ For a detailed explanation of the United Kingdom's Legal Aid model and some concerning recent changes under reforms to the civil justice system introduced by the Cameron Government in 2011 see

implement quality assurance safeguards places the whole justice system at risk.⁵⁶ Lord Carter provides useful criteria for quality in legal aid work which may be useful to any successful tender. It is extracted on page 9 of the Trude and Gibbs Report.

Trude and Gibbs also criticise the new 'peer review' model in the United Kingdom as it lacks the quality assurance reference points and as its approach picks out only elements of a case and doesn't do a file review of time spent or look at the case in its entirety. Such 'case splitting' by the LSC in its examination of quality in this author's view fragments the cases being examined and loses the context and sense of quality required overall. Trude and Gibbs also criticise the 'peer reviews' perimeters as it has a limited focus on the recent public service reforms agenda rather than on quality of the service provided to the community. The recent public reforms framework has also been criticised by the New Economics Foundation in the United Kingdom.

The LSC in the United Kingdom has developed some useful statements that can be included in surveys, questions and interviews with lawyers and clients around quality and outcome. However the warning from Trude and Gibbs note that care at ascertaining relevance, context and the dangers inherent in some of the approaches needs to be heeded. In extrapolating from the LSC instruments here is a need to be mindful that the system in the United Kingdom for legal aid service delivery is very different to Australia.

Some of the statements contained in the LSC's tools for measurement were adapted and used in the author's recent research in 2011 for LAACT. For example, 'Client advised and better able to plan or manage their affairs'. Some outcomes will be indeterminate as the outcomes will not be known, the client cannot be contacted or they ceased to instructions. These are common issues among legal assistance clients and need to be factored into any project evaluation design. Again, the work Curran has done for LAACT around measurement of quality and outcome may be relevant for any successful tender to consider as statements, questions and multiple methodological approaches. These could easily be replicated, as appropriate, in examinations of other legal assistance services.⁵⁷

Other relevant issues in assessing quality are discussed by Trude and Gibbs which include component elements to ascertain quality and some indicators.⁵⁸ They discuss process elements of quality evaluation.⁵⁹ They also identify some 'adviser features'⁶⁰ of quality which coincidentally line up with those in Curran's earlier research for LAACT in 2011.

- R Smith, 'Legal Aid in England and Wales: Entering the Endgame' Justice Journal, London, Spring 2011.

⁵⁶ Lord Carter of Coles, 'Lord Carter's Review of Legal Aid Procurement, Legal Aid: A Marker Based Approach to Reform', 2006, House of Lords, Britain.

⁵⁷ L Curran, "'I can now see there's light at the end of the tunnel', Legal Aid ACT: Demonstrating and Ensuring Quality Service to Clients", Legal Aid ACT, February 2012.

⁵⁸ A Trude and J Gibbs, 'Review of Quality Issues in Legal Advice: measuring and costing quality in asylum work', Lawyers Defending Human Rights, Refugee and Migrant Justice undertaken by the Information Centre About Asylum and Refugees and the Immigration Advisory Service, City University, London, March 2010, 39-45.

⁵⁹ A Trude and J Gibbs, 'Review of Quality Issues in Legal Advice: measuring and costing quality in asylum work', Lawyers Defending Human Rights, Refugee and Migrant Justice undertaken by the Information Centre About Asylum and Refugees and the Immigration Advisory Service, City University, London, March 2010, 44, 48 and 60.

⁶⁰ A Trude and J Gibbs, 'Review of Quality Issues in Legal Advice: measuring and costing quality in asylum work', Lawyers Defending Human Rights, Refugee and Migrant Justice undertaken by the

The usefulness of the Legal Services Commission's codes have also been questioned as 'end point codes' may not be the end point and so can distort the data.⁶¹ Concern about the has also been raised by Smith and Patel.⁶² The LSC ***also often lacks a clear understandable and applicable definition for outcome and so the data can often be distorted by attributing accountabilities to services which are outside their control such as case outcomes. This is dangerous for any service being measured.*** Again selection of which of these is appropriate given the context of the service provider and the client is important and great caution and a critical eye is needed rather than a replication.

R Barendrecht, Mulder and Giesen⁶³ and Laxminarayan⁶⁴ through the Netherland "Measuring Access to Justice Project have done work examining procedural quality, cost and outcome quality. Curran's research for LAACT was informed by their suggestions which include assessing informational justice outcomes around how processes are explained; interpersonal justice outcomes around respect and the treatment by the service/s; equality of outcomes namely the explanation of what occurred and the transformative quality outcomes namely the ability of parties to move forward.

Characteristics of a 'Quality Evaluation' have been identified as impartiality, usefulness, stakeholder involvement, technical adequacy, feedback and dissemination and value for money. Any LANPR gauging of legal assistance sector quality must recognise that the approach must be consistent with the role and function of a lawyer. The next section identifies some useful studies and approaches to measuring the quality of a legal assistance sector. Trude and Gobbs refer to 'The Effective Lawyer Communication Project' undertaken in 2003 by Glasgow Graduate School of Law and others⁶⁵ as a useful way of looking at quality approaches. This project looks at effective legal communication, excellent listening skills, positive and appropriate body language, availability, thorough evidence gathering, professional and neutral interpreter use and other key aspects of quality legal assistance which might be worth considering by a successful tender.

The United Kingdom has three key experts on the delivery of professional and quality legal services. Avrom Sher, Professor Alan Paterson and Richard Moorhead. These academics have written and researched professional legal services extensively and this literature review recommends that the successful tender read their articles on the subject.⁶⁶ They have

Information Centre About Asylum and Refugees and the Immigration Advisory Service, City University, London, March 2010, 60-61.

⁶¹ 'Towards a Business Case for Legal Aid', Citizen's Advice, Paper to the Legal Research Centre's International Conference, July 2010.

⁶² M Smith and A Patel, 'Using Monitoring Data: Examining Community Legal Advice Centres Delivery', Legal Services Commission, London, June 2010.

⁶³ M Barendrecht, J Mulder and I Giesen, 'How to Measure the Price and Quality of Access to Justice?' <<http://tilburguniversity.nl/faculties/law/research/tisco/research/projects/access/papers/06-11.pdf>

⁶⁴ M Laxminarayan, 'Measuring Access to Justice for Victims of Crime', Paper to the Victims in Europe Conference, Portugal, 2009.

<<http://www.tilburguniversity.nl/faculties/law/research/tisco/research/projects/access/publications/laxminarayan-june-2009.ppt>>

⁶⁵ A Trude and J Gibbs, 'Review of Quality Issues in Legal Advice: measuring and costing quality in asylum work', Lawyers Defending Human Rights, Refugee and Migrant Justice undertaken by the Information Centre About Asylum and Refugees and the Immigration Advisory Service, City University, London, March 2010, 9.

⁶⁶ A Paterson and A Sherr, 'Peer Review and Quality Assurance- the emergence of peer review in the legal profession', International Legal Aid Conference, Antwerp, June 2007 and A Sher and R Moorhead

observed that it is easy to determine competence but harder to evaluate attitude and motivation. Lord Carter has also noted the difficulties in examining quality.

Lord Carter states,

‘Measuring the quality and impact of guidance interventions... multi-faceted and complex. Given that guidance is a human activity, subject to degrees of unpredictability and uncertainty (particularly in relation to individual values, attitudes, beliefs and behaviours), it is unsurprising that it’s quality assurance and impact are difficult sometimes impossible to measure.’⁶⁷

R Moorhead and M Robinson⁶⁸ have observed that ***‘advisers own skill and expertise served as the strongest indicator of how clients would be dealt with’***. This author had the opportunity of discussing Moorhead’s research with him in Cardiff in 2007. The Moorhead research demonstrated the disparity between the identification of lawyers of the problem the client wanted resolving and the actual legal problem the client initially wanted help with. Interviews were conducted with the lawyers after interviewing clients and then with clients with follow up six months later. Often, even after six months the lawyer had still not identified the issue the client was seeking their assistance for. The study highlighted the real dangers of poor listening skills and an absence of lawyers checking they had clearly understood the facts and what the client was seeking. This process of examining the ability of the lawyer to identify the problem was utilised in Curran’s recent research into quality for LAACT. Happily, unlike the Cardiff experience, the lawyers there were ‘on the same page’ as their clients.

In terms of how to approach the measurement of legal assistance services it is critical to work with them and involve them in the study. The World Bank warns that if stakeholders, such as staff, are to trust the information then they must take ownership of the findings and agree to incorporate what has been learned into ongoing and new policies, programs and projects. It notes that creating a façade of involvement is a sure way of generating hostility and that sharing information, involving and discussing the issues a service confronts with the stakeholders is key of the measurements are going to be accepted, participated in and in the longer term remain sustainable. This is consistent with the adoption of the participatory action research process that this research engages. Other tips include:

- Data be presented in a short and crisp manner and be relevant to the target audience
- Only important data or information requests should be presented
- The data may have to be packaged and formatted differently according to the interests, preferences and capacity of each audience.⁶⁹
- Personnel briefings especially to staff and management to keep them updated
- Follow-up and feedback. This involved for example if tools are needed to improve then mechanisms to ensure the tools have been put in place.

et al, ‘Assessing and Developing Competence and Quality in Legal Aid- Transactional Criteria’, Volume 2 *The Quality Agenda*, HMSO, London 1994.

⁶⁷ Lord Carter of Coles, ‘Lord Carter’s Review of Legal Aid Procurement, Legal Aid: A Marker Based Approach to Reform’, 2006, House of Lords, Britain, 8.

⁶⁸ R Moorhead and M Robinson, ‘A Trouble Shared – legal problems clusters and advice agencies’, DCA Research Series 8/06 Department of Constitutional Affairs, London (2006).

⁶⁹ See also UNDP ‘Capacity Assessment Methodology User’s Guide’, Bureau for Development Policy, Capacity Development Group, New York, January, 2008.

- Comparisons of data over time are critical. Providing data for a specific quarter or year by year is itself not useful but where data can be collected and compared over time it can be useful.
- Always report against the baseline and intermediate measurements to determine whether progress has been sustained, whether there was a short spurt of improvement or whether early improvements have all disappeared.

Results of any findings should be used to:

- respond to elected officials and the public demands for accountability
- help formulate and justify budgetary requests
- Help make operational resource allocation decisions
- Trigger in depth examinations of what problems exist and what corrections are needed. If something goes wrong it does not mean the whole approach is wrong and many a good program is thrown out and gains lost. It may mean a refining is required.
- Help provide services more efficiently (researcher would add effectively).
- Support strategic and long term planning efforts
- Communicate better with the public to build trust.

Some of the research reveals that the '[Q]ualities about which service users are particularly concerned'⁷⁰ can include:

Choice
Flexibility
Information
Being like other people
Respect and being heard
Fairness and no discrimination
Cost and value
Safety

Other suggestions include⁷¹:

- Responsiveness
- Empathy
- Involvement
- Accessibility
- Listened Carefully
- Kept me up to date
- Explained things clearly & in a way I understood so I knew what to do/what was going on/going to happen⁷²
- Discreet atmosphere
- Helpfulness of staff⁷³

⁷⁰ 'Real Voices, Real Choices- a consultation with service users', The Commission for Social Care Inspection UK, March 2006.

⁷¹ Dr Matthias Killian, 'To pay or not to pay? The impact of Individuals on the perception of the legal system', Solden Institute for Law Practice, University of Cologne, Paper to the International Legal Aid Conference, Cambridge (2010).

⁷² Suggested by the researcher, Dr Curran

- Provided with relevant information in a timely way⁷⁴

The Legal Services Commission in the United Kingdom has developed self assessment checklists and 'Client Feedback Questionnaire'[s] in multiple languages for their 'Specialist Quality Mark' applications.⁷⁵ These relate mainly to organisational approaches of the law firms, with the United Kingdoms model of legal aid service delivery being different to Australia's as it does not have a mixed model as Australia does and contracts out most of its legal aid services to private firms.⁷⁶ Some of the material provided may be useful but again this author stresses the need for care given the difference in jurisdiction. Also this author notes that this material is heavily procedural rather than actual practice based and reflective of the nature of the services being delivered and the requirements imposed by the government contractor and so caution in using the material is needed by any successful tender.

T Smith in her evaluation also lists a series of matters which are integral to good practice which may be worthy of consideration by the successful tender.⁷⁷

Some international evaluations of legal aid services have also been undertaken in Canada⁷⁸ and New Zealand. These jurisdictions do not operate within the history of a 'mixed model' of legal aid services that Australia operates within Australia having a blend of salaried and private practitioners. Extreme caution is therefore needed in extrapolating these studies as is the case with the studies from the United Kingdom. In many of the studies in these countries stakeholder interviews with the private profession reveal vested interests as private firms resist any expansion of salaried lawyer schemes because they seem them as taking away their sources of work.⁷⁹ This is despite the fact that ventures into having salaried pilots are often to fill gaps not filled by the private profession, to assist client private

⁷³ Suggested by the researcher, Dr Curran

⁷⁴ Suggested by the researcher, Dr Curran

⁷⁵ See <http://www.legalservices.gov.uk/ciovil/forms/specialist_quality_mark.asp>

⁷⁶ L Curran, 'Ensuring Justice and Enhancing Human Rights: Improving Legal Aid Service Delivery to Reach Vulnerable and Disadvantaged People', La Trobe University & Victoria Law Foundation, 2007, 13-14; R Moorhead and R Harding, *Quality and Access: Specialist and Tolerance Work under Civil Contracts*, Stationary Office, Norwich, 2004.

⁷⁷ T Smith, 'Evaluation of Queensland Public Interest Law Clearing House Incorporated Homeless Persons' Legal Clinic and the Refugee Civil Law Clinic', PILCH and Encompass Family and Community PTY Ltd, November 2011, 6.

⁷⁸ C Meredith and P Malpass, 'Evaluation of the Legal Aid Ontario Pilot Staff Family Law Offices', FLO ARC Applied Research Consultants, Ontario Legal Aid, August 1999. This report methodology included phone surveys, a mail survey, consideration of cost data for service of the private bar by comparison to the new work being done in-house, interviews with stakeholder and 'client satisfaction' surveys. It was not useful for the LANPR as its focus is narrower and on costs comparisons of the private bar to in-house. The focus of this study is on costs contrasts and so it is also not relevant to the LANPR. As with the New Zealand Public Defenders Office private lawyers interviewed were neutral in their response to the service whilst other indicators revealed a general view of its effectiveness. See also A Currie, *Legal Aid Delivery in Canada: Past Experiences and Future Directions*, Research and Statistics Division, Department of Justice, Canada, 1999 which sets out a very different legal aid context in Canada to that of Australia highlighting a need for caution in transporting approaches from foreign jurisdictions without care as to the differences in history and context.

⁷⁹ See in 'Evaluation of the Public Defender's Service Pilot', Final Report, Legal Services Commission, New Zealand, 1 May 2008. Here responses by private law firms to the model of the Public Defenders Office in New Zealand were sometimes negative despite other views which revealed the pilot is effective in reaching and working for vulnerable and disadvantaged clients, meeting unmet legal need but as a threat to work of the private profession which was not meeting these criteria.

lawyer refuse to assist appropriately or to work in a early intervention/prevention and holistic model of service (all aims of the NPA). Many private firms in these countries (due to their historical model of legal aid services which are largely run by tender or contract) do not view their role or function as broadly as the NPA envisages given that they are largely run as businesses.

Measuring Effectiveness

As stated earlier a useful research paper on the monitoring of legal services has been written by Smith and Patel.⁸⁰ It is a detailed report. It should be noted that significant funding is invested in legal aid service research in the United Kingdom by comparison to Australia and has been for over a decade. Australia is well 'behind the eight ball' in this regard as will be seen when one examines the detail of and vast data collection capacity in the study.

In seeing how effective legal advice centres (CLACs) in the United Kingdom the researchers asked the following good questions:

1. How successful have the CLAC services been in delivering general and specialist help advice?
2. What is the profile of cases that have been delivered via these new services?
3. To what extent have the CLACs been able to provide a full range of services from initial diagnosis through to representation?
4. Is there any evidence that CLACs are providing integrated services to clients, addressing the multiple problems which clients may have?
5. To what extent have the services in CLAC areas differed from services being delivered in other areas?

Noting that CLACS in the United Kingdom are governed, funded and operate very differently to legal assistance service in Australia, some of the studies approaches are still useful for legal advice service in Australia.

Smith and Patel identify problems which are also likely to arise in such evaluation such as:

- * Considerable variation in the amount of data available at the client level for different time periods and for different CLACs.
- * Given the considerable time lags between the opening of a case and the submission of closed record reporting information.
- * The data provides only a partial picture of service delivery.

Their evaluation report was within a frame of pre-determined and detailed targets. They note that the data was limited, for example, people with clusters of problems presented problems because of the way the data was collected and the timing of the advices.

Any examination of this report will reveal how detailed the targets were but similarly the dangers highlighted earlier of having targets that are pre-determined and in isolation from the way that services need to be delivered to be effective. Overall, the evaluation of

⁸⁰ M Smith and A Patel, 'Using Monitoring Data: Examining Community Legal Advice Centres Delivery', Legal Services Commission, London, June 2010, 10.

performance of the CLACs with respect to the substantive benefit target was found to be very good but in difficult circumstances.⁸¹

Again the serious difficulties in attempts to measure integration of services, effectiveness and outcomes was noted as being extremely difficult and challenging given the limitation on how data could be gathered, collected and the whether the relevant data could be kept or the concepts measured, the consistency of data that can be collected and the compromises made in funding the support for that data.⁸²

A recent review of the Children's Court Assistance Scheme (CCAS) conducted by Legal Aid NSW is a useful study in terms of approaching a measurement of a service's effectiveness.⁸³ Similar to the study undertaken by Curran for LAACT in late 2011 it has a range of methodologies including a narrow literature review of strategic and operation documents, interviews with stakeholders and an on-line survey although does not include focus groups and lawyer client interviews, case study extraction, feedback to the staff and board as did Curran's LAACT research which was also conducted on-site.

Although it was not a Commonwealth program under examination by the CCAS Reviewers, England and Porteous, some of the approaches taken may be useful in any evaluation undertaken of the Legal Assistance Program. The task set was for the study to 'evaluate and report on the nature and effectiveness of the services provided across the court in which it operates.'⁸⁴ The approach taken was iterative, with a review of court data and records, progress report and records kept of the CCAS, funding agreements, and interviews with legal stakeholders, CCAS workers, a literature review and preparation of the findings to the CCAS Working Party and the Legal Aid Board.

The study examined the objectives of the programme which is to provide young people and their families/carers with information about court processes, informal counselling and referral to support services, mediation or accommodation services. The program is not supposed to provide legal advice but rather to facilitate a smoother court process. The program has five auspicing bodies which are CLCs and operates in eight Children's Courts.

The study was to examine the following:

- look at the various models and how they operated
- examine progress reports
- look at the provision of services to Aboriginal young people
- examine safety and health and occupational issues
- examine confidentiality
- look at Professional indemnity insurance implications of recording young people's information
- look at the resource used for law reform and community legal education
- explore any measures that would increase efficiency or effectiveness
- review the service agreements.

⁸¹ M Smith and A Patel, 'Using Monitoring Data: Examining Community Legal Advice Centres Delivery', Legal Services Commission, London, June 2010, 28 and 35.

⁸² M Smith and A Patel, 'Using Monitoring Data: Examining Community Legal Advice Centres Delivery', Legal Services Commission, London, June 2010, 37-38.

⁸³ C England and P Porteous, 'Review of the Children's Court Assistance Scheme', Final Report, Legal Aid NSW, Matrix on Board, 20 September 2011.

⁸⁴ C England and P Porteous, 'Review of the Children's Court Assistance Scheme', Final Report, Legal Aid NSW, Matrix on Board, 20 September 2011, 5.

England and Porteous note that there is varying nomenclature across the agencies and that different models were operating across the different courts. This was related to resources and staffing available and the nature of the work and clients coming through the courts. They noted that consistent definitions in any study need to be provided so that people are not discussing or implying different meaning to phrases or terminology used. This is an important point for any successful tender of the LANPR.

The methodological approach taken included:

- site visits to each auspiced body
- in depth interviews with 20 key stakeholders
- an on-line survey of 83 stakeholders
- the literature review of program guidelines, progress reports, court data, CCAS data, funding agreements and the legislation
- A briefing paper for the Board and Working Party.

The researchers found that in relying on both court and CCAS data there were significant problems. Not all data was collected consistently or regularly. This is also a warning to any successful tender in the LANPR process. England and Porteous found much of the data collected is affected by the staffing levels, business and pressured environments in which both the courts and the legal assistance service operated. They noted that accordingly caution was required in interpreting any conclusions being drawn for such data. Again this will be an issue for any successful tender. England and Porteous note that it appeared a greater case work was undertaken than that which was always recorded and suggested adapting information gathering forms and having clearer operating procedures.

England and Porteous also noted the limitations of CLSP Progress Reports (the data systems used by CLCs) in gathering the data required to determine efficiency and effectiveness. They looked at the various CLCs funding and how many FTE were provided and how many people assisted but again this data was not comprehensive.

The reality is that data collection is more likely to occur if the material being gathered is seen as important, relevant and easy to maintain by those expected to gather the data. In this case least 13,268 young people were assisted annually according to the data and yet in the on-line survey stakeholders estimated that between 75%-100% of the young people and their families before the court were being seen by the CCAS. This highlights the need for complimentary research approaches to be taken to gain a clearer picture than just the recorded data which is subject to the vagaries listed above. Although this study noted that CLCs recorded workshops, written materials developed, campaigns and TAFE training no evaluations of this work were discussed in the study.

A range of concerns were raised in the evaluation study by England and Porteous around effectiveness and efficiency. Many of these related to a lack of resources, limitations on the funding of staff and the program, geographical challenges and a lack of consistent training and use of experience and expertise by some of the CLCs but not others. England and Porteous suggest more clarity around the setting out of what constitutes quality in the operating principles would assist so that there is a clarity and consistency around expectations and then these might assist in measurement.⁸⁵

⁸⁵ C England and P Porteous, 'Review of the Children's Court Assistance Scheme, Final Report, Legal Aid NSW, Matrix on Board, 20 September 2011, 40-41.

Difficulties identified by National Association of CLCs and its members agencies over many years about the CLSIS system and its clunky and cumbersome mechanisms, the nature of the data it collects which do not facilitate record keeping by already busy and stretched staff. ***It is suggested therefore that the LANPR process has an inbuilt expectation that the successful tender will be able to undertake much of the research themselves to overcome the gaps in data as well as being mindful of the challenges of keeping such data in a busy practice where the focus is and should be on service delivery.***

Measuring Efficiency

The problem identified with the LSC approach (as Trude and Gibbs have ascertained)⁸⁶, is that a focus on efficiency and 'best value for money' overlooks that greater efficiency and likely effectiveness is created if quality time is permitted to be spent on cases. Trude and Gibbs observe that the fallacy in the LSC's thinking is that they aim to achieve 'value for money' through efficiency gains by reducing time spent on each case and therefore costs. Trude and Gibbs see this as problematic in terms of quality and outcomes and this was confirmed by their research findings discussed above.

Legal Aid Commissions are regularly audited by the state/territory Auditor's General in terms of 'ensuring that legal assistance is provided in the most effective, efficient and economical manner'. These existing reviews examine the service as a whole without distinguishing between Commonwealth and State/Territory matters examining overall efficiency of the agencies looking at procedures and processes for legal assistance, procedures and processes for managing legal assistance, relevant budgetary information, relevant reviews and reports, a list of key agency personnel and an on site conduct of the review using standards set by the Australian Auditing Standards.⁸⁷

These examinations are intensive and detailed and this author sees any further reporting requirements other than those reflecting on 'outcomes' and 'quality' are likely to be a duplication when existing tax-payers' money is already being utilised to examine and report on 'ensuring that legal assistance is provided in the most effective, efficient and economical manner.' Such examinations are required of Legal Aid Commissions and ATSILS as public sector entities and include examinations of governance issues, risk management and other control structures including human financial and other resources, information systems, performance measures, reporting and monitoring systems, probity and legal compliance. Aboriginal and Torres Strait Islander Legal Services also have facets of their work examined and measured by the Australian National Audit Office and the Department of Finance and Deregulation ascertaining again their effective and efficient delivery.

⁸⁶ A Trude and J Gibbs, 'Review of Quality Issues in Legal Advice: measuring and costing quality in asylum work', Lawyers Defending Human Rights, Refugee and Migrant Justice undertaken by the Information Centre About Asylum and Refugees and the Immigration Advisory Service, City University, London, March 2010, 1.

⁸⁷ By way of example, in the Australian Capital Territory *Auditor- General Act 1996* and see also 'Conducting a Performance Audit' and 'Performance Audit Stages', ACT Auditor General's Office <<http://actauditorgeneral.act.gov.au>>

***When examining efficiency of legal assistance service again care is needed as if the NPA is seeking outcomes sometimes an over concern with efficiency can erode the outcome and be counterproductive or even reduce the good work possible.*⁸⁸**

In Canada, an examination of internet based and telephone based legal assistance service has been undertaken.⁸⁹ Whilst some have argued electronic based services have increased efficiency and 'customer satisfaction' the concern about such approaches is that quality or the service suffers and that the drive to 'cost efficiency' comes at a cost where quality and the appropriateness of the service delivery for the client can be lost.⁹⁰

K Joffe of the Arch Disability Law Centre argues that any service delivery must be guided by the unique position of the service, in this case clinic, in its community.⁹¹ Whilst acknowledging phone and internet advice services can assist those in remote and rural communities, the elderly and people with disabilities who cannot leave their homes, Joffe notes that often they can come at the cost of in-person services which can in the long term also reduce the very access and barriers to communication that in-person services only, can overcome. ***As a warning to any successful tender under the LANPR when examining community based organisations like community legal centres and ATSILS Joffe stresses that the organisation of how services are delivered needs to be based on local community need and the vagaries of different client groups which can require different responses*** such as the elderly, persons with disabilities, injured workers or geographically defined groups.

Joffe stresses that to be effective such services will often have governance structures which are close to the communities they serve so that they can be guided by their community and this may explain different operational approaches which can beyond information provision by phone and internet to information in a variety of setting that suit the relevant community, CLE, law reform, advocacy as well as traditional advice and representation. ***It can be dangerous to ignore such elements that may be critical to quality and effective service delivery for these small community based services on the ground of 'cost efficiency'. This situation is similar for CLCs in Australia.***⁹² This author warns any successful tender under the LANPR that they should therefore heed the ***warning that community responsiveness may lead to effectiveness and quality and a concern with efficiency without careful consideration of the reasons for the approach can be counterproductive.***

Joffe states,

⁸⁸ J Collins et al, 'Unintended Consequences: How the Efficiency Agenda Erodes Local Public Services and a New Public Benefit Model to Restore Them', New Economics Foundation, London 2007.

⁸⁹ C Lafortune, 'Applying New Client Service Technologies', Legal Aid Ontario, 2011. See also the body of work from Dr Jeff Giddings of Griffith University Law School. His research over the past decade includes evaluations of self-help kits. For example, J Giddings and M Roberston, 'Large Scale Map or the A-Z? The Place of Self Help Services in Legal Aid, Vol 30 No 1, *Journal of Law and Society*, March 2003. His research and evaluations have identified many issues with these modes of assistance and the often fragmented nature of the assistance they provide and the difficulties such tools present for people experiencing various forms of disadvantage.

⁹⁰ K Joffe, International Legal Aid Group Newsletter, 27 July 2011
<<http://www.ilag.org/newsletterstories.php?id=39>>.

⁹¹ K Joffe, International Legal Aid Group Newsletter, 27 July 2011
<<http://www.ilag.org/newsletterstories.php?id=39>>.

⁹² <<http://www.nalc.org.au>>

‘Attention must be paid to the ways in which legal aid and clinic⁹³ work is measured and evaluated. Inappropriate measurements may erode systemic legal work, ultimately harming low-income clients and communities. If we want to preserve a strong legal aid system, any shift towards telephone and internet based services must be implemented in a way that supports the unique kind of community lawyering practices by Ontario legal clinics.’⁹⁴

A study undertaken for the Attorney General’s Department by Crockett in 1995⁹⁵ tackled the (thankfully) long past debate about in-house versus private practitioner legal aid delivery.⁹⁶ The report contains some discussion around ‘cost efficiency’.⁹⁷ There is some helpful discussion on pages 100- 105 of Crockett’s Report. As this author made it clear in the finalisation of the brief for this literature review she does not have background in economics and so this literature review whilst it has considered ‘efficiency’ does not examine ‘cost efficiency’ as it is beyond her expertise.

Legal Aid Commissions (LAC)

This section will detail some evaluations undertaken by Legal Aid Commissions of their own programs but also of community legal centres which is administered on behalf of State/Territory and the Federal Government by LACS. ***It is important for any successful tender to appreciate that LAC’s already conduct studies on their efficiency and effectiveness, evaluate new pilot and ongoing programmes on a regular basis under the existing funding and service agreements. Accordingly any further reporting or measurement should take these into consideration rather than increasing the burden on LAC’s as the TOR and LANPR stipulate is to be avoided.***

In addition, some other documents this author considers as essential background reading for any successful tender are footnoted below.⁹⁸

The current evaluations of LACs and by LACs vary. Some are mainly descriptive of programs and what they do. Some are more relevant in a policy context in outlining the stresses and strains and a need for reform such as in the care and protection of children. The latter are not really relevant evaluations for the examination of outcome, quality, and effectiveness under consideration in this literature review. Therefore these evaluations (unless an aspect in the methodology is worthy of note) are not discussed.

⁹³ Analogous to some extent to CLCs in Australia.

⁹⁴ For more information about legal aid clinics in Ontario see L Abramowicz, ‘The Critical Characteristics of Community Legal Aid Clinics in Ontario’ 2004, 19 *Journal of Law and Social Policy*, 70 and for information about CLCs in Australia see M Noone and S Tomsen, ‘Lawyers in Conflict: Australian Lawyers and Legal Aid’, The Federation Press, 2006, Chapter 7, 199- 230.

⁹⁵ A Crockett, ‘Cost Comparison Project, Attorney General’s Department’ Final Report, June 1995.

⁹⁶ See M Noone and S Tomsen, ‘Lawyers in Conflict: Australian Lawyers and Legal Aid’, The Federation Press, Sydney 2006, Part 2 139- 198 and the difficulties encountered in the United Kingdom with its limited model see R Smith, ILAG Newsletter, November 2011 referred to above.

⁹⁸ M Noone and S Tomsen, ‘Lawyers in Conflict: Australian Lawyers and Legal Aid’, The Federation Press, Sydney 2006, Part 2 139- 198; ‘The Economic Value of Legal Aid’ National Legal Aid, Price Waterhouse Coopers, 2009: ‘Legal Aid Funding: Current Challenges and the Opportunities of Cooperative Federalism’, 2009. These and many other relevant background documents are available on the National Legal Aid web site. In addition, there is a national study on unmet legal needs currently being written which may be worthwhile of consideration and it is due to be released sometime in early 2012 by National Legal Aid.

Many of the evaluations examine cost efficiency of programs already, some note the limitations to service delivery effectiveness and quality created by a lack of resources, infrastructure support, systemic barriers to access to justice and funding and issues retaining and attracting relevant practitioners with the necessary skills and expertise.⁹⁹ All of these factors are extremely relevant to issues of quality and effectiveness and yet all the reports lack sufficient examination of these elements in the examination of cost efficiency. ***This is concerning as it means that many reports lack the explanations of the understandings or reasons behind some of the expenditures. These are often the reasons for the way things need to be done in order to ensure quality of care for clients and which have been found through practice and consultation with communities of need to be more effective. This literature review would suggest that, it is this information that further research needs to undertake across the legal assistance services to complete the story often left untold by the statistics. Then issues such as outcome, early intervention and prevention impacts and quality of care for clients will place in context the statistics. Statistics which on their own or when aggregated can easily mislead or distort matters which are considered in a cost efficiency context can reduce or compromising effective innovations, quality and leading to less outcomes for community.***

These LAC reports on policy issues although not always within the scope of the consideration of this literature review do however reveal the complex, challenging and diverse nature of the work done by LACs and the CLCs. They may be worthwhile examining as further background for a successful tender of the specific areas of practice. Some evaluation reports conducted by LACs are also considered in the section below on CLCs.

On the issue of quality legal services, many of the reports considered do not examine the quality of the legal service observable from the actual practice, nor do they reveal the existence of quality assurance measures which are regularly tested to see the level of quality in practice. Some of the reviews and evaluations by or of LACS refer to practice standards, training and supervisory regimes that are in place but they discuss these fleetingly if the reports consider it at all. Few have actually indicated that these are the subject of measurement or any qualitative studies.

Some of the studies reveal the very important sound reputation of the services held by stakeholders and this is a very important factor that should be noted and considered as an important measure of quality in any study, as outlined in the Executive Summary to this literature review. ***A note of warning here is needed, some stakeholders will not be happy with what they consider ‘meddling’ by practitioners who challenge their authority. Given a key function of legal services is to hold people to account for their treatment of clients this must be factored in to any assessments of stakeholders who may find the role of legal aid services annoying or inconvenient.*** The very critical role of advocates in the rule of law may sometimes mean it is inconvenient for others.

⁹⁹ See J Bargen, ‘Children’s Legal Service Review: from hotline to hothouse’, Legal Aid NSW, December 2007 and ‘Service Review – Indictable Crime’ 2011. This report is confidential and although covers mainly state areas of crime. It is noted that a number of Commonwealth criminal matters also fall within LAC funding by the Commonwealth especially given areas of Centrelink prosecutions and recent changes to laws in relation to people smuggling which are leading to lengthy and costly trial expenditures by LACs. This report relates largely to technical issues and budgetary strains which whilst relevant are beyond the scope of this literature review. It does however reveal that the driver of many of the costs are well beyond the ability of LACs to control as they are driven by political imperatives, decisions which have flow on effects for LACS due to State/Territory and Commonwealth DPPs.

Some of the reports in recent times have sought to gather case studies to indicate outcomes at a local and client level these are very useful. However, as will be detailed below care needs to be taken however that, in determining what an outcome is, the definition is not outside the control of the service which is being measured.¹⁰⁰

The Review of the Care and Protection system by Legal Aid NSW¹⁰¹ is more a policy document than an evaluation which is relevant for the purposes of the literature review. It does examine some issues around effectiveness and efficiency (Part B pages 31 – 51). The recommendations are mainly around staffing and it is a descriptive report with some case studies. It highlights the fraught nature of care and protection work. The report's examination of quality service is somewhat limited as it describes some mechanisms but does not detail how the practice standards are monitored as part of any detailed analysis rather it states there is supervision and induction, important elements but there is not really any detail or closer examination.

Leach¹⁰² reviewed the Women's Domestic Violence Court Advocacy Program in NSW. This is a largely descriptive report with documents being considered and face-to-face interviews with employees, the manager of the program. Initially these interviews were not part of the project's methodology but mid-way through the project it was realised that it was critical to gain a service provider perspective. If this had not been done this author agrees the evaluation would have been incomplete and limited and not very useful as only so much can be gleaned from documents given that it is effectively a 'human service' being examined that is as detailed earlier at length, complex and often complicated and diverse in nature especially in the area of domestic violence. Much of the report is not hugely relevant for the scope of this literature review nor for the successful tender to the LANPR.

Bargen's evaluation report¹⁰³ whilst being an important policy document highlighting the complex and problematic nature of legal aid services and certain areas in need of policy and law reform is not relevant to the scope of this literature review.

The Legal Services Commission of South Australia has written to the former Attorney General detailing some concerns about the scope and expectations of the 'Strategic Framework for Access to Justice in the Federal Civil Justice System'.¹⁰⁴ Like this literature review, it expresses some ***concern about legal aid service being expected to deliver on***

¹⁰⁰ S Forrell and M Cain, 'Managing Mortgage Stress', Evaluation of Legal Aid NSW and Consumer Credit Legal Centre Hardship Service, June 2011. The outcome here appeared to be determined as repossession was prevented. This is not a realistic definition of an outcome for the service to be measured on. Why? Because a whole range of factors can influence repossessions which are beyond the power of a legal service to control. Although the case studies reveal the calibre of the work done there is danger in setting the outcome as beyond the normal remit of a legal service as it will set the legal service up to fail if this is the consistent bar to be met in other cases. The 'outcome' sought should be better and more clearly defined as something within the function and role of a legal service to be able to determine as the international research suggests.

¹⁰¹ 'Review of the Care and Protection Program of the Legal Aid Commission NSW', Legal Aid NSW, August 2006.

¹⁰² T Leach, 'A Review of the Women's Domestic Violence Court Advocacy Program for Legal Aid NSW', Legal Aid NSW, 30 June 2009

¹⁰³ J Bargen, 'Children's Legal Service Review: from hotline to hothouse', Legal Aid NSW, December 2007 and 'Service Review – Indictable Crime' 2011.

¹⁰⁴ Letter dated 26 November, 2009 from the Legal Services Commission of South Australia to the Attorney General Mr Robert McClelland.

aspects in terms of impact and outcome which go well beyond their remit or control. It also highlights areas in which LACs are already delivering services consistent with the Framework. For these reasons this letter should be considered by any successful tender for the LANPR.

Feneley's review of the Mental Health Advocacy Service has limited use for the purpose of this literature review's scope and the LANPR.¹⁰⁵ It is a small report and although has terms of reference to examine 'effectiveness and efficiency of current models.' There is no detail in the report on the questions asked of the people consulted with nor detail on the nature of the site visits so it is of limited use in this context. One aspect of the report worth considering is that the views of key stakeholder were sought from staff at the hospitals where the service was provided, magistrates and tribunal members. Again, such input from stakeholders is useful where there is to be any evaluation of outcome, quality and effectiveness but little detail on the process or outcomes of the discussions is provided. The conclusion made was that the program is 'highly regarded'. This author reiterates the view that reputation with agencies that the service interacts with is a relevant in any consideration, reporting or measurement tool of quality and outcome.

R and H Gray's review¹⁰⁶ is another example of the many studies/reviews undertaken of service by LACs as a matter of course and a reminder to the Commonwealth Attorney General's Department that there are already reporting regimes in place around cost efficiency and effectiveness. These reports reveal however that effectiveness is sometimes considered in a vacuum for the quality of the service provision and actual attention to results but is often based on the somewhat limited statistics kept by LACs, ATSILS and CLCs. This is not the fault of LAC but rather reflects the reporting that they have been required to keep and which are already a significant burden as they are time consuming and their relevance and useability has been questioned for some time by these agencies.

Often the statistics that these agencies have been required to keep have little useable relevance for the services themselves are ad hoc, reveal little about the contexts, challenges and rationales behind why and how the services are delivered. Many of the evaluations/reviews considered in this literature review have commented on the limited use of the currently collected data as it is often incomplete; clunky; burdensome and time consuming (for often small staffs of service providers) to keep; inconsistently gathered or do not contain any meaningful information. **CLISIS (CLC data base) and IRIS (ATSIL data base) have both been criticised as limited data bases.¹⁰⁷ Additional contextual and quality service information, if gathered, (not by the agencies themselves but through complimentary research integrated to compliment more effective data collection) could inform against the taking of rash decisions that may seem 'cost efficient' but which reverse the NPA's aims as they are adapting to the vagaries and peculiarities of the client groups.**

Whilst modes of service delivery may not make sense to people in Canberra they may make sense to a vulnerable community in remote and rural Australia or to Aboriginal people. (See discussion below on specific service delivery models and ATSILS). **This is why the NPA and the LANPR are so critical as they have the potential through the LANPR to deepen this information by a successful tender working to study and reveal the qualitative materials that can inform better understanding of the nature and calibre of the actual work done**

¹⁰⁵ J Feneley, 'Review of the NSW Legal Aid Commission's Mental Health Advocacy Service', May 2006.

¹⁰⁶ R & H Gray and Associates Pty Ltd, 'Review of the Pilot Insurance Law Service at Consumer Credit Legal Centre (NSW) Inc': A Report to the CEO of Legal Aid NSW, 2008.

¹⁰⁷ See C Cunneen and M Schwarz, 'Civil and Family Law Needs of Indigenous People in NSW: The Priority Areas', Vol 32, Issue 3 & 4 *UNSW Law Journal*, 2009, 725-245.

and how it effects clients and community. This information should assist Treasury in ensuring that decisions can be made around prioritising resources which are currently often made in a vacuum of relevant information as to why the statistics are the way they are.

R and H Gray's review however, has little relevance to this literature review and the LANPR as its focus was fairly limited to organisation matters and was largely an examination of the services compliance with the agreement and budgetary compliance. It is largely descriptive and no depth as to the calibre of CLE is provided mainly a report on the number and places or audiences for the CLE. There are some good questions on page 58.

Stubbs undertook a significant review of the Public Purpose Funded Projects from 2008-2011.¹⁰⁸ Again, this report illustrates that LAC's are already reporting under their State and Territory funding conditions and that such documents are available publically from LACs country-wide and hence to the Commonwealth's successful tender to examine as part of the LANPR to reduce duplication of reporting. This review examined 15 CLCs through examining CLSIS, interviews with CLCs and phone interviews with 3 stakeholders of each CLC. Stubbs notes that all the projects are different and unique to their target groups. Again, the focus of this review is narrower than this literature review but some of the criteria are relevant to matters of 'targeting and efficiency'. The review was mainly to examine on documentation and through some research whether the services were managed within budget, met stated objectives and targeting specific groups identified with unmet legal need. The report highlights some of the barriers to effective service delivery which are beyond the control of the agencies on pages 90-94.

Funston and Hitter reviewed the Prisoners Legal Service in 2006.¹⁰⁹ This report is largely recommendations but would be useful for any successful tender under the LANPR in understanding the difficulties in service delivery to prisoners. These are exacerbated for ATSI prisoners as is outlined in the section below on ATSILS.

The review of NSW CLCS is most relevant for understanding the context of legal aid in NSW.¹¹⁰

The review by Forrell and McCain,¹¹¹ mentioned earlier in this section, is a very useful examination which considers effectiveness, early intervention and outcome which are highly relevant to the NPA, the TOR and the LANPR. Despite the earlier warning about the outcome being defined sometimes too broadly by Forrell and McCain (given the limited ability of a legal assistance service to have control) the methodological approach is useful. There is a consideration of client outcomes on pages 55-59. The follow-up with clients after the service is a good approach but can be difficult as Curran's research for LAACT in 2007 revealed. Clients can be keen to move on and forget about their legal problems and so not want to be in touch with the service agency for feedback. Accordingly clients can be difficult to track if

¹⁰⁸ J Stubbs and Assoc with C Lux, 'Review of Public Purpose Funded Projects 2008-2011', Legal Aid NSW, February 2011.

¹⁰⁹ R Funston and M Hitter, 'Prisoner's Legal Service Review', NSW Legal Aid, September 2006.

¹¹⁰ 'Review of the NSW Community Legal Centres Funding Program', Legal Aid NSW, Final Report, June 2006. Earlier reviews of CLCs in South Australia and Victoria in the late 1990s and early 2000s are not helpful for the LANPR as some of the elements the Commonwealth seeks under the NPA were expressly not a priority in these reviews.

¹¹¹ S Forrell and M Cain, 'Managing Mortgage Stress', Evaluation of Legal Aid NSW and Consumer Credit Legal Centre Hardship Service, June 2011.

the methodology is not set up before clients leave. Even then it can be difficult to get clients to return calls. This is particularly the case if the agency is large and not closely in touch with a local community as some smaller CLCs may be.

As mentioned this author (Curran) was commissioned by Legal Aid ACT from August until December 2011 to undertake research measuring outcomes and quality legal services.¹¹² The research approach undertaken was the of ***'participatory action research' where the service providers and the clients were direct participants in the research and its design. They did this guided by the researcher who framed these discussions in a context of what the international and domestic research suggested so that staff and client could build on this knowledge and share their own insights and experiences into the research model.***

The key and overriding concern about the research was not to impose a further burden on staff in terms of additional and onerous record keeping and data entry and to enable staff to be able to get on with servicing their clients with minimal interruption. The research was therefore led in the main by the researcher but with a process that can be adapted and run in-house into the future. It was determined that a 'snap shot' approach gathering data over a two week period would operate which would be rolled out and rotate across different programs every six months and then comparisons could be made over time and against base line data that was gathered.

Curran's research utilised multiple approaches in order to firstly define what outcomes are in the context of legal aid services and which can be attributable to the functions of a legal aid service. This occurred through a series of conversations and focus groups with staff and client and by an examination of the strategic plan and operational plan of LAACT. The NPA and the 'Strategic Framework for Access to Justice in the Federal Civil Justice System'¹¹³ also informed the development of the definitions of outcomes which were as follows:

1. *A good client interview (Represents the following- holistic, joined up, quality, problem identification, empowerment, good practice, early intervention prevention, responsiveness, client centred, ADR, targeting, expertise)*
2. *Clients with chaotic lifestyle attend interviews, appointments and court dates. (Represents the following- Early intervention, prevention, empowerment, client centred, holistic, targeting)*
3. *As appropriate, sentence minimised or charges that are unsubstantiated are dropped (Rule of Law, efficiency, good practice, expertise)*
4. *Clients better able to plan and organise their legal affairs (Represents the following- Early intervention, prevention, empowerment, quality, good practice, client centred)*
5. *Improvement in the client's interaction with the legal system (Represents the following- 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. (Represents the following- Rule of Law, Quality, Voice, flexibility, good practice, client centred, responsiveness, ADR, expertise)*
7. *Client better able to understand their legal position and the options open to them (Represents the following- Early Intervention, prevention, empowerment, good practice, quality)*

¹¹² L Curran, "I can now see there's light at the end of the tunnel", Legal Aid ACT: Demonstrating and Ensuring Quality Service to Clients", Legal Aid ACT, February 2012.

¹¹³ See <http://ag.gov.au/a2>

8. *A process undergone where the client was listened to, respected but was given fearless advice of their legal position. (Represents the following- quality, client centred).*
9. *Relationships and trust building with other legal and non legal support agencies enabling referral and support (Represents the following- early Intervention/prevention/holistic, joined-up, good practice, quality).*
10. *Holding of authority to account (Represents the following- Rule of Law, Quality, Voice, flexibility, good practice, client centred, responsiveness).*
11. *A holistic service delivered to the client through collaboration/networking/CLE and joined-up services thereby enabling better facilitation of support for clients so that support, prevention and early intervention with client legal and non legal problems can occur.*

It was decided, because research on outcomes and quality in legal aid services is so new and rare world-wide it would run it as a trial, in the first instance, but would illicit useful data as well. The data was gathered from 9 November- 23 November 2011 by way of a 'snap shot'. In this way, the instruments could be tested. A feedback session with staff to discuss the process and the findings was held on 7 December 2011. After this some minor tweaking was done and suggested for the future 'snap shots' and these were incorporated into the draft report, submitted in December 2011.

Once the outcomes were defined, a set of surrogate indicators of the elements necessary for these outcomes to occur were identified in consultation with staff and a former client. Domestic and international research on quality legal aid services (although sparse and problematic see section above, Measuring Quality of Legal Assistance Services) also informed the identification of indicators and the instruments included some work done in the human services and humanitarian fields. The quality elements also took into consideration the relevant legal professional legislation, the Draft Australian Solicitors Conduct Rules and practice standards as development by the profession and the courts.

These indicators were then framed into questions and statements for surveys, interviews questionnaires and focus groups to be measured and benchmarked. Once these were finalised a draft of them was distributed to the staff team leaders for comment by them or their team and a volunteer practice section was called for to participate in the trial.

Unexpectedly, two practice areas volunteered. Rather than choosing between them it was decided, given the enthusiasm and commitment displayed by them, to enable both teams to participate. These practice sections including the Family Law Practice and the Criminal Law Practice. This also meant that we had participants representing both Territory and Commonwealth jurisdictions.

The instruments utilised to measure quality and outcomes were as follows:

A two week 'snap shot' trial period where the following occurred:

- i) Eight (8) Lawyer and eight (8) client interviews after legal interview
- ii) An observation log involving 7 entries by selected staff (staff were selected on the basis that they were not the staff undertaking other tasks in the research so that the workload was spread across staff)
- iii) A Client Voluntary Feedback Survey/Questionnaire for all clients receiving advice from lawyers

- iv) Closing of client file phone survey (this was the only unsuccessful instrument as client call back rates were low. Staff attributed this to the desire of client to move on and forget about something that was a problem for them.)
- v) Case Studies collected from open questions in Logs, Focus Groups and On Line Survey.
- vi) Interview with Stakeholders identified by the program area
- vii) On Line Survey Monkey of all Legal Aid Grant lawyers – private and in-house
- viii) Feedback Session with staff and Board and tweaking of instruments informed by the trial

Consistently and across the different measurement tools used (see appendices) LAACT scored highly on the indicators of the outcomes suggesting that the desired outcomes (listed 1-11 above) and quality service were present. On many counts the service scored extremely highly. This was verified by clients and stakeholders.

Aboriginal and Torres Strait Islander Legal Services

There is considerable literature in Australia documenting the difficulties for indigenous Australians in the legal system.¹¹⁴ Leah Cruickshank has identified issues confronting Aborigines in dealing with issues around access to justice in her report.¹¹⁵ These include anxiety, lack of familiarity, fear of detention, suicide and a reluctance to use mainstream legal assistance services. There is vast literature exploring the issues pertaining to indigenous disadvantage and how these impact upon their interactions with the legal system from housing, crimes and family violence, poor health and social supports.¹¹⁶ Any successful tender should be fully conversant in these issues as they are critical to understanding the challenges in service delivery.

Chris Cunneen has also written a substantial body of work on the significant impediments, systemic and cultural barriers for indigenous people in the Australian legal system.¹¹⁷ These

¹¹⁴ R Lincoln and P Wilson, 'Aboriginal Criminal Justice: Background and Foreground' in, D Chappell and P Wilson (eds, 2000), *Crime and the Criminal Justice System in Australia: 2000 and Beyond*, 205-207; Australian Institute of Health and Welfare, *Juvenile Justice in Australia 2000-01 to 2003-04* (2006) 16; H McRae, G Nettheim, L Beacroft, *Indigenous Legal Issues* (2nd ed, 1997), Ch 7, 305-320; S Yoe, 'The Recognition of Aboriginality by Australian Criminal Law' in G Bird, G. Martin, J Neilson (eds) *Majah, Indigenous Peoples and the Law* (1996), 228-265; D Weatherburn, J Fitzgerald and J Hua, 'Reducing Aboriginal Representation in Prison' (2003) 62(3) *Australian Journal of Judicial Administration*, 65-73; M Enderson, Benoit Dupont, *Policing the Lucky Country* (2001); T Coady, S James, s Miller and M O'Keefe, *Violence and Police Culture* (2000), Ch 1,14; M Finnane, *Police and Government in Australia* (1994)

¹¹⁵ L Cruickshank 'Identifying the Broken Bridges : an analysis of service gaps for Aboriginal young people at Children's Courts in New South Wales', Macquarie Legal Centre, 2009.

¹¹⁶ Australian Institute of Health and Welfare, *Child Protection in Australian 1998-2000*, Canberra (2001); Queensland Office of Child Protection, Families, Youth and Community Care, *Child Abuse Prevention Public Speaking Kit* (2000); C Choo, 'Aboriginal Child Poverty' (1990) *Child Poverty Policy Review* 2; Australian Bureau of Statistics Aboriginal and Torres Strait Islander Survey, <http://www.abs.gov.au/Ausstats/abs>; R Harding, R Broadhurst, A Ferrante and N Loh, *Aboriginal Contact with the Criminal Justice System and the Impact of the Royal Commission into Aboriginal Deaths in Custody* (1995); Royal Commission into Aboriginal Deaths in Custody Recommendations, Final Report see <www.austlii.edu.au/special/rsjproject/rsjlibrary/rcjadic/rciadic_summary/rcsumkoi.html>at 5 April 2007;

¹¹⁷ C Cunneen, 'Racism, Discrimination and the Over-representation of Indigenous People in the Criminal Justice System : Some Conceptual and Explanatory Issues', (Paper presented to the ANZSOC

include discriminatory policing, language barriers, a lack of interpreters, and the impact of separation policies and trauma on community. He has also explored different and novel approaches to make inroads including night patrols, community justice groups, anti violence programs, Koori and cultural Courts¹¹⁸ and Family Violence Prevention programs and the Justice Agreements all of which he states are making inroads into intractable issues but he observes these still uneven and in need of a more coherent approach.¹¹⁹

ATSILS over many years have also made numerous submissions dealing with the topics of disadvantage, incarceration impacts, institutionalisation, racism and social exclusion.¹²⁰ Again in the area of indigenous access to services, data has not always been consistently measured or kept over the years but in the past six years this has improved.¹²¹

Significantly, ATSILS has been reviewed regularly by the Australian National Audit Office and by the Office of Evaluation and Audit and the Department of Finance and Deregulation and these reports are available. Rather than requiring ATSILS to duplicate existing ongoing reporting on the cost efficiency and effectiveness it is suggested such reporting as demonstrated here already exists and ought not to be duplicated. Rather the Attorney General's Office can monitor these reports and only compliment this information with case studies, focus groups, and interviews with key stakeholders and collaborating agencies rather than duplicating reports regularly undertaken by statutorily independent offices on cost efficiency and effectiveness that are already detailed and more than adequate (Further more detailed discussion below).

There has been some work done to develop indicators internationally to measure indigenous justice outcomes¹²² and domestically.¹²³ The 2009 'Overcoming Indigenous Disadvantage Report' (OIDR) shows significant disadvantage frequently to a high degree against all justice system indicators. It reveals that in many cases the gap was increasing. This highlights the critical importance of interventions and support being provided by government, the courts, police, social and health services and the legal assistance sector. In this author's experience of working with the indigenous community the best outcomes are achieved through a grass roots approach informed by indigenous communities themselves who often have the solutions but these often get lost in translation.

Conference, Wellington New Zealand, 9 February 2005; C Cunneen and R White, *Juvenile Justice: Youth and Crime in Australia*, (2002), 19-20; C Cunneen, 'Judicial Racism' (1991) 2 (49), *Aboriginal Law Bulletin*, 8;

¹¹⁸ E Marchetti and K Daly, 'Indigenous Courts and Justice Practices in Australia, Trends and Issues in Crime and Criminal Justice', (paper No 227, Australian Institute of Criminology, May 2004) page 2. Available at <<https://www.aic.gov.au/publications/tandi2/tandi227t.html>> at 3 February 2007; B McAsey, 'A Critical Evaluation of the Koori Court Division of the Victorian Magistrates Court,' Volume 10 No. 2(2005) *Deakin Law Review*, 654 and Dr M Harris, 'A Sentencing Conversation' in Department of Justice, *Evaluation of the Koori Courts Pilot Program October 2002- October 2004* (2006).

¹¹⁹ C Cunneen, 'Assimilation and the Re-Invention of Barbarism', *Special Edition of the Indigenous Law Review*, Vol 11, 2007, 42.

¹²⁰ 'Doing Time – Time for Doing, Indigenous youth in the Criminal Justice System', House of Representatives Standing Committee on ATSI Affairs, 2011,

¹²¹ For example, a new set of data has now been developed by the Australian Institute for Health and Welfare and the Centre for Aboriginal Economic Policy Research, ANU which has improved this data significantly.

¹²² M Willis, 'Indicators used Internationally to Measure Indigenous Justice Outcomes', Brief 8, August 2010, *Indigenous Justice Clearinghouse*, 1-6.

¹²³ The Overcoming Indigenous Disadvantage Reports, (SCRGSP 2003, 2005, 2009) developed by the Council of Australian Governments.

Willis¹²⁴ observes that although national governments use an array of indicators on indigenous disadvantage, indicators (and by logical extension the outcomes they seek to indicate)¹²⁵ need to be developed with affected communities, capturing human dimensions, capturing the experiences of the individuals experiencing the criminal justice system. He states, 'change may be happening at a local level that brings real improvement to individual communities without being discernable more broadly' and warns that 'indicators that only measure large scale changes such as public perception of the justice system or recorded levels of violence, may give the impression that nothing is being achieved.'¹²⁶ These are important observations for any successful tender under the LANPR. Through the NPA and the enabling of focus groups, interviews and de-identified case studies (as the research approach favoured by this author in view of the vast literature reviewed) legal assistance services such as ATSIL and CLCs working at the local level and engaging with their communities should be able to adduce for a successful tender some valuable information alongside their local communities about the impact of their service on client and community outcomes.

This literature review favours focus group discussions and interviews as a rich form of information and through this process the relevant definitions of what is the outcome desired to be achieved can be settled upon and the relevant indicators for those outcomes determined. The author refers to the methodological approach taken in her recent work for LAACT on outcomes and quality legal services which adopted this approach.¹²⁷ Given language and remoteness and other difficulties in remote ATSIL communities this may see a call for evaluations conducted alongside or preferably with ATSIL community members who can engage community participation and if appropriate interpret.¹²⁸

Willis also notes that indicators of outcomes will only be meaningful and valid if they take into account differences between urban and remote communities on dimensions such as the availability of justice and community safety services. Additionally, when examining outcomes and indicators for ATSIL communities, Willis stresses the need to take into account 'psychological distress'. Indigenous people report higher levels of stressors including witnessing violence, drug related problems, trouble with police, being a victim of actual or threatened violence or abuse, having a family member in jail or who has been sent to jail.¹²⁹

Whilst ATSIL lawyers and Aboriginal Liaison Officers (ALOs) continue to have significant case loads to get through, particularly with circuit court visits, it is difficult for them to conduct full and proper interviews, take instructions and be assured their clients understand what is going on given well known issues with the shortage of interpreters in the various languages and hearing and health impediments that operate for the ATSIL clients. Realistic measures are required to measure outcome in light of such circumstances beyond the control of the

¹²⁴ M Willis, 'Indicators used Internationally to Measure Indigenous Justice Outcomes', Brief 8, August 2010, *Indigenous Justice Clearinghouse*, 2.

¹²⁵ Brackets inserted by author

¹²⁶ M Willis, 'Indicators used Internationally to Measure Indigenous Justice Outcomes', Brief 8, August 2010, *Indigenous Justice Clearinghouse*, 2.

¹²⁷ L Curran, "'I can now see there's light at the end of the tunnel', Legal Aid ACT: Demonstrating and Ensuring Quality Service to Clients", Legal Aid ACT, February 2012.

¹²⁸ Curran was involved in a study utilising this approach from 1997-1999, See 'It's not easy walkin in there', Catholic Commission for Justice Development and Peace & Caritas Australia, 1999

¹²⁹ M Willis, 'Indicators used internationally to Measure Indigenous Justice Outcomes', Brief 8, August 2010, *Indigenous Justice Clearinghouse*, 2 and 5.

legal assistance services. Collaborations and different ways of doing things are being explored with restorative and problem solving court approaches. The key difficulties are that often reported anecdotally by the services providers are that the support services required to enact problem solving solutions are in short supply.

Leah Cruickshank's research in New South Wales has revealed that there is a strong need for more culturally specific court support services for young people. She identifies that there is a serious need to increase the level of culturally specific support services, legal and non-legal available to Aboriginal young people and their families when appearing in court; and specifically a level of need for Aboriginal support workers at the Children's Courts throughout New South Wales.¹³⁰

The NPA aims of collaboration, joined-up services, holistic approaches which lead to early intervention, prevention and social inclusion are critically important here. These can only occur if services are not funded short term or suddenly defunded and are allowed to be community based. It is a recurrent theme in indigenous communities that service provision often suffers from inconsistent centralised management and turn-over which has significant ramifications down the line. One recent example in 2011 has been in the long running conduct of a review of Aboriginal prison transport services in NSW and the ACT which has created great uncertainty for the service. Whilst legal assistance services struggle to retain staff in this climate of uncertainty, this highlights the fact that sometimes other instrumentalities have a role alongside legal assistance services in reducing indigenous disadvantage and that these partnerships, as represented by the NPA, are not one-way but all parts must work in an integrated, efficient, effective and communicative manner if inroads are to be made. Advice UK has warned of the impact of 'failure demand' as increasing inefficiency and effectiveness. They define this as where a failing further back in the system of public administration creates unnecessary work and costs within the public service as well as for the advice service and most of all impacts negatively on the clients.¹³¹

Merry¹³² has pointed out that although statistical indicators provide standardised measures amenable to policy makers they lack specificity, context and history. In this author's view ***there is a gap in research that explains the reasons why the statistics are the way they are.*** Willis observes that statistics reveal the high rates of imprisonment but do not disclose the significant further impact it has on their families nor does it capture the contradictions around the incredible resilience of those families and communities in coping with these impacts.¹³³ ***Qualitative methodologies can delve deeper and assist when the NPA desires 'successful outcomes'. Without such data as to the 'why' behind the statistics it will be difficult to make the necessary inroads to achieving better outcomes*** (which need definition).

As indicated earlier, ATSILS already have significant reporting and review processes it is suggested that the Commonwealth Attorney General's Office not duplicate these as this

¹³⁰ L Cruickshank 'Identifying the Broken Bridges : an analysis of service gaps for Aboriginal young people at Children's Courts in New South Wales', Macquarie Legal Centre, 2009.

¹³¹ Advice UK, 'It's the System Stupid! Radically Rethinking Advice', 2008, United Kingdom

¹³² Merry E, 'Measuring the World: indicators, human rights and global governance', Paper to the American Society of Law, Panel on Indicators, 2009
<<http://www.wilj.org/research/documents/L.Merry.Measuringthe.worldASIL.pdf>>

¹³³ M Willis, 'Indicators used Internationally to Measure Indigenous Justice Outcomes', Brief 8, August 2010, *Indigenous Justice Clearinghouse*, 2.

would be an inefficient use of taxpayers' money which would be better placed at service delivery to Indigenous Australians.¹³⁴

An article by Schwartz and Cunneen is essential reading for any successful tender of the LANPR in understanding the pressures that ATSILS are under and the difficulties they face.¹³⁵

The Productivity Commission has noted that the 'Overcoming Indigenous Disadvantage' report examines outcomes for Indigenous people across a range of strategic areas. It cites 'reasons for persistent gaps are complex, arising from a mix of historical, social and economic causes.' It notes there has been limited information with which to assess the adequacy, effectiveness and efficiency of expenditure on programs aimed at addressing these disparities. To address this, the Indigenous Expenditure Report Steering Committee — under the auspices of the Heads of Treasuries — developed a National Framework for collecting and reporting information on government expenditure on services to Indigenous and non-Indigenous Australians. A high-level overview of the reporting approach was endorsed by COAG at its 2 July 2009 meeting in Darwin. In this author's view, **the material being gathered through this process should be examined by the successful tender and analysed rather than increasing and adding additional burdens on those who are delivering the services at the 'coal face'. Rather than working in silos with multiple reporting gathering data already being collected makes more sense both from a tax payer accountability and duplication point of view.**

The Productivity Commission notes that the first Indigenous Expenditure Report, containing data on the levels and patterns of government expenditure in 2008-09, was publically released on 28 February 2011. In February 2011, COAG transferred responsibility for developing and producing future editions of the Report to the Steering Committee for the Review of Government Service Provision. The former IER Steering Committee will continue as a working group providing expert advice to the new Steering Committee.¹³⁶

The Steering Committee and IER working group are conscious of the knowledge and experience held by a wide-range of stakeholders and practitioners, and will consult widely

¹³⁴ For example, the Prevention, Diversion, Rehabilitation and Restorative Justice Program (PDRRP) works to divert Indigenous Australians away from adverse contact with the legal system and provides activities that will rehabilitate and support Indigenous Australians who have been incarcerated or are in custody. The program has four sub-components: night patrols, youth initiatives, prisoner support and rehabilitation services, and restorative justice initiatives. This work is relevant to both the early intervention and prevention aims of the NPA and alternatives to litigation aims. A performance audit of the PDRRP was conducted as part of the Office of Evaluation and Audit (Indigenous Programs) 2006-09 Evaluation and Audit Work Program. The objective of OEA's performance audit was to: assess the efficiency, effectiveness and economy of the PDRRP and its delivery by funded external service providers; identify the achievements of projects funded under the program, and determine the extent to which project performance and outcomes have met the overall objectives of the PDRRP; and identify any areas where performance can be improved. 'Audit of the Prevention, Diversion, Rehabilitation and Restorative Justice Program', Office of Evaluation and Audit, 2008; 'Strategic Review of Indigenous Expenditure', Department of Finance and Deregulation Report to the Australian Government, 2010 <http://www.finance.gov.au/oea/docs/OEA_PDRRP_report.pdf>

¹³⁵ M Schwartz and C Cunneen, 'Working Cheaper, Working Harder- Inequity in Funding for Aboriginal and Torres Strait Islander Legal Services' *Indigenous Law Bulletin*, 2009.

¹³⁶ Productivity Commission, Summary Indigenous Expenditure Report, 2011 <http://pc.gov.au>. For the Expenditure Report see http://www.finance.gov.au/foi/disclosure-log/2011/foi_10-27_strategic_reviews.html

with Indigenous organisations, governments and researchers in developing the report framework and methodology.¹³⁷

The next Indigenous Expenditure Report is planned for public release in mid-2012 and it seems logical that this should be factored in as relevant material/measurement for the LANPR given the expertise and consultation process already underway.

Caution though is needed some of the recommendations of the Indigenous Expenditure Report including the proposed rationalisation of indigenous services. This is an example of decisions being made without information around why the services are the way they are. In the attempt to address the issues around efficiency and to an extent effectiveness international research highlights the importance of context and that an over-concern with efficiency can drive down quality and effectiveness.¹³⁸ It should be seen within the broader context of the local understandings and knowledge and the backdrop of qualitative data which this literature review would argue is a significant area where there is a gap in measurement which key in understanding why and how services are delivered, the reasons they are delivered in this way and what improvements or good practices exist and what outcomes are occurring. ***The concern is that currently if Treasury is only concerned with aggregated statistics that drive an efficiency agenda then they risk compromising programs of service delivery that work but may work because they take time or work differently due to the nature of the client group, time and work that is needed if inroads into increasing access to justice and 'closing the gap' are to be made.***

The Australian National Audit Office (ANAO) in its review of ATSILS has raised some concerns around some of the systemic issues which act as barriers to seamless and effective service delivery to indigenous communities.¹³⁹ ***The ANAO has found that current program management and funding focuses on requests for inputs from grantee organisations rather than on an assessment of the resources required to achieve outputs or outcomes.*** The input-based funding arrangements include top-up funding during a financial year to grantee organisations, particularly ATSILS. The ANAO notes that its fieldwork for the 2003-2004 report for the Law and Justice Program performance audit pre-dated the decision to separate ATSIC and ATSIS, and the resulting Ministerial Directions. The ANAO considers that this process is inefficient and is not always transparent to staff and stakeholders. The ANAO notes that a decision to expedite the tendering of legal aid services, and enter into contracts with selected service providers, is likely to lead to a changed funding approach for some service providers. This author refers back to the structural, historical impediments. Moves to contracting of services and the ***need for adaption in cultural approaches by such services and their enculturation and training will take time and any such contract selection ought***

¹³⁷ Productivity Commission, 'Summary Indigenous Expenditure Report', 2011 <http://pc.gov.au>. For the Expenditure Report see http://www.finance.gov.au/foi/disclosure-log/2011/foi_10-27_strategic_reviews.html

¹³⁸ A Trude and J Gibbs, 'Review of Quality Issues in Legal Advice: measuring and costing quality in asylum work', Lawyers Defending Human Rights, Refugee and Migrant Justice undertaken by the Information Centre About Asylum and Refugees and the Immigration Advisory Service, City University, London, March 2010

¹³⁹ ATSIS Law and Justice Program Performance Audit – Audit Report No 13, Australian National Audit Office, 2003-2004. See also for a summary, Key Audit Findings ANAO ATSIS Law and Justice Program Performance Audit, Report No 13 ANAO 2003-2004 from Summary Brochure.

to have these factors as considerations given the significant consequences of getting it wrong that could derive for indigenous people.

Again, this literature review stresses the need to ensure that 'cost efficiency' alone ought not be the driving force for reforms to ATSIL services given the complexity of indigenous disadvantage and the risks highlighted above by the international research in driving down quality and effectiveness. In some areas, the ANAO report suggests a narrow approach is taken by suggesting at times more rigid frameworks for service delivery that may compromise the innovation, flexibility and adaptability that is needed in working with clients and that the settings and contexts within which the local and centralised ATSIL services exist have not been fully explored or considered. Again this author stresses that without an understanding of why things are done and what works well for specific client groups through discussion with those communities, their service providers and deeper qualitative studies rather than the minimalist focus on quantitative data, advances in the area of indigenous access to the legal system could be impeded.

The ANAO found that ATSIS has not given adequate consideration to determining the most efficient means of providing assistance to service delivery organisations. Annual funding of service providers under the Law and Justice Program (rather than multi-year funding) places an unnecessary and costly administrative burden on ATSIS and those organisations requiring the financial assistance. The ANAO states there is also scope to achieve administrative economies, both by reducing the number of small grants and by addressing rapidly escalating costs, such as Professional Indemnity Insurance for ATSILS and Family Violence Prevention Units (FVPUs).¹⁴⁰ This again highlights the systemic and funding issues that can make the context in which legal assistance services and how they operate impediments to their actually being able to deliver positive outcomes and effective services. ***The instability of their funding situation can only lead to insecurity and uncertainty which makes an already difficult service context all the more difficult to have the inroads that the Commonwealth's 'Closing the Gap' strategy is seeking to attain.***

Other notable reviews of ATSIL services which a successful tender might wish to examine are footnoted below.¹⁴¹ In any consideration of the reviews conducted and listed the successful tender should also consider the often written responses to these reviews by ATSILS which often explain the context and clarify issues raised by these reviews.¹⁴²

¹⁴⁰ Key audit findings ANAO ATSIS Law and Justice Program Performance Audit, Report No 13 ANAO 2003-2004 from Summary Brochure.

¹⁴¹ 'Evaluation of the Legal and Preventative Service Program', Office of Evaluation and Audit, 2003; D Dymo 'Civil Law Aboriginal Legal Service Outreach Review', Legal Aid NSW, March 2008; 'The Evaluation of the Legal Aid for Indigenous Australia Programs', Office of Evaluation and Audit, 2008; 'Audit of the Prevention, Diversion, Rehabilitation and Restorative Justice Program', Office of Evaluation and Audit, 2008; 'Strategic Review of Indigenous Expenditure', Department of Finance and Deregulation Report to the Australian Government, 2010, <http://www.finance.gov.au/oea/docs/OEA_PDRRP_report.pdf> 'Doing Time – Time for Doing, Indigenous Youth in the Criminal Justice System', House of Representatives Standing Committee on ATSI Affairs, 2011.

¹⁴² It may seem strange for a literature review, but to obtain a realistic view on what ATSILS do, understand the difficulties and the context of the work of ATSILS the SBS serialisation "The Circuit" available from Dymocks is well worth viewing. This programme had the input of the Western Australian Aboriginal and Torres Strait Islander Legal Service and had many Aboriginal Directors and screenplay writers contributing to the production.

Dimo's ¹⁴³ report examining the Civil Law Outreach Program involved consultations and the collection of case studies which may be useful for looking at outcomes/impact but the report is largely descriptive. Whilst making many recommendations it does not fully address the resource and funding issues that make these problematic for implementation. There are some good recommendations around training and the need for more services to meet the need but the suggestions for enhanced data collection could place further burdens on the small agency.

Cunneen and Schwarz's ¹⁴⁴ research, although more relevant to identifying legal need and so outside the scope of this literature review, is vital reading given the Commonwealth Government priorities and the context of the LANPR. The methodology included consultations with indigenous community and those who provide services. 153 participants out of 160 services were received. There was a questionnaire and interviews with stakeholders. The process of research here may be useful for any successful tender conducting research in indigenous services.¹⁴⁵

Community Legal Centres

All CLCs are required to produce an Annual Report by law. These are a critical resource for any successful tender as some contain case studies about impact and the CLCs work in areas which are required by the NPA. Some CLC's are very small others are larger¹⁴⁶, some are generalist, some work in areas of specific and identified need¹⁴⁷ and others specialise.¹⁴⁸

Some of the useful reports for any successful tender identified (sometimes more for their methodological approach than necessarily because they are evaluations within the scope of this literature review) are discussed below.

The 'Targeting Justice Report' of the Loddon Campaspe Community Legal Centre¹⁴⁹ is more of a reporting back to community on progress rather than a full evaluation. However, its approach is very useful. It gathered local demographic data and then examined its four key

¹⁴³ D Dimo 'Civil Law Aboriginal Legal Service Outreach Review', Legal Aid NSW, March 2008.

¹⁴⁴ See C Cunneen and M Schwarz, 'Civil and Family Law Needs of Indigenous People in NSW: The Priority Areas, Vol 32, Issue 3 & 4 *UNSW Law Journal*, 2009, 725-245.

¹⁴⁵ C Cunneen and M Schwarz, 'Civil and Family Law Needs of Indigenous People in NSW: The Priority Areas, Vol 32, Issue 3 & 4 *UNSW Law Journal*, 2009, 725-245.

¹⁴⁶ Peninsula Community Legal Service and Eastern Community Legal Service, Redfern Community Legal Service.

¹⁴⁷ For example, the Loddon Campaspe Legal Service after a local 'Access to Justice Report' in 2008 identified key focus groups as the elderly, homeless, migrants and in family violence. Also the West Heidelberg Community legal Service conducted a community consultation in the first half of 2008 identifying the key issues of homeless and poor housing and discrimination as key concerns of community. It successfully received a Legal Services Board Grant at the end of 2010 to address these issues in partnership with Banyule Community Health over a three year period. The Footscray Community Legal Service has programs which target local Burmese and Sudanese community members and young people. Many more examples exist around Australia.

¹⁴⁸ For example the Consumer Credit Legal Service in NSW, Women's Legal Service around the country, the Consumer Action Law Centre, the Human Rights Law Resource Centre, Refugee and Immigration Legal Services and Street Law in the ACT and the Homeless Persons Legal Clinics in Victorian and Queensland.

¹⁴⁹ E L'Huillier, 'Targeting Justice in the Loddon Campaspe Region: A Review of the Loddon Campaspe Community Legal Centre: a report on the progress towards access to justice in the Loddon Campaspe Region', Advocacy Rights Centre & Loddon Campaspe Community Legal Centre, September 2008.

programs through interviews with people involved in an initial Access to Justice Report and the establishment of the service; interviews with relevant stakeholders e.g. Family Violence Service (pages 37-40); surveys of volunteers; survey of agencies working closely with the service and a list of achievements. The report contains some useful information on accessibility, holistic approaches, prevention approaches and CLE but the report notes this CLE is mainly with students and could be more directed at community, support workers and engagement in community participation as part of the process. ***The consistent pattern of most of the evaluation reports into legal assistance services, considered in this literature review, all identified the systemic barriers to effective service delivery.*** This report by the Loddon Campaspe Community Legal Centre is no different highlighting the limited funding, limited staffing, capacity, and remoteness and pressures that this places on a committed staff (pages 19-21, 20-23). Some interesting data is gathered around referral practices and it is identified as an area where significant work needs to be done. It highlights issues around a lack of knowledge and a lack of support services which match the need (Page 36).

QPILCH has also produced a useful report by T Smith examining their Homeless Persons Legal Clinic (HPLC) (commenced 2002) and their Refugee Civil Law Clinic Programs (RCLCP)(commenced 2007).¹⁵⁰ The first program works alongside host agencies where the service is often delivered. Similarly the RCLCP operates on an outreach model. ***As noted earlier, many useful evaluations of legal assistance services are already undertaken under State or Territory funding requirements. Where this is the case, rather than increase the burden on legal assistance service to do additional reporting, these reports should be considered and factored into the evaluation process.*** This evaluation was conducted under the Department of Communities, Community and Homelessness Services. It collected quantitative and qualitative data. It conducted interviews with host agencies and working groups; face to face interviews some structured and others unstructured; an on-line survey of team leaders and volunteer lawyers from partner law firms; used case studies prepared by volunteer lawyers; tried to utilise the what they note was limiting CLSIS data; conducted in depth file reviews of 58 files. The evaluation does include an examination of how effective the model was in achieving its stated outcome.

The report has useful material on what constitutes an effective outreach service (page 41).

This evaluation report of QPILCH again notes the problems and barriers to effective services presented by limited resources. The report notes that the reliance on ad hoc pro bono assistance can fragment holistic service and is not always reliable. It noted inadequate capacity to offer services identifying criminal and family law as areas of need identified by service users and non legal services. It also observed a need for non legal service induction into what is a legal problem.

Redfern Community Legal Service has collated some case histories on problems and how the service dealt with them which may be useful.¹⁵¹ A word of warning, some CLCs do not have active web sites. This is a resource issue as well as a staffing issue as few staff have the skills the service demands as well as the requisite IT knowledge. Some have tried to obtain funding for their web pages through philanthropies and government support but others

¹⁵⁰ T Smith, 'Evaluation of Queensland Public Interest Law Clearing House Incorporated Homeless Persons' Legal Clinic and the Refugee Civil Law Clinic, PILCH and Encompass Family and Community PTY Ltd, November 2011.

¹⁵¹ 'Understanding Credit and Debt Project for CALD Communities, Report on the First Stage', Redfern Community Legal Service, October 2010. Their Annual Reports are also useful in outlining some outcomes for clients in case studies. <www.rcl.org.au>

struggle on with ad hoc pro bono assistance or have not been able to find the resources to enable regular updating or uploading. This does not mean however, the CLCs do not have valuable information about their service that exists in their offices. Asking them to provide this relevant information to a successful tender can be onerous. It is suggested that on-site visits by the successful tender would be less burdensome.¹⁵²

In one review of CLCs examined in the course of this literature review, the consultant asked legal assistance services and community agencies in the area to make submissions to the review. Given the range of law reform submissions required of legal aid services on policy areas and legislative changes affecting their clients it is not a surprise to this author that this consultant appeared to receive no responses to the requests. It merely demonstrates a lack of consideration in their project's design of the pressures on legal assistance service. Calling for submissions from under resourced agencies is not a sound or realistic methodological approach in this context.

This author notes that during her research for LAACT in late 2011,¹⁵³ practitioners noted that file reviews did not adequately represent the actual nature of the file which could be more complex, challenging and nuanced than a file would reveal. They preferred interview and a diary approach during a matter. This is important to note in relation to the last methodological approach by T Smith.¹⁵⁴ In addition, an expectation in a small agency without volunteer lawyers that they might have time to write up case studies may be difficult. Again in the LAACT 2011 research to avert this, an 'open question' in the on-line survey asked them to describe a good client outcome and how it occurred and ask similar questions was posited to lawyers and para-legals in the personal logs that they collected in a 'snap shot' period of two weeks. This elicited relevant and focussed case studies on outcome and helped understandings around the nature of the work and how the service was being delivered. This can be complimented by client feedback surveys or face to face interviews which ask similar questions using the approach 'but for the intervention of the legal assistance service what do you think might happen/have happened?'

Further studies relevant to an examination of homelessness services¹⁵⁵ and service delivery to the mentally ill¹⁵⁶ are footnoted below and are worthy of consideration.

Woodyatt, Thompson and Pendlebury have examined Queensland's Self Representation Service.¹⁵⁷ Their evaluation is largely descriptive as to how the service works with its focus on diversions of people out of court and so this is relevant to the NPA in the area of avoidance of litigation. The report has statistical information and highlights the problems

¹⁵² This researcher did this for her research into the impact of CLC law reform on community in 2007 and it was the best way of conducting the research as it did not intrude on the day to day work of the busy CLCs she was examining. See L Curran, 'Making the Legal System More Responsive to Community: A Report on «SCONTITLE»', La Trobe University, May 2007

¹⁵³ L Curran, "I can now see there's light at the end of the tunnel", Legal Aid ACT: Demonstrating and Ensuring Quality Service to Clients", Legal Aid ACT, February 2012.

¹⁵⁴ T Smith, 'Evaluation of Queensland Public Interest Law Clearing House Incorporated Homeless Persons' Legal Clinic and the Refugee Civil Law Clinic', PILCH and Encompass Family and Community PTY Ltd, November 2011.

¹⁵⁵ S Forrell, E McCarron and L Schetzer, 'No have, no justice? The legal needs of homeless people in NSW', Law and Justice Foundation of NSW, Sydney, 2005.

¹⁵⁶ M Karras, E McCarron, E Gray and S Ardisinski, 'On the Edge of Justice: the legal needs of people with a mental illness', NSW, Law and Justice Foundation of NSW, Sydney, 2006.

¹⁵⁷ T Woodyatt, A Thompson and E Pendlebury, 'Queensland's Self Representation Services: A model for other courts and tribunals', 1 *International Journal of Judicial Administration*, 2011.

with the way data was collected. It identifies difficulties in ascertaining the precise information on cost savings made by the service. As a result of this concern a further research project is being developed in collaboration with others. It might be worthwhile for any successful tender to monitor this by for the LANPR.

Further recommended reading for any successful tender examining CLCs is the article footnoted below by P O'Brien detailing the critical role of legal centres in advocacy and policy development and change.¹⁵⁸

Family Violence and Prevention Services

The NPA encourages 'greater collaboration among legal and other service providers'. There was an evaluation undertaken in the Northern Territory in March 2007 of their 'Integrated Family Violence Justice Project'¹⁵⁹ a project which can be described as working towards 'greater collaboration among legal and other service providers'. This is funded through the Australian Governments Domestic and Family Violence and Sexual Assault Initiative within the Office for Women. The Evaluation was mainly of two forums held with people providing legal and non-legal service, judicial, police, government, the prosecutor's office and others working in the domestic violence sector including accommodation and corrections. The project was based on a similar project in the ACT which has won 3 Australian Violence Prevention Awards. The project was to examine ways that government and non government agencies can work better to improve outcomes for people experiencing domestic violence. Similarly, to other evaluations examined no definition of what these outcomes are is provided. The forums conducted identified some significant gaps in service delivery, awareness, training and barriers due to different agency approaches. Whilst improvements in policing were noted significant impediments were identified. In summary, these included:

- under-resourcing of service providers
- competition for funding grants which were often short term or curtailed even after success
- vast geographical distances and a lack of services
- a lack of understanding between services of their role and approach
- the acceptance of violent behaviour in some regions of the Northern Territory.
- the intractability of senior levels as a barrier to progress
- problems with the nature of legislation for example mandatory sentencing concerns for a second offence
- a need for education and training.

The evaluation which was largely of the forums and the issues these identified as well as suggesting significant barriers to be overcome at the systemic, legislative, service provider level as noted above also stressed the complexity of the work and the need for key issues affecting the different communities to be individually identified. Concerns raised by forum participants around the duplication of resources resulting from networks and resources not being shared were identified as were concerns about respect for confidentiality. The limitation of men's services and their isolation was identified as leading to isolation. Issues of

¹⁵⁸ P O'Brien, 'Changing Public Interest Law: Overcoming the Law's Barriers to Social Change lawyering', Vol 36 *Alternative Law Journal*, 2011.

¹⁵⁹ 'Working Towards Greater Collaboration and Better Outcomes for Clients and Stakeholders', Northern Territory Legal Aid Commission, March 2007; C Cunneen and M Schwarz, 'Civil and Family Law Needs of Indigenous People in NSW: The Priority Areas', Vol 32 Issue 3 & 4, *University of New South Wales Law Journal*, 2009, 725-245.

workload and staff retention were identified as affecting continuity and understanding of the issues for community and the best ways to approach these. Community legal Education of community members was identified as a need as many did not understand court processes. Although some existing and the Women's Legal and Advocacy Service is seen as a positive initiative there was a greater need. Task forces were also seen as complimenting the work of the project.

The evaluation report on the forum noted that each group had identified tasks they would need to undertake to improve the project and the issues identified. This task list was a good idea but there was no timeline or personal/agency responsibility identified for the long list of tasks. Many of the tasks listed will be difficult to overcome and achieve at an agency level in view of the systemic, limited resources and barriers that are identified in the evaluation report on the forums. Issues that they seek to address such as increased victim support and advocacy and trauma counselling and the need for interpreters in program delivery and crisis intervention also would require more than individual or agency action as the funding necessary is identified as scarce.

The desired approaches for the project as outlined included:

- Pro-arrest and pro charge and presumptions against bail with police being equipped with evidence kits with evidence of an increase of 20-25% of all reported incidents resulting in criminal prosecutions
- Victim support via domestic violence crisis service in partnership with police and where interventions to protect children might occur.
- Coordination and case management and case tracking and family violence court case management hearings
- Programs for rehabilitation of offenders and one on one counselling
- Partner safety information and support.

Another evaluation examined for this literature review was the Women's Legal Aid Evaluation Report.¹⁶⁰ As a methodology for the LANPR it is not that helpful as it is mainly a description of activities and targets and so, is largely about numbers rather than a substantive analysis of how they are delivered in terms of quality and effectiveness which is the brief for this Literature Reviews examination.

There are 31 Family Violence Legal Services funded by the Commonwealth Government.¹⁶¹ A number of useful submissions and reports produced by the Aboriginal Family Violence Legal Service Victoria (AFVLSV) were considered for this literature review.¹⁶² It is noted that such services have to find independent or philanthropic funding to do much of their policy and law reform work.¹⁶³ Many of these documents explain the national policy settings and some of the difficult circumstances and limitations on service delivery to victims of domestic violence in ATSI communities. Isolation; the lack of support services in rural and remote communities and infrastructure; under-resourcing and short term funding; and

¹⁶⁰ 'Women's Legal Aid Evaluation Report', Queensland Legal Aid, July 2002.

¹⁶¹ Letter from the Aboriginal Family Violence and Legal Service Victoria to the Australian Law Reform Commission, 25 June 2010.

¹⁶² Some further information on the policy context, challenges in working in this area for legal assistance services and some evaluation reports can also be found on the web page for the Women's Legal Service Australia <<http://www.wlsa.org.au>. Unfortunately, due to the time frames for this literature review it was not able to analyse these in detail.

¹⁶³ Letter from the Aboriginal Family Violence Legal Service Victoria to the Australian Law Reform Commission, 25 June 2010, 1.

discontinuance of programs that needed time and longer term thinking to have an impact are identified as obstacles. **Systemic restraints can affect the ability of agencies to be as responsive as they could or would like to be.**¹⁶⁴ Again as this literature keeps stressing the issues and complex layers which need to be understood and factored into service delivery **highlight the need to avert a 'one size fits all' approach and resists temptations to homogenise services which may require different approaches to suit the different community.**¹⁶⁵ Issues identified include service delivery models for CLE which are in conversational settings, culturally appropriate responses to victims which take into account their circumstances, the lack of understanding in community that sexual assault by partners is crimes family violence and is not lawful, fear, shame, historically insensitive approaches and the need for grass roots responsiveness. These are identified as more successful for outcomes to 'top down' approaches which can affect effectiveness.¹⁶⁶ **There is also concern expressed that Alternative Dispute Resolution may not always be appropriate in setting with complex issues around violence and assault and community and family members.**¹⁶⁷ **This should be considered in any attempt to measure ADR options under the NPA. Also relevant are the services' human rights frameworks and how domestic violence services respond to these.**¹⁶⁸ **Such elements include respect, dignity and appropriate treatment of people by the services.** Elements also discussed above under the section on quality in this literature review.

There were some studies from the United States examined as part of the literature review. Given the legal aid system in the United States is so vastly different to Australia being characterised by limited government funding, a reliance on the pro bono efforts of the private bar and a reliance on law school clinics publicly funded legal aid sector, caution is needed. One evaluation of the Legal Assistance for Victims Program¹⁶⁹ notes that the program itself in assisting collaboration and partnerships was positively evaluated but that the systemic barriers caused by this blend of the private bar, law clinics and some funded domestic violence services still left high levels of unmet legal need, fragmentation of service delivery, limited resources and problems in recruiting and retaining professionals to work in and with the program. The methodology of the evaluation was largely quantitative being survey based and using 'client satisfaction' approaches that have been negatively critiqued above. The authors themselves note that their methodology was problematic and that decreases in funding for the Legal Services Corporation in the United States and in other service created further obstacles in the research.

¹⁶⁴ Aboriginal Family Violence Legal Service Victoria Response to the ALRC List of Questions and Proposals, 75-83; Letter from AFVLSV to the Family Law Council Secretariat, 2 June 2011.

¹⁶⁵ AFVLSV submission on the 'Failure to protect Laws', Department of Justice, Victoria, 9 September 2011 and Letter AFVLSV to the National Plan Task Force Office for Women, 1 July 2008, 2.

¹⁶⁶ Letter from the Aboriginal Family Violence Prevention and Legal Service Victoria to the Australian Law Reform Commission, 25 June 2010, 3.

¹⁶⁷ Letter from the Aboriginal Family Violence Prevention and Legal Service Victoria to the Australian Law Reform Commission (ALRC), 25 June 2010; Aboriginal Family Violence Prevention and Legal Service Victoria Response to the ALRC List of Questions and Proposals, 62-63

¹⁶⁸ Submission AFVPLS to the Commonwealth Attorney General's Department on the National Human Rights Action Plan Baseline Study, 1 September 2011, 5-10 and L Curran, "'I can now see there's light at the end of the tunnel', Legal Aid ACT: Demonstrating and Ensuring Quality Service to Clients", Legal Aid ACT, February 2012.

¹⁶⁹ National Evaluation of the Legal Assistance for Victims Program, Institute for Law and Justice and the National Centre for Victims of Crime, 24 January 2005 <http://www.wily.org>.

Collaboration, Community Strengthening and Community Legal Education

There is a lack of detailed literature on the measurement of collaboration or how it might be undertaken. Curran has tried to incorporate some measurement of it in the various tools in her 2011 research for LAACT.¹⁷⁰

Some work around indicators on well-being and community engagement and strengthening has been attempted by McCaughey Centre's School of Population Health at the University of Melbourne and the references are footnoted below.¹⁷¹ Whilst the materials produced by Community Indicators Victoria (CIV) under the McCaughey Centres auspice are relevant they are still fairly broad and aimed at the Local Governance Areas on Results Based Accountability (RBA). They are also still in the early days of measurement and development. Again much of the material gathered tends to be statistical only, revealing again the shortcoming identified earlier for any effective LANPR process whereby the statistics do not reveal the reasons behind the statistics. Accordingly this approach may not be effective for the point of examining the implementation of the NPA or for purposes of measurement by the successful tender under the LANPR. Again, the indicators identified in the materials of CIV may not be easily transferable to human service delivery such as legal aid services and community based organisations as they are too broad and often outside an agency's control or remit and require other players. In addition, ***for legal aid service delivery measurements there are inherent dangers in an over reliance on telephone surveys and on-line surveys of community members given many legal aid clients have no address, limited phone access, are from CALD backgrounds and may not be computer literate and so there are huge holes in clients of legal aid services who can be surveyed.*** Some of the discussion and framing of the CIV indicators may be useful for any successful tender to consider subject to the warnings given above.

The Australian Bureau of Statistics has also grappled with trying to measure progress on aspects of well being and community including groups of interest to legal aid services and other community service delivery agencies including low income, unemployed, ASTSI, people born overseas, victimisation and offender rates.¹⁷² Again, for the LANPR this may have limited use as it is statistical and has little qualitative data that explains the reasons behind the statistics and informs of how services are being delivered. It also loses its local impact capacity which is so critical in measuring outcomes for clients. Much of what is measured in the ABS material is systemic, national and beyond the capacity of individual or collective agencies to influence. ***The ABS itself admits that such measurements of outcome and results are difficult when undertaken on a national level and difficult to reveal the understandings as to what is happening at the local level. Care is needed.***

¹⁷⁰ L Curran, "I can now see there's light at the end of the tunnel", Legal Aid ACT: Demonstrating and Ensuring Quality Service to Clients", Legal Aid ACT, February 2012.

¹⁷¹ 'Community Indicators Victoria: for informed, engaged and well planned communities, A Resource Guide Using CIV as a Tool for Council Planning, Community Indicators Victoria, http://www.communityindicators.net.au/measuring_wellbeing; M Davern, Citizen Engagement and Community Satisfaction, Community Indicators Victoria Survey 2007, McCaughey Centre, VicHealth Centre for the Promotion of Mental Health and Wellbeing, 2007.

¹⁷² Measures of Australia's Progress, 2010, Australian Bureau of Statistics
<<http://www.abs.gov.au/ausstats/abs@nsf/Lookup?by Subject/1370....> and Measures of Australia's Progress 2010, Feature Article: Future directions for measuring Australia's Progress, September 2010.

T Smith looks at integrated services and access by other services (pages 26-27) she examines outreach accessibility (pages 27-30). She raises the point that it is critical in legal service delivery to assist service users and their non-legal workers in being able to identify what a legal problem is so that they can seek help. This has also been examined by Curran.¹⁷³ Smith notes that this goes to early intervention and prevention (pages 30-33) She also discusses the relevance of this in the context of clients with complex and multiple needs and the need for relevant and realistic targeting (pages 38-39).¹⁷⁴

A useful resource in relation to measuring capacity has been developed by the United Nations Development Programme.¹⁷⁵ This material stresses what is mentioned in the Executive Summary of this Literature Review, namely, the lack of a common language with which to articulate results, the lack of a framework in which to capture them and the difficulties in being able to measure and prove success and where it does exist the need often for it to be descriptive, subjective and the risk that cannot be avoided of its being anecdotal and vague. They warn each program must be understood to better inform and ensure adaptive learning and management processes rather than being fixed and remote from the realities of practice. Any approach must be able to adapt and hear and incorporate changing realities and demands.¹⁷⁶ Clearly, the task set under the LANPR is not an easy one to measure and warnings of authoritative bodies such as the United Nations Development Program highlight the difficulties of the task and the possibility that it will not always be an exact science. They stress that measurement must go beyond an increase in input resources and completion of activities. The author has stressed this point throughout this literature review elsewhere.¹⁷⁷

There are very few evaluations of community legal education as undertaken by Legal Aid Commissions, community legal centres and ATSILS. Although, there are sometimes CLE Evaluations required by Legal Aid Commissions of CLCs' of CLE these are often very limited in scope and do not actually look at the actual quality, detail of knowledge or capacity developed by participants in CLE, or impact on participants of the CLE or community development undertaken. Often the CLE measurement is about the number of sessions held or number of participants attending rather than quality of presentation style or impact. It is rare for CLE to be ongoing with particular communities. As they are often one off sessions rather than building block style multiple CLE sessions.

Much of the CLE conducted tends to be in a lecture or forum style of presentation and does not engage with participants particularly those due to their disadvantage may require novel, flexible and appropriate responses and modes of delivery in CLE. 'Evaluations' which merely reflect on the number of people who attended a session or the number of CLE activities

¹⁷³ See also L Curran, 'Relieving Some of the Burdens on Clients: Legal aid services working alongside psychologists and other health and social service professionals', Vol 20 No 1, *The Australian Community Psychologist*, June 2008

¹⁷⁴ T Smith, 'Evaluation of Queensland Public Interest Law Clearing House Incorporated Homeless Persons' Legal Clinic and the Refugee Civil Law Clinic,' PILCH and Encompass Family and Community PTY Ltd, November 2011 26-27.

¹⁷⁵ 'Overview of the UNDP's Approach to Measuring Capacity' Capacity Development Group, Bureau for Development Policy, United Nations Development Program, June 2010 and Dr P Downes, 'Measuring Outcomes in Relation to SCP Core Elements, NEWB, Green Street, Educational Disadvantage Centre, St Patricks College, UK, 13 January 2011.

¹⁷⁶ 'Overview of the UNDP's Approach to Measuring Capacity' Capacity Development Group, Bureau for Development Policy, United Nations Development Program, June 2010, 10.

¹⁷⁷ 'Overview of the UNDP's Approach to Measuring Capacity' Capacity Development Group, Bureau for Development Policy, United Nations Development Program, June 2010, 6.

rather than the actual levels of empowerment or enhanced knowledge or capacity of participants after the CLE. This will tell little about whether the aims of the NPA are being achieved by the CLE. There are some exceptions in this approach and the Footscray Legal Service is possibly a leader in this field.¹⁷⁸

For example, a project runs at Footscray Community Legal Service (FCLC) which is called, “Bring Your Bills Days”. It is an innovative early intervention community event that the FCLC has been running for a few years most intensively over 2011 with 7 events and with a possible 6-7 events that FCLC will be involved in 2012. There will be additional ones for other legal and non legal services who want FCLC’s initial guidance. It is a blend of CLE and legal advice and problem resolution all in one and so unique – effective and efficient as client contact, education, problem identification, problem solving and sometimes resolution can all occur on one day in the one place.

By way of background it is a model that arose from the need to find an alternative way to decrease financial counselling casework in the traditional form due to the large number of issues/problems arising that were evidently systemic and were a result of vulnerable clients who more often than not were also of a CALD background.

The success of the days has led to interest from other areas including Broadmeadows, Ringwood and Shepparton in rural Victoria. In this case it is a promising model for CLE/advice as other legal service providers are due to replicate it in their areas. The concept is clearly relevant to the aims of the NPA in terms of early intervention, social exclusion and litigation avoidance, and is predominately related to lack of English and financial status / literacy that comes with having been introduced into a Western society and its complexities and costs, but also related to the lack of community legal education in terms of contracts and the complexity of refugee names being “too hard” for sales people to correctly document.

What occurs is an event where people having consumer difficulties, problems with utilities, financial institutions come to one place on a given day. Interpreters are present and CALD community leaders are engaged to advise of the event, to get people to come along and are present on the day to offer support.

Complaints handling bodies such as the Financial Services Ombudsman are invited along and once the matters are examined by the lawyers on site are referred on the spot to the relevant agency for resolution.

This is an efficient effective approach and has led to resolution of many problems. It is an example of being proactive, going to where the people are going to be and services be situated at venues appropriate for community access. It works in collaboration not only with legal services such as Victoria Legal Aid but also non legal agencies such as AMES and others. There are many programs such as this one being run with few resources and as innovations as problems are identified and access points and relationships established. Some law reform activity in the areas where there is a repetition of problems is also planned.

It takes the legal service to the people who face many barriers to even knowing or identifying they have a problem capable of solution.

¹⁷⁸ See <http://www.footscrayclc.org.au/brochures-publications/>

Such programs exist around Australia but are very rarely examined or documented because the few people involved in running them have little time to document such initiatives and so they are not well known. It is not suggested that the solution is to force these people to document their work as they are already under the pump. Perhaps one role of the successful tender or a further research project might be to go out to such legal assistance providers and document them for the providers. Not only would this examine outcomes and some of the NPA aims in action but it would provide a useful resource for the service itself. If more innovative programs responding to community need were documented and this information shared around good and workable practices, then they could be replicated with adjustments based on the dynamics of the community in question.

For some time it has been lamented that very little investigation has been taken into best practice CLE and models of good practise. This was identified by the Victorian Legal Assistance Forum in Victoria as an area in need of further exploration in August – November 2010.

Katie Fisher formerly of National Legal Aid, Monica Ferrari of Victorian Legal Aid and this author for some years have discussed our desire to do further research and explore the best practice models in CLE, community development, capacity and community strengthening. Proposals to funding bodies have been drafted and all three remain keen to investigate CLE approaches further.

This author suggests the issue of effective and transforming CLE and community development given the critical need for disadvantaged and vulnerable people under the NPA to know their rights and responsibilities and to be empowered to use the legal system is an area in need of further research and exploration beyond the scope of this literature review. A framework for defining what is good practice CLE which explores different models and approaches needs to be developed, models examined and their effectiveness and impact should be undertaken or commissioned.

Respecting Diversity, Keeping the Flexibility and Range of Ways to best respond to it

This Literature Review has highlighted that ***legal assistance work is not only complex but that it is also complicated. There is no one way which can make it easy to achieve a successful outcome. Good practice informed by good training, cultural awareness and sensitivity and adaptability and flexibility are key factors in effectively reaching and targeting vulnerable and disadvantaged groups.***

The United Kingdom Report by Buck et al contains some extremely useful research on tailoring and targeting of services and a good methodology for how to examine this.¹⁷⁹ See a summary discussion of this report below.

Buck and Curran¹⁸⁰ explore some issues around advice seeking behaviours and barriers to people in seeking help for their legal problems and suggestions to overcome these in service delivery models which may be useful background for a successful tender. They also suggest identify some international service models.

¹⁷⁹ A Buck, M Smith, J Sidaway and L Scanlan, 'Piecing it Together: Exploring one-stop shop legal service delivery in Community Advice Centres', Legal Services Commission (Legal Service Research Centre) June 2010.

¹⁸⁰ A Buck and L Curran, 'Delivery of Advice to Marginalised and Vulnerable groups: The Need for Innovative Approaches', Volume 3 Art. 7 *The Journal of Public Space*, 2009, 1-29.

Forrell and Gray have considered some of the literature into outreach legal services for people with complex needs. Although the study is not a measurement of services under taking the work in might be useful in its discussion of the challenges for service providers in providing services to disadvantaged people with complex needs and 'hard to reach clients'.¹⁸¹

Different approaches will also be required given different laws which operate and the different policy settings. For example, in the criminal law jurisdiction the approaches will differ to family law approaches. Many decisions to go to trial are made by the Director of Public Prosecutions (DPP) and that often despite efforts to reduce expense, time and to ensure efficiency and to enable clients not to be detained or placed under the undue stress delays can cause, the judgement call is that of the DPP (State and Commonwealth) and not of legal aid. The NPA states there is a requirement for legal assistance services to 'avoid the need for litigation'. Sometimes despite the intent of legal services such outcomes are not possible.

The role of the DPP and other players in providing barriers to legal assistance services in achieving their outcomes was evident in the research of the author undertaken in the latter part of 2011 for Legal Aid ACT¹⁸² and identified in the 'Integrated Family Violence Project – Working Towards Greater Collaboration and Better Outcomes for Clients and Stakeholders Report by the Northern Territory Legal Aid Commission in March 2007'.¹⁸³ This highlights the ***danger in applying homogenous standards or reporting to such different and complex areas of law where often 'successful outcomes' can be hindered by other elements of the system or systemic barriers beyond legal assistance services control. It also highlights the danger of imposing on legal assistance expectations around efficiency and cost reduction which are not within legal aid services power to determine such as timely dispensation, reductions in recidivism and case management.***

Issues around a lack of paperwork, failure to keep appointments because of chaotic lifestyles, memory loss, inability to articulate, intellectual and mental capacity are all issues that staff of legal aid services who deal with disadvantage need to work with in order to have a successful outcome. The nature of this work is time consuming and that in order to be able to present the client's story fully and effectively to a court and to make the case was not straightforward when such factors are operating.

Integrated Legal Service Delivery

¹⁸¹ S Forrell and A Gray, 'Outreach Legal Services to people with complex needs: What works?' Justice Issues', Law and Justice Foundation of NSW, 12 October 2009. See also L Curran, 'Relieving some of the burdens on clients: Legal aid services working alongside psychologists and other health and social service professionals', Vol 20 No 1, *The Australian Community Psychologist*, June 2008; L Curran, 'Human Rights in Australia: their relevance to the vulnerable and marginalised', Vol 33 No 2 *Alternative Law Journal*, June 2008, 70-74.

¹⁸² L Curran, "'I can now see there's light at the end of the tunnel', Legal Aid ACT: Demonstrating and Ensuring Quality Service to Clients", Legal Aid ACT, February 2012.

¹⁸³ 'Working Towards Greater Collaboration and Better Outcomes for Clients and Stakeholders', Northern Territory Legal Aid Commission, March 2007

Research and evaluations of integrated legal service delivery are rare. Of the few studies that have been undertaken, two occurred in 2010. The first is by Noone and Digney¹⁸⁴ and occurred in Australia. The second occurred in the United Kingdom and so care needs to be taken as their Community Advice Centres are very different creatures to Australian CLCs in terms of funding, history and governance.¹⁸⁵ These reports emerging from the research are critical resources for any successful tender for the LANPR.¹⁸⁶

The A Buck et al Report, is essential reading and contains a useful methodology which involved observations of community advice sessions; interviews with clients and their advisers after the advice sessions and follow-up in depth interviews with clients.

The report revealed some excellent information around the operation of integrated services and seamless services as follows:

1. There are systemic issues beyond legal assistance service control affecting access including transportation, lack of advertising of the services and what they do and do not do.
2. The issues that were barriers to delivery of a seamless service include a lack of volunteers when needed, lack of ongoing support from clients after the advice; a need for proper staff supervision, the clustering of problems and multiple client problems, poor problem identification by client and adviser which was compounded by client issues.
3. Issues affecting the problem identification and quality of the advice service included the importance of allowing the client time to tell their story, training of advisers on the interlocked and overlapping nature of client problems.
4. The organisational barriers to integrated and seamless service delivery capacity to give advice included a lack of resources, lack of practice in other areas of law as required not covered.
5. The limitations of a diagnostic approach to identifying and responding to client problems and a need for advisers to have skill, expertise, flexibility in any specific context given complicated and complex client issues including clustering of problems and multiple client need.
6. The critical importance of an advice chain was noted where there was a logical continuum of generalist and specialist services available and ability to identify when and how a smooth transition would or should occur.

The Noone and Digney report outlines key features of integrated legal services identified as important during the research which included a literature review. The methodology to ascertain what led to integrated legal service delivery and the extent to which these were being realised was as follows:

¹⁸⁴ M Noone and K Digney, "It's Hard to Open up to Strangers" 'Improving Access to Justice: The Key Features of an Integrated Legal Services Delivery Model', Research Report, Legal Services Board and La Trobe University, September 2010. This author notes that she was on the Steering Group for this research project from March 2008 - end December 2009.

¹⁸⁵ A Buck, M Smith, J Sidaway and L Scanlan, 'Piecing it Together: Exploring one-stop shop legal service delivery in Community Advice Centres', Legal Services Commission (Legal Service Research Centre) June 2010.

¹⁸⁶ Another excellent report is C Fox, R Moorhead, M Sefton and K Wong, 'Community Legal Advice Centres and Networks: A Process Evaluation', Vol 30 No 2 *Civil Justice Quarterly*, London, 2011 204-222.

1. An Advisory Group made up of staff of the legal service, West Heidelberg Community Legal Service and the co-located service Banyule Community Health.
2. A collection of existing data – in the course of the research the CLSIS data was problematic and had little relevance as little information about referral to and from non-legal services was kept by either service and there was a small staff involved in the delivery of the service who had limited capacity to record and the systems for recoding were cumbersome and technology and data sets for collection were imperfect.
3. Identification of referral practices – formal policies and practices and informal (through observation).
4. Staff on-line survey 62 responses from approx 150 staff of the health and legal service.
5. Staff diaries from identified staff of the health and legal service.
6. Client interviews/lawyer interviews from the same interview.
7. Staff interviews (approximately one hour)
8. Staff Workshop (feedback session).

The research revealed that 'an integrated legal service delivery model could be measured against whether there exists:

1. Central focus on the needs of the client/community
2. Holistic Service Delivery approach
3. Organisational partnership and collaboration.
4. Whole of government and service system approach to complex community need.

As this literature review continues to stress, Noone and Digney underline the complex nature of the client's lives and the need to understand this in any measurement as it complicates any measurement and so must be considered if the measurement is to be relevant.

Areas to be considered according to the Noone and Digney report in any measure of integrated legal service delivery include:

- Trust and respect between staff of the agencies.
- Sufficient resources to ensure infrastructure and systems support the service delivery and the development of program responses to local community justice needs with other community organisations.
- Flexibility and responsiveness in how and where people work i.e. ability to be where the need is and that this is built into funding and service agreements by funders.
- Recognition of the time and energy and resources in funding and management of the service required to build, nurture and maintain the relationships between service providers and their governance structure to facilitate collaboration and the integrated service delivery.
- Sound referral practices which are up to date and know what services do and do not do before referrals are made and referrals which ensure smooth transition for clients e.g. by ringing before hand or in a client's company or being able to readily discuss and access people from the other service for instance for homeless clients.
- Identification with community of their needs and responses.
- Ensuring community can identify their problems, know about services, are able to identify the relevance of services to their problems.

- Are physically able to access the services.
- Have the confidence to raise their problems and ask for help.
- Have the expectation and confidence that the service will act upon their request.

This author suggests that the above list would be helpful as indicators of integrated service delivery in any study of 'integration' holistic approaches and early intervention.

The Noone and Digney Report and the Buck et al. Report are rich in suggestions both for the future measurement of integrated legal service but also in identifying the barriers and difficulties that can occur without systemic support.¹⁸⁷

Conclusion – An Overview of the Findings of this Literature Review

This literature review suggests some ways of averting the many difficulties identified in much of the domestic and international literature in the measurement of outcome, quality, efficiency and effectiveness. It suggests some, but not all of the difficulties, can be overcome with care in the construction of a methodology for their evaluation. Such a methodology sets out to understand what the legal aid service actually does and what is within its realistic remit first before defining the outcomes. It then defines the outcome, how the service can work to attain it, the elements necessary to going about achieving the outcome and then by measuring the levels to which these are followed in the approach to the work. This Literature Review however, also contains many warnings as these measurements are far from straightforward. Many researcher world-wide have struggled to monitor and measure results and quality and identified many hurdles.

The United Nations Development Programme¹⁸⁸ has stressed that there is a lack of a common language with which to articulate results, the lack of a framework in which to capture them and the difficulties in being able to measure¹⁸⁹ and prove success. Where such a framework does exist the need is often for it to be descriptive, subjective and the risk (which they state, cannot be avoided) of its being anecdotal and vague. Clearly, the task set under the LANPR is not an easy one to measure and warnings of authoritative bodies such as the United Nations Development Program highlight the difficulties of the task and the possibility that it will not always be an exact science and is challenging.

For example, one good or 'successful outcome' for a legal service that does legal advice and case- work can be defined as a 'good client interview'. A legal interview is the pivotal stage in a client being able to have their issues identified and resolved, the delivery of accurate and relevant, targeted advice. It is with a good interview that a sensible, effective and efficient eliciting of relevant information can be undertaken. This can often direct the whole strategy by which evidence will be adduced and the direction for the future conduct of a

¹⁸⁷ See also M Noone, 'Towards and Integrated Service Response to the link between Legal and Health Issues' Vol 15 *Journal of Primary Health*, 2009, 203-2011; A Buck, M Smith, J Sidaway and L Scanlan, 'Piecing it Together: Exploring one-stop shop legal service delivery in Community Advice Centres', Legal Services Commission (Legal Service Research Centre) June 2010.

¹⁸⁸ 'Overview of the UNDP's Approach to Measuring Capacity' Capacity Development Group, Bureau for Development Policy, United Nations Development Program, June 2010.

¹⁸⁹ See M Barendrecht, J Mulder, T Giesen and the Study Group Access to Justice, 'How to Measure the Price and Quality of Access to Justice', November 2006, 21. They examine the significant hurdles for measurement and conclude 'Measuring access to justice is a challenge' see <<http://www.tilburguniversity.nl/faculties/law/research/tisco/research/projects/access/papers/06-11.pdf>>.

case. A good client interview can lead to early intervention and prevention, referral to legal and non-legal services or negotiated outcomes, representation or advocacy as required.

This literature review also identifies, based on the research and evaluation methodologies examined and analysed in the literature review, some triangulated approaches to any evaluative study and review that enable a 'getting to know a service, its role and what it does'. This is essential given the diverse nature and client groups, different services have adapted to be able to serve. It also suggests ways of also enabling a measurement to take place which incorporate some quantitative data but also draws out the qualitative data. The latter is often lacking in evaluations but provides for a richer understanding of the backdrop to the statistical information. This can better inform and guide service delivery, and, at a policy level, ensure greater awareness. This can ensure responsiveness and effectiveness at all levels so as to meet community need and enable government and legal services to be better positioned in explaining their value to the public.

Any evaluation for the LANPR must try to reconcile the noble aims and objectives of the NPA in the context of the actual realities of what legal aid services provide and can provide by way of realistic measurement and of things that are within a legal aid services' function and ability to control and within their resources to provide. If definitions around outcomes, quality, efficiency and effectiveness and the measures set to ascertain whether these aims are achieved, do not reflect such reality, then, they risk setting agencies up to fail. Any successful tender for the LANPR must consider this as they approach the task and in setting up a methodology.

As the TOR suggest, too many reporting requirements, if they are too burdensome and time consuming can take away from the resources which need to be directed at actually providing legal services to the community and achieving the very outcomes that are required to be measured.

Although the Commonwealth Government expects agencies to report on success and outcome, little actual experience of how this can be done exists internationally and domestically. There is considerable literature on how it might be done and what elements should be present in undertaking such research¹⁹⁰ but few agencies have taken the plunge and completed such research.

Curran began the process of setting out to measure outcomes and quality legal services in the second half of 2011 for a study commissioned by Legal Aid ACT (LAACT). This research report will be released in February 2012.¹⁹¹ This report has also informed much of this literature review alongside the other research, evaluations and strategic and policy setting documents considered in this literature review which have a wider scope to the LAACT study including efficiency and effectiveness and the factors identified in the TOR.

¹⁹⁰ Paul Bullen, Management Alternatives for Human Services
<http://www.mapl.com.au/evaluation/eval4.htm>; See also D Smart, 'Ask the Expert' USA National Resource Centre, 2004.

¹⁹¹ L Curran, "I can now see there's light at the end of the tunnel", Legal Aid ACT: Demonstrating and Ensuring Quality Service to Clients", Legal Aid ACT, February 2012.

Legal aid services are complex and operate at different levels.¹⁹² Within a legal aid service different objectives and intentions can sit behind each program. Therefore, they cannot be measured as a lump without first understanding the very nature, diverse ways of engaging required to target different client groups, complexity, layers and imperative and funding requirements that drive each of the many parts. This process of understanding must be undertaken for each service if any review/evaluation is to be accurate and realistic. It is suggested that any successful tender for the LANPR should have read the seminal work about the development, context and history of legal aid by Noone and Tomsen as a starting point.¹⁹³

The concern is that currently Treasury is concerned with aggregated statistics that drive an efficiency agenda, but they risk compromising programs of service delivery that work effectively and make inroads because of a lack of information around why the statistics are the way they are. Sometimes it is the fact that service they takes time or works differently due to the nature of the client group, that inroads into increasing access to justice and 'closing the gap' are to be made. For further explanation, see the section on Aboriginal and Torres Strait Islander Services in this literature review.

Many of the evaluations reviewed for this literature review reveal that questions of 'effectiveness' and 'cost efficiency' are more often than not considered in a vacuum of information about the quality of the service provision and actual attention to results achieved for the client group. Trying to simplify things for bureaucratic ease, risks any measure being irrelevant, inefficient and ineffective as this literature review reveals.

It has been noted that in the social sector financial ratios are no doubt important but that more and more funders are asking services to measure their impact and helpfulness. They are recognising that financial measures are often the means to the ends of social sector activity.¹⁹⁴ This is a good development as it ensures accountability as to the impact that services are having on client lives and what interventions from services mean in the lives of the public they are being funded to serve. Smith and Patel¹⁹⁵ in a very useful evaluation report for the purposes of the LANPR and a critical resource for any successful tender have noted that there is 'tension in data sets between simplicity and utility given resource pressure'. As a result they stress that this 'means monitoring frameworks must lend themselves to multiple uses.'

The statistics kept by LACs, ATSILS and CLCs currently, reveal little about the contexts, challenges and rationales behind why and how the services are delivered. Having further qualitative information (to compliment often inconsistently gathered data where often the data's usefulness is dubious) can inform against the taking of rash decisions that may seem 'cost efficient' but which could risk reversing the NPA's aims.

¹⁹² For an unravelling of this complexity see the Focus Group discussions in L Curran, "I can now see there's light at the end of the tunnel", Legal Aid ACT: Demonstrating and Ensuring Quality Service to Clients", Legal Aid ACT, February 2012.

¹⁹³ M Noone and S Tomsen, 'Lawyers in Conflict: Australian Lawyers and Legal Aid', The Federation Press, Sydney 2006.

¹⁹⁴ A Ebrahim and V K Rangan, 'The Limits of Non Profit Impact: A Contingency Framework for Measuring Social Performance', Harvard Business School Working Paper, May 2010, 4.

¹⁹⁵ M Smith and A Patel, 'Using Monitoring Data: Examining Community Legal Advice Centres Delivery', Legal Services Commission, London, June 2010, 4.

To be effective a service must adapt to the vagaries and peculiarities of the client groups and whilst they may not make sense to people in Canberra they may make sense to a vulnerable community in remote and rural Australia or to Aboriginal people. This is why the NPA and the LANPR are so critical as they have the potential through the LANPR to deepen this information by a successful tender working to study and reveal the qualitative materials that can inform better understanding of the nature and calibre of the actual work done and how it effects clients and community.

This complimentary information should assist Treasury in ensuring that better decisions can be made around prioritising resources without the a vacuum of relevant information to explain why the statistics are the way they are.

In consideration of any tender this author having reviewed the complexity of legal aid services, evaluations and the key aims of the NPA considers any successful tender should also be considered where they meet the following three criteria:

1. An understanding of the exigencies of working with vulnerable and disadvantaged people and communities.
2. An understanding of legal aid service delivery in its different context i.e. statutory function and role of legal aid commissions, community based model and philosophy of community legal centres, ATSILS. In the latter case they should understand the nature of delivering service to Aboriginal and Torres Strait Islander people given the history of removal, separation, land and culture.
3. A full understanding of the implications on legal practice of the various legal professional requirements on lawyer including the legislation governing the profession, case law on their obligations and the Australian Solicitors Conduct Rules July 2011 and other codes operating to govern ethical standards in the various States and territories.

Legal aid services work with vulnerable and disadvantaged experiences and challenges of the clients who it is now accepted make up the legal assistance sector clientele.¹⁹⁶ The legal assistance sector, which provides different services to different geographical and client groups, is itself structured differently and has different aims from not just service to service but the different service operations within the service.

This makes for difficult challenge for any evaluator. It this very service diversity enables many services to meet and address the diverse range of expectations and impediments

¹⁹⁶ A Buck, N Balmer and P Pleasence, 'Social Exclusion and Civil Law: Experience of Civil Justice Problems among Vulnerable Groups' (June 2005) 39(3) *Journal of Social Policy and Administration* 302, 318-320; R Moorhead, M Sefton and G F Douglas, 'The Advice Needs of Lone-parents' (2004) 34 *Family Law* 667 and A Buck, P Pleasence, N Balmer, A O'Grady and H Genn, 'Lone-parents and Civil Law: An Experience of Problems and Advice-seeking Behaviour' (2004) 38(3) *Journal of Social Policy and Administration* 253-269; S Ellison, L Schetzer, J Mullins and K Wang, *The Legal Needs of Older People*, New South Wales Law and Justice Foundation, New South Wales (2004) (The New South Wales Law and Justice Foundation <http://www.lawfoundation.net.au/report/older>); C Cournarellous, Z Wei and A Zhou, *Justice Made to Measure: New South Wales Legal Needs Survey in Disadvantaged Areas*, New South Wales Law and Justice Foundation <<http://www.lawfoundation.net.au/report/survey2006>>; New South Wales Law and Justice Foundation, 'On the Edge of Justice: the legal needs of people with a mental illness in New South Wales (2006); 'No Home, No Justice? The legal needs of homeless people in New South Wales (2005) and 'The Legal Needs of Older People in New South Wales (2004); 'Access to Justice and Legal Needs, Stage 1, Public Consultations' (2003) and 'Qualitative Legal Needs Survey: Bega Valley (Pilot)', (2003). See <<https://www.lawfoundation.net.au/publications>>.

faced by community in accessing the justice system. Other instrumentalities and agencies can also affect how legal assistance service can meet NPA aims. Often, for example (and as detailed in this literature review), agencies with the final control over whether a matter 'avoids litigation' are not the legal assistance service, no matter how hard they might try, but reside with agencies such as the Commonwealth DPP.

This does not mean that all services are perfect and any model of evaluation must therefore incorporate a constructive feedback process to enable and provide capacity for the continuous development and learning suggested later in this literature review. In this way services can learn, adapt and better service their community by learning what works well and why and how things can be done better. This is a critical benefit of evaluation and reviews of programs. Such endeavours should not be seen as the 'wielding of a stick' but rather a tool for improvement so that community outcomes can be enhanced.

Legal aid commissions, community legal centres and Aboriginal and Torres Strait Islander Services (ATSIS) are all set up differently and have different approaches that reflect the difference and diversity of the people they are set up to service. This adaptation, flexibility and variation can be part of the means by which the NPA's objectives are achieved. To try to streamline the diverse approaches and how they are measured in any evaluation may risk the loss of the very nature of the service that prevents social exclusion, one of the core aims of the NPA. Any research methodology risks being irrelevant if it does not take into account not only the diversity of the client groups but also the diversity of the services which are set up to assist them.

The other issue around evaluation of outcomes or results of a service intervention is the appropriate timelines. Sometimes if significant change is needed a short time frame within which results are measured can be counter-productive. Smith and Patel state 'the importance of time intervals is magnified where the objective of service delivery involves an integration of subject boundaries. This is because of the need for an assessment on outcomes to take account of the various threads of a client's advice journey. The combined effect of different case durations and the permitted three month reporting window in which closed case data can be submitted imply long time intervals before a reliable picture emerges. In this context, funders need to be wary of rushing to make assessments that services are not meeting the objective of providing advice for clients' multiple problems.'¹⁹⁷

Any measures of outcome need to first define what the outcome to be measured is. Many of the research and evaluations examined in this literature review talk about outcomes but never actually defined what was meant by 'outcome'. How can you go about measuring outcomes if you don't know first what it is that you are going to be measuring?

The starting point for any LANPR must be the determination of the definition of outcome for the specific service being examined. The research consistently state that to be effective measures/indicators need to be:

- Relevant
- Useful and measurable
- Achievable
- Practical to measure
- Within the service or practitioner's control and influence

¹⁹⁷ M Smith and A Patel, 'Using Monitoring Data: Examining Community Legal Advice Centres Delivery', Legal Services Commission, London, June 2010, 38.

Smith and Patel warn that there is a 'need for care about the most appropriate intervals for evaluating services' otherwise incorrect inferences can be drawn.

Therefore, before any measurement of success, quality of service and outcomes can occur it is critical to understand the nature of the service being delivered specific to the type of service being delivered.¹⁹⁸

It is noted that already legal aid services collect significant data some more than other for a range of instrumentalities as many have to report to a range of these. Some including Legal Aid Commissions and ATSILS already report on cost efficiency and effectiveness. Rather than duplicate this information and waste scarce resource, this author suggests that rather than re-measure these features under the LANPR and NPA this information be considered. In addition, all these bodies are required by law to prepare an Annual Report. Many of these reports already contain useful data¹⁹⁹. Some, but not all reveal case studies and impacts the service has which may be useful for any successful tender in examining outcome, efficiency and effectiveness.

What appear to be missing, in most of the evaluations of legal assistance services examined for this literature review, are the rich stories behind the data that explain it and deepen an understanding of the contexts. These can inform good service delivery, good relevant policy and the better targeting of legal aid services. Each service's reason for how the service is delivered their role and function needs to be examined in order to set realistic outcomes that can then be measured. This literature review has suggested approaches to help shape what such a definition of relevant outcome, measurement and reporting ought to look like.

In essence what is needed is an examination of the process (e.g. a good client interview, holding authority to account, providing voice for clients, holistic responses) undergone and their examination against quality criteria. This is what can lead to improvements in the quality of legal services and accordingly good outcomes. In the author's view and that of the better evaluations analysed for this literature review (particularly that of Trude and Gibbs discussed later in this literature review)²⁰⁰ if quality legal work is undertaken this is the most likely way of affecting better or 'positive' outcomes.

However, in order to realise the aims of the NPA it is suggested that if any new or additional measurement required fill the existing gap and be a qualitative analysis that can build understandings hence truly examining what legal assistance sector impacts are happening and how the community is being served.

It is therefore suggested that methodologies which adopt the following processes in combination (and a participatory action research approach) are likely to lead to the information desired by the TOR, the NPA and services themselves and yet which can also

¹⁹⁸ A Ebrahim and V K Rangan, 'The Limits of Non Profit Impact: A Contingency Framework for Measuring Social Performance', Harvard Business School Working Paper, May 2010, 3.

¹⁹⁹ For example, see the Annual Report, Prisoners' Legal Service Queensland 2010 – 2011 and Annual Report, West Heidelberg Community Legal Service, 2009-2010, Annual Report of the Footscray Community Legal Service 2010-2011; Annual Report of the Redfern Community Legal Service 2010-2011.

²⁰⁰ A Trude and J Gibbs, 'Review of Quality Issues in legal Advice: measuring and costing quality in asylum work', Lawyers Defending Human Rights, Refugee and Migrant Justice undertaken by the Information Centre About Asylum and Refugees and the Immigration Advisory Service, City University, London, March 2010.

inform community and other parts of government including treasury of the value of the work to community cohesion that is undertaken by the legal assistance sector.

How to Measure Quality/Outcome and Effectiveness

- a. Strategic Plan and operational plans of the legal assistance service and Annual Reports be reviewed and understood as part of setting the scene for the evaluation.
- b. A 'Conversation' with agency staff and management be undertaken to improve understandings of the role and function and scope of the service and what is within its control and attributable to it.
- c. Focus Groups held with the support staff/practitioners providing the on-the ground service/program to identify and define the outcomes particular to the service under examination and what are the elements or surrogate indicators of such an outcome including what quality assurance measures are relevant to ensuring such quality and outcomes. This would include ascertaining what quality assurance mechanisms are in place and how these are adhered to. Some agencies may not have any in place and so these may need to be developed as part of the research process.
- d. Stake-holder interviews informed by 2 & 3 above.
- e. Interviews with clients and lawyers after the same client interview informed by 2 & 3 above.
- f. Survey/Questionnaire of client feedback about the services treatment of them at interview and in the course of the matter but which are NOT based on or using the language of 'client satisfaction surveys' (for reasons set out in detail later in this literature review).
- g. An on-line survey on quality and approach in service for practitioners both private and public who deliver legal aid services. (This should not be a tool used for clients as on-line surveys can risk missing many of the target clients of legal aid and given difficulty with on-line surveys as discussed later in this literature review). See a model for such a survey in the Appendixes of Curran's LAACT Report.
- h. Case Studies derived from the service providers or from clients about their experiences through the interview, survey and focus group tools discussed in 2,3,4,5,6, and 7 above.

Below are some footnotes with examples models on questions, statements, case studies and other tools which might be adapted subject to 1, 2 and 3 informing how they are shaped.²⁰¹

How to Measure Efficiency

- a. The Attorney General's Office staff or the successful tender summarise the reviews and reports of the Australian National Audit Office, Offices of the Auditor Generals, Annual Reports and CLSP Plans rather than conducting further measures of efficiency and re-inventing the wheel especially as taxpayers' money has been spent by other government instrumentalities measuring the organisations already for 'cost efficiency'.

²⁰¹ A Trude and J Gibbs, 'Review of Quality Issues in Legal Advice: measuring and costing quality in asylum work', Lawyers Defending Human Rights, Refugee and Migrant Justice undertaken by the Information Centre About Asylum and Refugees and the Immigration Advisory Service, City University, London, March 2010; L Curran, "'I can now see there's light at the end of the tunnel', Legal Aid ACT: Demonstrating and Ensuring Quality Service to Clients", Legal Aid ACT, Appendixes, February 2012 and C England and P Porteous, 'Review of the Children's Court Assistance Scheme', Final Report, Legal Aid NSW, Matrix on Board, 20 September 2011, 29-40.

- b. Such measurement should only compliment the information gathered above from the measures for quality, outcome and effectiveness (a)-(h) rather than drive it. This author is mindful of the dangers underlined in both domestic and overseas research (discussed later in this literature review) which notes the risks of 'cost efficiency' being seen in a vacuum from the realities on the ground with the cost efficiency measures leading to a correlating reduction in quality and the effectiveness of service delivery.²⁰² These would jeopardise the stated aims of the NPA.

This Literature Review reveals that significant measures and data are already in place to examine efficiency and in many cases 'cost efficiency'. To replicate these under the LANPR is unnecessary duplication. This literature review strongly recommends that rather impose a further burden of reporting on legal aid commissions, community legal centres and ATSILS (especially given the range of examinations the latter undergo currently from different government departments and state and commonwealth instrumentalities additional to the Attorney General's Department) the successful tender or the Attorney General's Department staff use such existing and regularised studies as the investigation of efficiency.

Nomenclature is important as it can distort people's perception of what is being evaluated, and in the legal assistance sector, the actual role and function of a lawyer which will not always be to 'satisfy' a client or be their 'mouthpiece' as this is explicitly discouraged by the conduct rules and duties of the legal profession. This is why the studies that involve 'Client Satisfaction Surveys' are problematic if applied to the legal assistance sector. In using any such models considerable care and sophistication of approach in the design of questions and their relevance to the legal assistance service sector needs to be taken. Where the responses required are 'satisfied' 'not satisfied' they further distort client understandings of the role and function of legal services and ignore the legislative framework within which the legal profession has to practice (this is discussed earlier in this literature review).

This author suggests that any tender to be successful must demonstrate a fundamental understanding of the role, duties and obligations of a legal professional so that the questions/statements that form a part of the design are drafted with this in mind. Not an easy task.

Barendrecht et al²⁰³ detail the significant issues to be addressed in order to be able to measure 'access to justice'. Their study is largely concerned with cost and so of limited use to the scope of this literature review. However, they set out some significant difficulties in measuring even this. Some options are expounded but their concern is with much broader levels of justice than the legal assistance sector and includes courts and the State. They keep reiterating throughout their report that the processes are complex and that there are many participants. The suggestions they make in their report are very detailed, hard to report on and quantify (on their own suggestion) and they suggest this data collection would be undertaken by insurers (revealing the different legal system of the Netherlands where the

²⁰² A Trude and J Gibbs, 'Review of Quality Issues in Legal Advice: measuring and costing quality in asylum work', Lawyers Defending Human Rights, Refugee and Migrant Justice undertaken by the Information Centre About Asylum and Refugees and the Immigration Advisory Service, City University, London, March 2010

²⁰³ M Barendrecht, J Mulder, T Giesen & the Study Group Access to Justice, 'How to Measure the Price and Quality of Access to Justice', November 2006
<<http://www.tilburguniversity.nl/faculties/law/research/tisco/research/projects/access/papers/06-11.pdf>>.

study is based) or suppliers(which given the issues of under-resourcing in Australia) is clearly unrealistic.²⁰⁴

Other mechanisms, other than the resort to surveys as many of the evaluations do, can perhaps be better where the complexity and complicated aspects of service delivery are being examined. These include in-depth interviews or focus groups, otherwise the risk is that the statistics gathered are not in fact representative of the information they are seeking to gather and hence have little empirical value or precision.

Again, this author stresses the importance of recognising the strengths and weaknesses of different approaches and of using multiple approaches to compliment each other or reduce distortions. Surveys cannot gather detailed information about context and circumstances unless extensive open questions are used and many survey tools have limited capacity for this. Qualitative approaches may be a better compliment where such complexity is evident. Perhaps even 'snap shots' rather than ongoing reporting requirements for legal assistance services are another way of ensuring the burdens on service reporting are kept to a minimum. For a detailed explanation of methodologies such as these and a rationale for the selection and the process by which they have been undertaken see an about to be released research report in 2012 written by Curran.²⁰⁵

In examining whether a service is able to meet the aims and objectives of the NPA and looking at effectiveness I have previously noted:

Knowledge, capacity, capability and understanding are the key prerequisites to access to justice.²⁰⁶ If legal aid services are to be effective, they need to reach people who are vulnerable, disempowered, poor or marginalised. This requires a holistic, connected service delivery, relationship building, community development and education.²⁰⁷

For a service to be measured as to its effectiveness, legal assistance services' approaches to working with other agencies at the front line both legal and non legal, their realisation that clients themselves (particularly if they are disadvantaged) are not likely to be able to identify a problem capable of a legal solution are all relevant. These should inform how they deliver services in a way that targets such groups and lessens the expectation that client will some how come to them by traditional approaches such as having to make appointments are deemed as less likely to find client most in need.

Pro-activity in areas of connected service delivery, relationship building and maintenance, community development approaches to CLE and law reform are all

²⁰⁴ Senate Legal and Constitutional Reference Committee, 2004, 'Legal Aid and Access to Justice Report' <http://aph.gov.au>.

²⁰⁵ L Curran, "I can now see there's light at the end of the tunnel", Legal Aid ACT: Demonstrating and Ensuring Quality Service to Clients", Legal Aid ACT, February 2012.

²⁰⁶ See L Curran and M Noone, 'The Challenge of Defining Unmet Legal Need' (2007) 1 *Journal of Law and Social Policy* 63-64.

²⁰⁷ See L Curran, 'Ensuring Justice and Enhancing Human Rights: A Report on Improving Legal Aid Service Delivery to Reach Vulnerable and Disadvantaged People, La Trobe University & Victoria Law Foundation (2007), p 4.

matters which need to be examined in any evaluation and are implicit in the stated aims of the NPA. The ability however to gauge the effectiveness of law reform is a challenge that international researchers have identified and the discussion in this literature review will reveal that this is incredibly difficult to measure in terms of effectiveness and outcome. Expectations of required record keeping may not be realistic in the current context of legal assistance services. It is therefore suggested that external research examining existing documentation over longer periods of time e.g. every decade are advisable given the time it can take to influence policy change and the difficulties associated with attribution in any change.²⁰⁸

The World Bank 'Handbook' recommends a participatory approach to monitoring and measurement involving key stakeholders including those who provide the services.²⁰⁹ Why? Because setting goals in isolation from what is being done and what has to be done and by those who do it might lead to a 'lack of ownership' on the part of the main internal and external stakeholders. The World Bank Handbook recommends that this participatory and consultative process must be done in all stages in the identification of goals, objective, what outcomes look like and the steps necessary to get there i.e. building the indicator system.

With surprising consistency, the evaluations studied in the course of this literature review noted that often despite very committed and relentless endeavours by legal assistance services to bring about better outcomes for their often poor, vulnerable or disadvantaged clients these could be significantly hampered because of limited resources, few staff, lack of additional support service access which these client need, uncertainty due to short term or irregular funding or overwhelming legal need.

Innovations occur but often these also need time and effort and relationship building and nurturing to occur. For example, the materials examined pertaining to indigenous services revealed limited staff, huge court lists, lack of interpreters or part or profound deafness, diminished intellectual capacity through trauma or abuse of substances in rural and remote communities. Accordingly, ATSI clients have to be interviewed on mass, often in public spaces, in a rush and without full consideration to client's rights, the client's ability or capacity or time to tell their story or for the lawyers to be assured that clients understand legal implications due to problems with appropriate and trained interpreters in their language, disability and so, a rough form of justice is delivered by lawyers and Aboriginal Liaison Officers. This is due to systemic failings not due to endeavours of the legal assistance teams who often go well beyond the call of duty.

Clear knowledge about the foundation for an outcome of a 'good legal interview and time spent on case preparation' although critical to good outcomes have to be given short shrift due to the number of cases to be heard and often imperfect evidence gathered has little time to be scrutinised. This is very relevant and in the Circuit Courts and remote and rural Australia. Legal Assistance services continue to go the extra mile but there is only so much that is in their control to influence

²⁰⁸ L Curran, 'CLCs Lead on Law Reform', *Law Institute Journal*, Melbourne, April 2008.

²⁰⁹ J. Z Kusek & R C Rist, 'A Handbook for Development Practitioners: 10 Steps to a Results Based Monitoring and Evaluation System', The International Bank for Reconstruction and Development, The World Bank, 2004, 58.

in such stressful and overwhelming circumstances. In such circumstances the efforts of the NPA are reliant on broader systems interventions. Such interventions are not within the remit of the legal assistance service and need to be addressed by other instrumentalities that have the ability to address them.

This literature review is lengthy and detailed. The author has endeavoured to explore and analyse as much material as was possible in a tight time frame. It is hoped that the information contained in this literature review will help to shape the LANPR; assist the successful tender; inform the development of the NPA as a framework; lead to research and evaluation approaches that tell the story of the client; the legal assistance service and the latter's impact on well defined and clear outcomes. It is hoped that this literature review might in some small way lead to processes which enhance the quality of legal aid services and to the sharing of information between the legal aid services sector, government, other instrumentalities, the private sector and the community on the best ways to ensure access to justice for disadvantaged and vulnerable individuals and groups in Australia. This author wishes the successful tender well in what is an important but complicated and complex task.

Dr Liz Curran
Curran Consulting: Enhancing Justice and Human Rights
27 January 2012