

‘The Challenges of Measuring Outcomes – Examining Quality, Responsiveness and Legal Professionalism as a Way Forward’

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**This PowerPoint/Poster is based on findings from Dr Curran's
Report**

*“WE CAN NOW SEE THERE’S LIGHT AT THE END OF THE TUNNEL
NOW” (client) LEGAL AID ACT: DEMONSTRATING AND
ENSURING QUALITY SERVICE TO CLIENTS,*

Dr Liz Curran, Legal Aid ACT, Australia, 2012

Context of the Research

- Service delivery and humanitarian agencies are increasingly being asked to report and measure results based outcomes world-wide.
- Surprisingly, very little outcome measurement has been undertaken internationally or domestically although there is some literature on how one might go about it. This makes this research important not just for Legal Aid ACT but for others in legal and non-legal service delivery internationally.

Context - Legal Aid Commissions in Australia

Legal aid in Australia is structured. Legal Aid Commissions are statutory bodies in each of the six states and two territories. These Commissions complement the work of community legal centres which are community based organisations. They are funded by State and Commonwealth Governments and in some cases there are other funding arrangements. Legal Aid services (including both Legal Aid Commissions and Community Legal Centres) undertake information, advice, casework and representation alongside community legal education and law reform.

Legal Aid Commissions in Australia have a mixed model of service delivery, meaning it has in-house salaried practitioners and provides grant of aid on application to both in-house and private practitioners. There is some information, advice and minor case work provided to community. Ongoing casework and legal representation is subject of an application for a grant of aid which is subject to a means and merits test and priorities for grants of aid set by governments and the Boards of Commissions.

About Legal Aid ACT (LAACT)

Legal Aid Australian Capital Territory (ACT), the subject of this research, is one of eight independent statutory state and territory legal aid commissions in Australia. Legal Aid ACT is the second smallest commission serving a population in the ACT of 360,000 with an annual budget of \$12million.

Objective of this presentation and the research

- To inform the public debate, help shape realistic accountabilities, policy development and most importantly for good and effective quality service delivery to clients of the legal aid service sector (who are overwhelmingly experiencing disadvantage and/or vulnerability) and to the wider community.*
- The author has an ongoing interest enhancing the quality of services of the legal profession and exploring ways to advance the legal ethics and professionalism of her profession. She believes that clients of legal aid services because they experience disadvantage should receive the highest quality of legal advice and representation. This is why Dr Curran also teaches legal ethics and professionalism to students of law at graduate and undergraduate levels.

Before ‘jumping in’ to formulate outcomes to be measured– spend time discovering the function of the service that is to be measured before determining its outcomes

The role or function of legal aid, as defined in this report (after detailed fact finding), includes upholding the rule of law, advising, providing information and education, representation, holding others to account, asking the right questions and knowing and applying the law.

Any expectations or funding contingent on aspects beyond the actual role and responsibility, control and power of the legal aid practitioners needs to be carefully scrutinised so that the staff, clients and service are not ‘set up to fail’.

Before ‘jumping in’ to formulate outcomes to be measured– spend time discovering the function of the service that is to be measured before determining its outcomes (cont)

Within legal aid services themselves different areas of law have different legislative and policy settings which need to be understood before measuring outcomes.

Legal ethical rules of conduct and legal profession legislation have impacts on the duties of lawyers and need to be considered. ‘Client satisfaction’ surveys misconceive the function and role of a lawyer with the lawyer’s paramount duty to the court and role as independent, fearless legal adviser.

Methodology for the LAACT Research

- An 'action participatory approach'-using a cyclic or spiral process alternating between action and critical reflection and, in the later cycles, continuously refining methods, data and interpretation in the light of the understanding developed in the earlier cycles.
- Literature Review looking at similar research both in Australia and overseas to see what was useful/effective/realistic/appropriate and relevant for the purposes of this research.
- Staff designers and stakeholders in the research, with the service providers making comments and suggestions guided by the research as explained to them by the researcher.
- Indicators developed were based on those elements identified as essential for the outcome to occur.

Methodology (cont)

- Multiple research approaches were used - to check and verify responses against each other, to enable different stages and parts of the service's activities to be examined and measured up against those elements deemed to be indicators of good outcomes or quality legal services.
- Through this methodology the research was able to look at different aspects of the service such as a client interviews or through stakeholders' eyes on the service's conduct out of and in court, with the other side, the service's relationships with clients, significant networks and community agencies.

Methodology (cont)

Phases

Two Phases.

Phase One:

- Collation and analysis of previous research, examination of LAACT's strategic documents (Annual Reports, strategic and operational plans).
- Initial staff conversation.
- Focus groups in each division/ practice area of LAACT (with paralegals, receptionists and legal practitioners).
- Feedback from a former client of LAACT

Methodology (cont)

Phase Two - two-week 'snapshot' trial 9 November - 23 November 2011 using the instruments developed in Phase One:

- Eight lawyer and eight client interviews conducted by the researcher – interviews were conducted separately, but after the same legal interviews.
- Entries in observation logs made by seven staff members (selected because they were not undertaking other tasks in the research – the survey workload was spread across staff).
- A feedback session with staff and board members to discuss the conduct of the research and any tweaking the instruments needed for measurement in the future

Methodology (Phase 2 cont)

- A voluntary client feedback survey/questionnaire all clients receiving advice in interview from LAACT lawyers.
- A telephone survey of clients on closure of their files
- Case studies collected from open questions in observation logs, focus groups, client interview with the researcher and the online survey.
- Interviews with the stakeholders identified by the practice areas (as well as the College of Law, Australian National University (ANU), as law students work in partnership with LAACT work in the Youth Law Program and in the Legal Aid Clinic (advice service).
- An online survey (using SurveyMonkey) of private and in-house lawyers handling legally-assisted cases.

Unanticipated Outcome of the Research

The participation, involvement, commitment of staff and the ownership by staff of the research and the emerging need/desire to continuously reflect on and improve the service.

11 Outcomes (in bold) as defined by and through the Research

1. **Good client interview.** Qualities Demonstrated: Holistic, Joined-up, Quality, Problem Identification, Empowerment, Good Practice, Early Intervention, Prevention, Responsiveness, Client Centred, Alternative Dispute Resolution (ADR), Targeting, Expertise.
2. **Clients with chaotic lifestyles attend interviews, appointments and court dates.** Qualities Demonstrated: Early Intervention, Prevention, Empowerment, Client Centred, Holistic, Targeting.
3. **As appropriate, sentences are minimised or unsubstantiated charges are dropped.** Qualities Demonstrated: Rule of Law, Efficiency, Good Practice, Expertise.
4. **Clients are better able to plan and organise their legal affairs.** Qualities Demonstrated: Early Intervention, Prevention, Empowerment, Quality, Good Practice, Client Centred.

Outcomes (cont)

5. **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.** Qualities Demonstrated: Rule of Law, Quality, Voice, Flexibility, Good Practice, Client Centred, Responsiveness, ADR, Expertise.
6. **Client is better able to understand their legal position and the options open to them.** Early Intervention, Prevention, Empowerment, Good Practice, Quality.
7. **A process is undergone where the client is listened to, respected and given fearless advice of their legal position.** Qualities Demonstrated: Quality Service, Client Centred.
8. **Improvement in the client's interaction with the legal system.** Qualities Demonstrated: Early Intervention, Prevention, Empowerment, Client Centred.

Outcomes (cont)

- 9. Relationships and trust building with other legal and non-legal support agencies enabling client referral and support.**
Qualities Demonstrated: Early Intervention, Prevention, Holistic, Joined-up, Good Practice, Quality.
- 10. Holding of authority to account.** Qualities Demonstrated: Rule of Law, Quality, Voice, Flexibility, Good Practice, Client Centred, Responsiveness.
- 11. A holistic service delivered to the client through collaboration, networking, community legal education and joined-up services.** Qualities Demonstrated: Good Practice, Client Centred, Problem Identification, Collaboration, Prevention, Early Intervention, Holistic, Joined-up.

Some highlights - What the research revealed?

From stakeholder interviews:

‘ Legal aid’s in house lawyers are good to deal with. They bend over backwards to do what they can for their clients. ‘There is often a significant imbalance in what they can do with their resources. It’s good to be able to deal with an entity where there are systemic issues.’

Case Study from Focus Group

A client was being considered for Electro Convulsive-Shock Therapy (ECT). In ensuring that various issues were raised/explored and to ensure the process followed was fair, LAACT staff interviewed the client and asked the necessary questions to gain consideration of all aspects/ramifications of the proposed route (i.e. the ECT). They indicated that 'but for LAACT's intervention', serious risk to the client's health could have resulted. Through questioning the client and some health professionals about other aspects of the client's health, the lawyer learned that the 89 year old had a pace-maker and had been considered for ECT without the anaesthetist being asked if the ECT procedure would be safe for the client. The lawyer highlighted the obligation at law that hospital staff had to take into account relevant health factors (unrelated to the client's mental health issues) that posed serious risk to the client's life.

Client Interviews

Do you feel:

- a. you understand what to do next? (Yes 87.5%)
- b. you understand what steps you need to take? (Yes 100%)
- c. you understand what steps the lawyer will/will not take and why? (Yes 100%)
- d. you understand all the options open to you? (Yes 100%)
- Explain 'Sometimes I have to be told over and over again. It must be annoying for the lawyer and their helpers. When I am stressed I can only take some things in. I appreciate the way they tell me in small bites. I can get overwhelmed if it's too big picture. They give me it in bits so I go step by step. It's how they know I cope.'

Background: The Australian Context

The National Partnership Agreement (NPA) requirements of the Australian Government on all legal assistance services are new requirements. Aspects such as early intervention, prevention, holistic and joined up services (see qualities demonstrated listed above with the 11 outcomes) and consideration of legal and non legal issues (although not alien to many practitioners) have not been reportable expectations in legal aid service provision.

Background: The Australian Context (cont)

Traditional lawyering required a focus on technical legal knowledge, expertise, good advice and representation.

Thus the expectations on legal services have broadened with the NPA. It will take time to settle into legal culture.

Therefore, the initial online SurveyMonkey of private and in-house practitioners only sought to introduce NPA concepts to the profession before insisting on measuring them or the outcomes expected from them.

The practitioner survey component of this research unlike the snapshot is designed to run once annually and the next instrument will be testing the implementation of the new requirements in future surveys.

SurveyMonkey of Practitioners (inclusive of in-house and private law firms) with Legal Aid Grants

The SurveyMonkey (of private and in-house legal aid practitioners with a grant of legal aid) sought to introduce the NPA concepts to the profession and see how practitioners approached their work with clients of legal aid.

It would be unfair to expect implementation of the NPA requirements in a short time period. In any further roll-out of the survey it is recommended that the questions be more directly related to how the lawyers' actually approach their practice and what qualities are demonstrated by this practice.

The survey results in the snapshot period revealed that there is very little difference in approach to the practice of law between the private panel practitioners (to receive a grant of aid in the ACT private law firms need to have qualified to be on a panel) and in house lawyers. Most ranked similar items as essential, very important and important with almost no practitioners rating elements as unimportant.

Dangers

Some survey comments in response to an open question warned of the danger if outcomes that are defined are not realistic given the limited role of the lawyers in the lives of their clients. Often a legal aid service's interaction with clients is short term and brief. Accordingly, expectations that lawyers can influence changes in future behaviour are unrealistic particularly if these behaviours are entrenched.

View from a practitioner in the SurveyMonkey

“This is a difficult process to ensure that one can achieve those outcomes. Some of the questions outlined above are not in my view in the solicitor's gift. We have a role to satisfy the requirements of the Court and the law. We can assist the client in a range of advice options and outline to them their obligations under the law and suggest strategies for the future. But to suggest that in reality clients are wiser after the event or are empowered etc is something I am unable to answer with any certainty.”

From client interviews:

As a result of seeing the lawyer today are you better able to plan and organise your affairs?

- Yes (100%)
- No (0%)
- **Do you feel:**
 - a. You understand what to do next? (Yes 87.5%)
 - b. You understand what steps you need to take? (Yes 100%)
 - c. You understand what steps the lawyer will/will not take and why? (Yes 100%)
 - d. You understand all the options open to you? (Yes 100%)

Client Explains

- Sometimes I have to be told over and over again. It must be annoying for the lawyer and their helpers. When I am stressed I can only take some things in. I appreciate the way they tell me in small bites. I can get overwhelmed if it's too big picture. They give me it in bits so I go step by step. It's how they know I cope.
- He explained really clearly everythings [sic].

From stakeholder interviews:

- Legal aid's in house lawyers are good to deal with. They bend over backwards to do what they can for their clients. There is often a significant imbalance in what they can do with their resources. It's good to be able to deal with an entity where there are systemic issues.
- Value the LAACT in-house team as in all interactions they are honest, have integrity and are hard-working. I can deal with them. We have a mutual respect and understand each other's different but important roles in the legal system.
- They do the very best for the client and are easy to deal with but also fearless advocates.

Online SurveyMonkey

Forty five surveys were received from practitioners – 25 from private lawyers (there are 146 private lawyers on Legal Aid's General Panel) and 20 from in-house lawyers. This is considered a good response rate for a two-week period.

Some of the online SurveyMonkey questions asked respondents to rank the importance of a series of actions relating to obtaining a grant of legal assistance as: 5, Essential; 4, Very Important; 3, Important; 2, Not Important; or 1, Irrelevant.

An example of one such question is:

Example of a SurveyMonkey Questions

Reflect on legal aid cases that you have commenced working on in the last three months.

Rate the following in terms of importance when commencing a new case: Answer Options 5 Essential 4 Very Important 3 Important 2 Not Important 1 Irrelevant

Spend time preparing a client, calming them down when anxious.

Encourage them to bring the right paperwork.

Discourage them from taking inappropriate action without first getting legal advice e.g. discouraging clients from contacting a witness for the other side.

Build a good rapport with the client which you can determine by the client's responsiveness receptivity – head nodding, asking of further questions, being thanked.

Example of a SurveyMonkey Questions (cont)

Affirm the client, for example, when they have taken positive steps to help their situation.

Provide information and advice that is simple and understandable for the nature of the client e.g. intellectual disability, a child, poor schooling.

Are up to date on services in the community so that you can make good referrals to other services for support on legal and non legal issues.

Regularly check that the client at interview and during the matter that they understand the context, the court proceeding or legal process, their position at law.

Check/verify that the client knows what the next step they need to take is and what the lawyer's role will be and what the next steps the lawyer will take are.

The client values the opinion of the lawyer.

The client touches base with the lawyer if required after interview.

SurveyMonkey Questions and Results Link.

The results of the SurveyMonkey Questions are difficult to display in a power point/poster presentation BUT the full survey results can be viewed and downloaded from LAACT's website at http://www.legalaidact.org.au/pdf/Legal_Aid_ACT_Quality_Legal_services.pdf.

The Findings of the Research

(first Snapshot – November 2012)

Consistently and across the different measurement tools used (see appendixes on LAACT Web site cited below) Legal Aid ACT scored highly on the indicators of the 11 outcomes (listed above) above. This suggests that the desired outcomes and a quality service was present. On many counts the service scored extremely highly. This was verified by clients and stakeholders.

Conclusions

- **The research revealed the complexity and complicated nature of legal aid work and legal aid clients.**
- **In order to have ‘successful outcomes’ a degree of autonomy, creativity and relationship building are critical. All of these must be in the context of the reality of the clients’ lives and be within the control of the agency given its role and function in society.**

Conclusions (cont)

- The first snapshot (November 2011) and a second snapshot which occurred in June 2012 (but is not the subject of this presentation) provide useful direction for LAACT to continuously improve and better target its service to increase quality and effectiveness. By utilising a multi pronged and 360 degree perspective from clients, service providers and external stakeholders through utilising different instruments data can collect different levels of information that can both check and enrich each other.
- It is a straightforward methodology with limited administrative burdens for already under-resourced legal aid and community services. With tweaking it could be replicated and adapted to inform agencies of their real impact on the people they assist.
- It is hoped this PowerPoint Poster presentation will be useful internationally for other interested in quality legal aid services.

Further discussion/information

For a copy of the Report see the link:

http://www.legalaidact.org.au/pdf/Light_at_the_end_of_the_Tunnel_Legal_Aid_Services_Quality_and_Outcomes.pdf

To email and comments or for a dialogue about the research feel free to email the Report's author, Dr Liz Curran on Liz.Curran@anu.edu.au

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END