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The Commissioners  
Productivity Commission  
Canberra, ACT

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CRICOS Provider No. 00120C

Dear Commissioners,

**Re: Response Submission to the Productivity Commission's Inquiry into Access to Justice Arrangements' Draft Report**

***Introduction***

This submission is the third submission by the writer (Curran) to the Productivity Commission by Dr Curran in response to the 'Inquiry into Access to Justice Arrangements'. Due to time constraints on Curran, this submission can only discuss in brief some of the Productivity Commission's queries/suggestions. Curran is drawing on over a decade and a half of researching access to justice and twenty-four years of legal practice (Curran still hold a practising certificate and provides client advice).

Curran hopes that she may be also able to appear in person at the public hearings in Melbourne and has registered. There are a lot more points Curran would like to make pertinent to a range of issues and information requests made by the Productivity Commission in its lengthy Draft Report. This is Curran's busiest time of year with substantial teaching commitments in Semester One and so she has been selective in the points made here.

In Part One of Curran's earlier submission Curran endeavoured to list some of the pivotal research (including her own) in the area of access to justice and legal assistance services. In Part Two, Curran combined some further research with some practice experience with clients and also tackled some issues around regulation and education of the legal profession (given her current work at ANU's Legal Workshop, readying graduates for real life legal practice. This submission builds on these earlier submissions and notes that the Productivity Commission has specifically noted some of Curran's observations in the Draft Report. Curran also met with members of the Productivity Commission on 26 February 2014 and answered a wide range of questions.

In this response, Curran's key focus will be on aspects of the report relating to legal assistance services and their clients as these are overwhelmingly those living in a low –socio economic context and who experience some sort of disadvantage be it a disability, acknowledged obstacles in indigenous communities, mental health problems, addictions, homelessness, CALD and so on.

## ***Response to the Draft Report – Some General Observations***

The first overall response is that Curran is encouraged by the overall thrust of the Productivity Commission's (PC) Draft Report particularly, its acknowledgement of the complexities and difficulties of many clients' circumstances and the need for holistic, integrated and responsive services that see clients within their context. The PC rightly views receivers of legal advice, not just as individuals needing fragmented one off individual advices or representation, but a need for more sophisticated responses if the service is to be effective and make a difference and hence be a wise use of taxpayers' money.<sup>1</sup>

Given most clients of legal assistance services are disadvantaged or on very low incomes, their lives and problems are situated within broader contexts and problems are often multiple and inter-connected and compounding.<sup>2</sup> This dictates that such sophisticated approach rather than a streamlined or homogenised approach is required if legal services are to be effective, not band-aid and actually address and resolve people's problems.<sup>3</sup> The Productivity Commission's Draft Report acknowledges this. This is a critical and important part of improving access to justice arrangements.

The difficulty is that the PC's statements about a need for holistic and inter-connected service delivery seem to be lost, even contradicted by proposals in the Chapters of the Draft Report t around training and funding models and processes for service delivery. For this reason, this submission will in the main deal with these issues. This response to the Draft Report will try to highlight why the sections on funding come into conflict with its other draft recommendations.

To only provide services on a one by one basis can lead to an inefficient use of limited resources and is not a very effective way of solving people's legal and other problems.<sup>4</sup> In some cases this is necessary and in other cases due to limitations on funding staff and resources other ways need to be adopted. If not, a focus on individual case based responses only, can lead to increased time spent in courts with all of the resources that this entails. Efforts to intervene earlier and before issues escalate and to prevent issues

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<sup>1</sup> C Coumarelos, D MacCourt, J People, H.M. McDonald, Z Wei, R Iriana and S Ramsey, 'Access to Justice and Legal Needs: Legal Australia Wide Survey Legal Need in Australia, Law and Justice Foundation of New South Wales, Sydney, August, 2012 and L Curran, 'We Can See Now there's Light at the End of the Tunnel' Legal Aid ACT: Demonstrating and Ensuring Quality Service to Clients, Legal Aid ACT, 2012  
[http://www.legalaidact.org.au/pdf/Light at the end of the Tunnel Legal Aid Services Quality and Outcomes.pdf](http://www.legalaidact.org.au/pdf/Light%20at%20the%20end%20of%20the%20Tunnel%20Legal%20Aid%20Services%20Quality%20and%20Outcomes.pdf)

<sup>2</sup> Pleasence, P, Balmer, NJ, Buck, A, O'Grady, A & Genn, H 2004b, '[Multiple justiciable problems: common clusters and their social and demographic indicators](#)', *Journal of Empirical Legal Studies*, vol. 1, no. 2, pp. 301–329; C Coumarelos, D MacCourt, J People, H.M. McDonald, Z Wei, R Iriana and S Ramsey, 'Access to Justice and Legal Needs: Legal Australia Wide Survey Legal Need in Australia, Law and Justice Foundation of New South Wales, Sydney, August, 2012.

<sup>3</sup> Pleasence, P, Balmer, NJ & Tam, T 2009, '[Failure to recall: indications from the English and Welsh Civil and Social Justice Survey of the relative severity and incidence of civil justice problems](#)', in RL Sandefur (ed.), *Sociology of crime, law and deviance, volume 12: access to justice*, Emerald Group, Bingley, pp. 43–65.

<sup>4</sup> L Curran, 'Solving Legal Problems: A strategic approach', March, 2013 at 26-27  
<http://www.law.anu.edu.au/legalworkshop-gdip/publications>

arising in the first place can save money in the longer term on courts and other processes. The interconnectedness of being responsive to the legal issue, prevention and early intervention through community development/legal education approaches and 'in place timely' legal education<sup>5</sup> tailored to the client need and group can avert escalation of problems. This interconnects and intersects with the pivotal role of law and policy reform which, if informed by observed trends in client experience, can rectify laws and their negative impact or those of their administration saving clients from undue stress, health problems proven to emerge from unresolved legal problems<sup>6</sup> and reduce the significant time and resources of the courts and other regulatory bodies.<sup>7</sup> As an example, in her meeting with the Productivity Commission (PC), Curran discussed the 'bulk negotiation' case study outlined in Curran's 2013 Report (a)<sup>8</sup> which saved millions of dollars for a large number of people and led to changes in corporate practice that are fairer and in line with legislative protections and which also solved many resources in court time and expense.

Whilst the Bulk Negotiation project is not appropriate in every instance, it is an example of the value of flexible and strategic responsiveness to client problems that enables innovation and creativity and can lead to significant outcomes in this case millions of dollars in savings and reduced risk of health complications through stress and anxiety. Curran has already provided the Productivity Commission with the information around the significant cost savings and outcomes (millions of dollars) of the project which was initiated when she was the Director of a legal service through Victoria Law Reform Commission funding.

*'To date, the project has negotiated waiver or closure of debts worth more than \$15 million with creditors such as major banks, insurance companies, credit providers, debt collectors and utility providers.'*

*The project has directly assisted about 2500 debtors. Instead of negotiations taking place for each client separately, they were bundled together into a "bulk negotiation". All cases involved clients on a low income, with most receiving some form of Social Security payment. Many clients had multiple debts. Most clients also had other significant indicators of disadvantage, such as mental illness, disability, ill health or were full-time carers.'*

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<sup>5</sup> Public Legal Education and Support Task Force (PLEAS Task Force) 2007, [Developing capable citizens: the role of public legal education](#), PLEAS Task Force, London; Public Legal Education Network (Plenet) 2009, [Public legal education: improving lives, empowering communities](#), Plenet, London; Public Legal Education Network (Plenet) n.d., [Public legal education: principles and guidance](#), Plenet, London; Buck, A & Curran, L 2009, '[Delivery of advice to marginalised and vulnerable groups: the need for innovative approaches](#)', *Public Space: The Journal of Law and Social Justice*, vol. 3, pp. 1–29.

<sup>6</sup> Pleasence, P, Balmer, NJ, Buck, A, Smith, M & Patel, A 2007b, 'Mounting problems: further evidence of the social, economic and health consequences of civil justice problems', in P Pleasence, A Buck & NJ Balmer (eds), *Transforming lives: law and social process*, Stationery Office, London, pp. 67–92.

<sup>7</sup> L Curran, 'Solving Legal Problems: A strategic approach', March, 2013 <http://www.law.anu.edu.au/legalworkshop-gdip/publications> and L Curran, 'Making the Legal System More Responsive to Community: A Report on the Impact of Victorian Community Legal Centre (CLC) Law Reform Initiatives', La Trobe University and the Reichstein Foundation, May 2007.

<sup>8</sup> L Curran, 'Solving Legal Problems: A strategic approach', March, 2013 at 26-27 <http://www.law.anu.edu.au/legalworkshop-gdip/publications>

This Curran 2013 report (a) carefully sets out ways of working for community legal centres that can and have enabled a significant use of limited resources to have maximum gain and significant client and community outcomes leading to efficiencies and greater effectiveness.

Australia is unique in terms of its enormous size and the remoteness of some of its communities particularly its indigenous community.<sup>9</sup> Ensuring different communities are able to access legal service is a real challenge and running services in ways that seize opportunities and uses multi-pronged approaches suitable to the varying circumstances that are flexible and responsive to client behaviour should be required. They should not come at the cost of constraining the types of service legal assistance services can offer so that they are rigid, pre-ordained and hence unresponsive and often ineffective.

*'A strategic approach to problem solving helps address some of the challenges of providing an efficient service. Firstly, who should the centres help? It's simple to suggest that this should be whoever walks through the door, but if it is clear that there are other victims of a particular illegal practice, can it be justified to focus public resources only on one person and ignore the pressing problems of others with similar problems. Some civil matters may involve a relatively small amount of money, in some cases less than the value of the legal resources required to resolve the dispute. Resolving the dispute in a way that benefits other individuals who have not sought assistance, or which prevents future exploitative behaviour, is an efficient use of community legal centre resources.'*<sup>10</sup>

*'Generalist or local CLCs have been historically based on the shop-front approach to the delivery of legal services. This might be described as a "first come, first served" approach. Over time, CLCs and legal aid offices have moved towards a more targeted approach to service delivery. This reflects the growing need in society and the growing complexity of the legal system and the often compounding, multiple and cascading nature of legal problems clients experiencing disadvantage face.'*<sup>11</sup> *The approach has gradually evolved to better meet the needs and circumstances of those who need help the most who are often vulnerable and disadvantaged and to garner the small resources available to community legal centres to have an impact. Accordingly, it focuses on targeting specific disadvantaged communities and targeting specific legal problems identified by those communities.*

*Committees have often focused their time on financial accountability and viability. While this is important, committees are sometimes unaware that an increased focus on the development of a strategy for targeting communities and their problems, and for addressing those problems more broadly, will often lead to an expansion of the funding base and increased viability.*

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<sup>9</sup> M Schwarz, F Allison and C Cunneen, 'A Report of the Australian Indigenous Legal Needs Project', Cairns, James Cook University, 2013. See [http://www.jcu.edu.au/ilnp/public/groups/everyone/documents/technical\\_report/jcu\\_131180.pdf](http://www.jcu.edu.au/ilnp/public/groups/everyone/documents/technical_report/jcu_131180.pdf) accessed 17 January 2014 and M Schwarz, F Allison and C Cunneen 'The Civil and Family Law Needs of Indigenous People in Victoria', Cairns, James Cook University, 2013.

<sup>10</sup> L Curran, 'Solving Legal Problems: A strategic approach', March, 2013 at 12 <http://www.law.anu.edu.au/legalworkshop-gdlp/publications>

<sup>11</sup> C Coumarelos, D MacCourt, J People, H.M. McDonald, Z Wei, R Iriana and S Ramsey, 'Access to Justice and Legal Needs: Legal Australia Wide Survey Legal need in Australia, Law and Justice Foundation of New South Wales( Sydney, August 2012).

*Setting a clear division between management and committee responsibilities can free up committee time to focus on broader strategic issues. While committees should not generally be involved in management decisions, they ideally play a significant role in the broader strategy of the centre. This role should inform the skill needs when seeking new committee members.<sup>12</sup>*

This 2013 (a) report highlights numerous case studies where, a multi-pronged approach dictated to by the actual situations at hand, have reaped good outcomes. This requires flexibility in funding requirements on how work is done. It also involves a need for trust, recognition and acceptance of the expertise that comes from people on the ground who do the actual service delivery and interact with service users who can be homeless, mentally ill from CALD backgrounds and so on. Such respect and consideration of this expertise is often overlooked and even ignored in some policy setting and funding contexts by government and departmental management. Significant gains have and are being made by legal assistance services by such approaches. Recent and timely empirical legal studies on advice seeking behaviours now exist<sup>13</sup> and are starting to inform how services can be delivered more effectively and efficiently have been embraced by many legal assistance services. Other legal assistance service need to be encouraged to identify legal need and respond to this through better support and training as to how this can be done. These recent empirical studies (as Curran indicated when she met with the Productivity Commission) are situated against a previous vacuum of such empirical information in Australia. The Productivity Commission's Final Report should take on board these recent empirical studies which represent a great body of work with the suggestions on ways forward. Many legal assistance services have been doing what these studies suggest for some time. Others are just coming to finding ways of shifting their service models to respond to what the research says about advice-seeking behaviour and the nature of different clients. Other centres may need to be further exposed to the benefits but the latter should be supported in finding ways to achieve this and can find leadership on this in the sector. Curran's concern is that they should not be lost in a focus on reducing expenditure which could come at the cost of good service delivery.

### **Responses to Specific Information Requests**

#### INFORMATION REQUEST 6.3

*The Commission is seeking views on the appropriate 'hosts' for central online resources with information about legal fees — should they be hosted by each jurisdiction's Attorney-General's department, legal services commissioner (or equivalent) or legal aid commission? Could this resource exist alongside a 'directory' listing of firms who are willing to advertise their prices through, say, a law society website?*

A word of caution - when looking at 'hosts of central online resources' it is important to stress a need for accuracy of information and a need for it to be checked and verified by a legal practitioner.

Whilst it is important to translate information into plain English and understandable language, care must be taken that this does not dilute accuracy. By way of an example, in 2012, whilst marking a series of

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<sup>12</sup> L Curran, 'Solving Legal Problems: A strategic approach', March, 2013 at 45 and see 45-50  
<http://www.law.anu.edu.au/legalworkshop-gdlp/publications>

<sup>13</sup> C Coumarelos, D MacCourt, J People, H.M. McDonald, Z Wei, R Iriana and S Ramsey, 'Access to Justice and Legal Needs: Legal Australia Wide Survey Legal need in Australia, Law and Justice Foundation of New South Wales (Sydney, August 2012).

student 'Letter of Advice to Clients', Curran found the students incorrectly stating how various provisions applied and advising client options in terms of alternative dispute resolution that were incorrect and not open on the facts of the client situation. On querying the students' source of information it emerged that the students had relied on an Attorney General's web site. On checking the site the information was incorrect and misleading. It may be that the information before being placed online went through many hands and was changed. This is why Curran would be wary about using the Attorney General's Department. Whilst stressing to the students that as emerging lawyers they needed to rely on primary sources, it did highlight that a web site set up for the public could, if care was not taken in accurate information, end up providing incorrect and misleading information that could have consequences for people relying on this information. It is suggested that legal aid commissions already have useful and accurate directories as do some specialist legal centres. These however need constant updating as laws change.

Advertising prices alongside resources providing legal information could be confusing for clients and also blur the lines between legal information and advertising/marketing and so should be left to law society web sites.

#### INFORMATION REQUEST 5.1

*The Commission seeks feedback on the likely effectiveness and efficiency of extending the use of legal health checks to those groups identified as least likely to recognise problems that have a legal dimension. More vulnerable groups include people with a disability, sole parents, homeless people, public housing tenants, migrants and people dependent on income support.*

*Where greater use of legal health checks is deemed appropriate, information is sought on who should have responsibility for administering the checks. What role should non-legal agencies that have regular contact with disadvantaged clients play? Do these organisations need to be funded separately to undertake legal health checks?*

The 'legal health check' is one tool (in part of a much larger repertoire) which would be useful. Use of such a legal health check will need training by those who administer them. For two years Curran sat next to an intake worker at a community health service who did a 'health check' on clients. It demonstrated the importance of proper training as the process can involve the client indicating a range of legal, health and other social and cultural issues which may need appropriate responses and which present challenges given client complexity e.g. clients in discussing legal and health issues can find other issues triggered e.g. sexual abuse, suicidal ideation. The worker would often need to de-brief. Care is needed.

Allied health and community health centres utilise health checks and have intake process that legal assistance service can and are learning from. These might be adapted to include issues or the nature of problems capable of a legal solution. Describing problems as legal is an issue in itself and creates confusion.<sup>14</sup>

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<sup>14</sup> L Curran and M Noone, 'Access to Justice: A new approach using human rights standards', *International Journal of the Legal Profession*, 2008, Vol 15 (3) pp. 195-229; L Curran and M Noone, 'The Challenge of Defining Legal Need', *Journal of Law and Social Policy*, 2007, Vol 21 Spring, Ontario Canada, pp.63 -89 and M Noone and K Digney, "It's

## INFORMATION REQUEST 5.2

*Information is sought on the costs and benefits of adopting the legal problem identification training module (being developed by the Commonwealth Attorney-General's Department and Department of Human Services) more widely among non-legal workers who provide services to disadvantaged groups.*

*Feedback is also sought on which agencies' staff should receive this training and whether funding should be provided to cover training costs.*

For many years, Curran has regularly trained/s non-legal workers for example doctors, nurses, psychologists,<sup>15</sup> youth workers, financial counselors, regulators, local council and departmental staff in identifying legal issues and how to work with clients.

To do these training effectively, adult learning approaches using realistic and relevant scenario based learning is critical in making the training go beyond the abstract. Curran has been working for some time on an article outlining approaches to effective legal training/education and aims to finish it in coming months. She would be happy to make this available when she finishes it. She also makes the following observation as to what is needed as part of such training in a 2012 Legal Aid ACT report:<sup>16</sup>

'...A needs analysis of what issues with a legal dimension were pressing for vulnerable and disadvantaged community members.

- The development of a CLE plan in collaboration with and informed by the involvement of affected community members, drawing on the experience of legal staff in the different practice areas and with appropriate modes of delivery for different community groups.
- Improved targeting of the CLE program.<sup>17</sup>

Specialist legal centres have also expertise in this area. For example, The Victorian Aboriginal Legal Service can attune departmental staff to blockages in people revealing the extent of their legal problems through shame and fear of non-culturally specific service providers. Consumer Action Law Centre, because it is accustomed to Consumer Laws and consumer vulnerability assists regulators in working out what legal

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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, Melbourne, September 2010.

<sup>15</sup> L Curran, 'Relieving Some of the Legal Burdens on Clients: legal Aid services working alongside Psychologists and other health and social service professionals', *Australian Community Psychologist*, August 2008, Vol 20 (1), pp 47-56.

<sup>16</sup> L Curran, 'We Can See Now there's Light at the End of the Tunnel' Legal Aid ACT: Demonstrating and Ensuring Quality Service to Clients, Legal Aid ACT, 2012, at 46  
[http://www.legalaidact.org.au/pdf/Light\\_at\\_the\\_end\\_of\\_the\\_Tunnel\\_Legal\\_Aid\\_Services\\_Quality\\_and\\_Outcomes.pdf](http://www.legalaidact.org.au/pdf/Light_at_the_end_of_the_Tunnel_Legal_Aid_Services_Quality_and_Outcomes.pdf)

<sup>17</sup> For background on what has been accepted by the community legal sector as community legal education see National CLEWS Network, *Guidelines for the Management of Community Legal Education* (2009), [http://www.naclc.org.au/cb\\_pages/files/13%20National%20CLE%20Guidelines%20\(Oct%202009\)\(2\).pdf](http://www.naclc.org.au/cb_pages/files/13%20National%20CLE%20Guidelines%20(Oct%202009)(2).pdf).



issues are and improving where they send members of the public. Consumer Action does this training, process work with regulators because if regulators do this poorly, clients end up on a referral roundabout or just give up.<sup>18</sup> Many regulators do not have insight into how disadvantage and vulnerability can impact on how information is absorbed and so this expertise is also needed. Consumer Action also has a detailed triage process which is also likely to assist department people in working out ways to identify legal issues. This is discussed in my 2013 Report (b).<sup>19</sup> As a result of Curran's evaluation work for Consumer Action the services approach to legal needs identification and barriers to people with specific disadvantage are leading to continuous refinement to the intake and legal needs identification approach. Similarly, Women's Legal Service Victoria, due to its expertise in working with women is accustomed to training departmental people and non-legal services in legal issue identification and also ensuring that a gender and cultural appropriate approach is taken.

Legal issue identification is not just about nominating what is legal and suggesting a legal service but is more complex if it aims to be about improving access to justice and removing barriers.<sup>20</sup> It is also about awareness of barriers and impediments to having legal help. Community Legal Centres (CLCs) are ideally situated, to partner in such training given their on the ground experience with the very clients who might struggle but CLCs will need resources to partner with departments/agencies in advising how these modules might be more effective.<sup>21</sup> Monica Ferarri and Katie Fraser for National Legal Aid have also developed expertise in this area and this has informed project design on legal needs identification and accessing vulnerable communities.<sup>22</sup>

### **How to improve information between agencies (5.1 Further Information)**

Some observations pertinent to the PC's questions on better service co-ordination are documented in a 2005 report by the Social and Policy Research Centre at UNSW.

The report states:

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<sup>18</sup> C Coumarelos, D MacCourt, J People, H.M. McDonald, Z Wei, R Iriana and S Ramsey, 'Access to Justice and Legal Needs: Legal Australia Wide Survey Legal need in Australia, Law and Justice Foundation of New South Wales( Sydney, August 2012).

<sup>19</sup> L Curran, 'Encouraging Good Practice in Measuring Effectiveness in the Legal Service Sector', May 2013 at 9 <http://www.law.anu.edu.au/legalworkshop-gdlp/publications> <http://consumeraction.org.au/report-encouraging-good-practice-in-measuring-effectiveness-in-the-legal-service-sector/> and L Curran, 'Solving Legal Problems: A strategic approach', March, 2013 at p 15-16 <http://www.law.anu.edu.au/legalworkshop-gdlp/publications>

<sup>20</sup> Buck, A, Pleasence, P & Balmer, N 2008, '[Do citizens know how to deal with legal issues? Some empirical insights](#)', *Journal of Social Policy*, vol. 37, no. 4, pp. 661–681 and Buck, A, Pleasence, P & Balmer, N 2008, '[Do citizens know how to deal with legal issues? Some empirical insights](#)', *Journal of Social Policy*, vol. 37, no. 4, pp. 661–681.

<sup>21</sup> CLEWS Working Group, National Association of Community Legal Centres, 2009, Guidelines for the Management of Community Legal Education < [http://www.naclc.org.au/cb\\_pages/files/13%20National%20CLE%20Guidelines%20%28Oct%202009%29%282%29.pdf](http://www.naclc.org.au/cb_pages/files/13%20National%20CLE%20Guidelines%20%28Oct%202009%29%282%29.pdf)>.

<sup>22</sup> 'Evaluation Report: Assessing the Value of What's the Law?' National Legal Aid 2013, <http://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-whats-the-law-evaluation.pdf>



*'What is required, this suggests, is not the promotion of the goal of service integration as an end in itself, but a more differential approach. Clear evidence of the nature and extent of problems in particular spheres of service provision together with evidence of Coordinated and Integrated Human Service Delivery Models the value of specific initiatives to address these difficulties is necessary before an ongoing commitment is made to new initiatives.'* (page 3-4)

*'Involving service providers, consumers and others likely to be immediately involved in any integration initiatives appears to be a widespread practice in those projects which were most successful in achieving their aims. This is because the ultimate success of any venture of this kind depends very much on the commitment and good will of those directly affected. If integration is to depend on the imposition of rigid rules or strict financial control measures, the transaction costs are likely to be high in relation to any benefits obtained. Those who need to be involved at some stage include both management and service staff of organisations, and, where appropriate their representative organisations such as trade unions and service associations.'* (page 42)

*'Clearly, care is needed in developing consultative processes which are sufficiently inclusive to be successful, without being unwieldy, chaotic, open-ended or too expensive. Mechanisms such as conferences and seminars provide useful and well recognised means of establishing open forums for debate of ideas. Other processes, such as working parties and committees can be established as a second stage to work up specific proposals... disseminating information and ideas of interest to service managers and personnel.'* (page 42).<sup>23</sup>

*The report also notes that*

*'Using a pilot or demonstration projects approach because the area of service integration is such an uncertain one at present, the experimental and demonstration project approaches to developing and implementing any potential system-wide innovations are particularly suitable. In turn, introducing reforms which have not been tested remains, at best, a risky enterprise. This does not mean that there is no need for ongoing improvements in the integration of service provisions. Opportunities for innovation should be encouraged, and assistance provided in linking service managers and administrators with experts and advisers who have the skills and experience to assist them where necessary.'* (Page 42)

This study supports the general thrust of this submission around a need for collaboration, communication and respect for those who actually undertake service delivery in both the legal and community service spheres in developing initiatives around information sharing if such a process is to be effective and relevant. The Family Violence Partnership/ Network in the ACT is a good example of such information sharing. As Curran noted in her meeting with the PC it will only work if it is 'bottom up' and works through relationships of trust and regular meetings and will not work if it is imposed from the 'top down'.

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<sup>23</sup> Fine, M, Pancharatnam, K & Thomson, C 2005, [Coordinated and integrated human services delivery models: final report, SPRC](#) report, no. 1/05, Social Policy Research Centre, University of NSW, Sydney.

#### INFORMATION REQUEST 17.1

*The Commission seeks views on how best to enable courts to identify their technological needs and service gaps, and promote work practices that maximise the benefits of available technologies. In particular, the Commission seeks views on whether, and to what extent, this involves greater use of court information technology strategic plans and/or greater coordination and leveraging of technology solutions across and within jurisdictions. Investment in which types of technologies, including those to better assist self-represented litigants, would be most cost effective? What are the likely costs of addressing the different technological needs of different courts?*

A further note of caution - recently Curran was asked to examine and assess a legal advice/information portal in the United States that was touted as a way to improve access to justice for self-represented litigants and others in the court and tribunals in the particular state. On paper, it looked good and took many hundreds of people to design it and create 'realistic scenarios' at great cost. Curran decided not just to examine the report on the project design but to also look a few years forward into the evaluation of the service.

The evaluation which occurred several years after the on-line program roll-out, noted that there were significant issues with accuracy, people not understanding the information and making poor choices as the education module/scenarios and content it was not sufficiently tailored to difference in circumstances. It was found to waste time of already stretched and reduced support staff. The evaluation noted that consumers had difficulty understanding the information and sought help of legal advisers/navigators who spent significant time correcting the information provided through the portal.

For the vast amount of money and resources expended, it was clear from the evaluation that it consumed more service energy and led people into error. Although the intention was a noble one, in the end it was highly problematic and created different problems for consumers. This example highlights the dangers in seeing technology as a 'silver bullet' and that care and a multiplicity of strategies is required.

#### **INFORMATION** REQUEST 21.3

*The Commission seeks feedback on how Community Legal Centre (CLC) funds should be distributed across providers while at the same time ensuring providers are of sufficient scale and the benefits of the historic community support of CLCs are not lost. Competitive tendering might be one possible method for allocating funds. The Commission seeks feedback on the costs and benefits of such a process and how they compare with the costs and benefits of alternative methods of allocating CLC funding. The Commission seeks feedback on the extent of, and the costs associated with, meeting the civil legal needs of disadvantaged Australians, and the benefits that would result.*

The Information Request and Draft Recommendations in this section of the Productivity Commission's Draft Report are dis-connected from some of the other key recommendations of the Draft Report. Good

service delivery can respond to difference in local understandings and knowledge.<sup>24</sup> This means that service delivery needs to be informed by the reality of what happens on the ground for it to lead to effective, efficient, responsive and cost efficient responses.

In any funding approach respectful partnerships between funder (government) and those who provide the service is critical. Why? Because those who provide the service on the ground know what works well and why on the ground and governments can look to broader aims of over-arching policy but such a partnership is essential in any funding decisions in the complex area of legal assistance services to ensure a lack of remoteness from the reality which leads to inefficiencies. In addition, without such a partnership, holistic and joined-up service delivery becomes problematic and difficult. The draft recommendation seems to lose a sense of the importance of such partnership. One without the other will lead to ineffective services and a loss of value for taxpayer money. As Currans 2012<sup>25</sup> report states

*‘Service delivery that reaches out, builds understanding of the workings of the law and a person’s place within it can also be an effective way of ensuring greater access to justice for vulnerable and disadvantaged groups. This research has examined the ability of LAACT to work collaboratively with legal and non-legal services and to look at clients holistically. It has also examined the critical role of community legal education in enabling people to assert their legal rights. This is important because ‘[k]nowledge, capacity, capability and understanding are the key prerequisites to access to justice’<sup>26</sup> and because ‘[i]f 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’.<sup>27</sup>*

The Productivity Commission’s suggestions around the funding of services, tendering of services, planning for service delivery seem to contradict the other parts of the report which acknowledge the critical importance of holistic, joined up and integrated service delivery. This is the one part of the report that is concerning as the suggestion could place at risk and contradict its other recommendations.

The example of tendering for legal assistance services is concerning. Having just undertaken a training session of workers last week with staff in disability and homelessness services, the participants lamented the fact that tendering for community services led to a culture of secrecy and competition which provides a significant barrier for agencies who should be working together. This comment resonated at the time as this was the experience in Victoria in the late 1990s when an array of community services and legal services were tendered. Community services competed for the tender and were unprepared to share their experiences, service aims, service achievements for fear they would lose competitive advantage. Tendering will work against holistic, integrated service delivery, trust and relationship building which are

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<sup>24</sup> Genn, H 1999, *Paths to justice: what people do and think about going to law*, Hart, Oxford.

<sup>25</sup> L Curran, *We Can See Now there’s Light at the End of the Tunnel’ Legal Aid ACT: Demonstrating and Ensuring Quality Service to Clients*, Legal Aid ACT, 2012, at 46  
[http://www.legalaidact.org.au/pdf/Light\\_at\\_the\\_end\\_of\\_the\\_Tunnel\\_Legal\\_Aid\\_Services\\_Quality\\_and\\_Outcomes.pdf](http://www.legalaidact.org.au/pdf/Light_at_the_end_of_the_Tunnel_Legal_Aid_Services_Quality_and_Outcomes.pdf)

<sup>26</sup> L Curran and M Noone, ‘The Challenge of Defining Unmet Legal Need’, *Journal of Law and Social Policy* vol. 1 (2007), 63-4.

<sup>27</sup> L Curran, *Ensuring Justice and Enhancing Human Rights: A Report on Improving Legal Aid Service Delivery to Reach Vulnerable and Disadvantaged People*, (Melbourne: La Trobe University and Victoria Law Foundation, 2007), 4.

pre-requisites for effective referral and collaboration that the Productivity Commission has acknowledged are needed to reduce barriers and encourage information sharing. Noone has also highlighted in her research the critical importance of trusting relationships in legal assistance services if out-reach, co-location and collaboration are to be effective and resources and information shared.<sup>28</sup>

Another draw-back is that often the largest and repeat tenderers have the advantage in the tender process. This does not always mean they have the expertise as smaller agencies which have worked with local community to develop approaches that respond and are likely to work with specific groups. Such expertise and knowledge is easily lost in the granting of tenders. Such services work effectively with certain communities and have built up trust with people. As someone who has worked on a public housing estate for a decade such relationships of trust become critical to encourage people to use legal service. Victims of sexual and violent offences feel safer in coming to seek help and will advise their friends to do so. Tender processes can cut across such community agency relationships which can take time to develop.

In addition, the process of tendering can hold up and intervene significantly in service delivery on the ground. One of many examples of the problems with the tendering of legal assistance services involved an indigenous legal service in a rural and remote community which had recently had an extremely positive evaluation. It saw prisoners on remand without access to legal advice for up to two years whilst the government departments at State and federal level worked out how it was going to proceed. As staff in the department got promoted and moved out of the department and others took annual and long service leave further delay occurred and this was given as the key reason for the delay of two years. During the time for the tender process (which was to be two weeks) which took two years, staff at the legal service who had been trained, left the service due to the uncertainty leaving the service without staff to see the prisoners – many of whom were at risk of self-harm and many had pressing family and other legal issues. For Curran, issues to do with departmental staff being moved around and departmental inability to work out a tender framework seemed to be poor excuses for placing the indigenous men at risk. When the tender was finally announced the service agency was given an extremely short time frame to apply to make up for the wasted departmental time. This placed more pressure on the service agencies to get the paperwork in on time especially by now when they were under staffed.

Curran notes that tendering for human services (such as legal assistance services) can divert critical time and resources away from direct and front line service delivery. The process can take up valuable time and lead to uncertainty and staff attrition, when often it is hard enough to get good staff especially in remote locations and with the low pay.

As this Inquiry is about 'Access to Justice Frameworks' the barriers created to such access are compounded by inflexible responses. What Curran recommends are models that work to continuously improve and develop services so that they work with community closely to develop and identify need and the most appropriate responses informed by this. Tendering cuts across such an approach and can often lose much that is of value along the way.

A replicable, low-burdensome methodology for evaluating services which brings the service community and funder together in a partnership for funding frameworks based on a **dialogue model** is set out in Curran's 2012 report which also provides the instruments and tools that can be used in further studies.

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<sup>28</sup> M Noone, 'Towards and Integrated Service Response to the link between Legal and Health Issues' Vol 15, *Journal of Primary Health*, 2009, 203-2011

In the ILAG Conference Paper<sup>29</sup> the rationale and point of such research is explained as follows:

*'Because of the limited resources available to Legal Aid ACT and other legal assistance providers for the collection and reporting of service data there was a need to develop a methodology that was not unduly costly or administratively burdensome. Much of the research conducted in the United States and the United Kingdom into measuring legal services has received significant funding, an example being the excellent research conducted by the Legal Services Research Centre.<sup>1</sup> This has not been the case in Australia and while there is recognition by governments of the need to avoid imposing unreasonable reporting burdens on legal assistance providers, this has yet to result in a streamlining of reporting requirements or the provision of additional resources to help meet those requirements. Our aim was therefore to develop an approach that could be adapted for use by a variety of legal assistance services and conducted with minimal cost and disruption to service delivery. Hence the development of a periodic 'snapshot' survey approach.*

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

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

Given the complex nature of legal assistance service clients and the need to be responsive to ensure services are appropriately targeted and effective is the key then the problem with tendering is that the parameters are often set by those with little experience of direct service delivery and are often set in advance with key performance indicators being linked to them. Given the changing nature of the law, policy settings and shifts in service needs more flexible approaches can be lost if requirements are cast in stone. What was set for a service three years beforehand may become redundant or be deemed ineffective? Because it is the requirement for the tender and condition of funding it will lead to inefficiencies as the service complies and tries to meet KPIs which may have become meaningless and hollow given the changing contexts.

Legal assistance services are after all human services. Human lives are complex especially given the nature of often multiple and diverse experiences of disadvantage. <sup>30</sup> Mowles, Stacey and Griffin<sup>31</sup> note that

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<sup>29</sup> A Crockett and L Curran, Conference Paper International Legal Aid Group Conference, A Practical Model for Measuring Effectiveness., The Hague, June 2013 at 3.

<sup>30</sup> L Curran, 'We Can See Now there's Light at the End of the Tunnel' Legal Aid ACT: Demonstrating and Ensuring Quality Service to Clients, Legal Aid ACT, 2012, at 46

[http://www.legalaidact.org.au/pdf/Light\\_at\\_the\\_end\\_of\\_the\\_Tunnel\\_Legal\\_Aid\\_Services\\_Quality\\_and\\_Outcomes.pdf](http://www.legalaidact.org.au/pdf/Light_at_the_end_of_the_Tunnel_Legal_Aid_Services_Quality_and_Outcomes.pdf)

managerial methods have been adopted often uncritically from the private sector and that when applied to processes of social interaction like human development (or services)<sup>32</sup> these methods have severe shortcomings. The methods overlook or fail to understand unanticipated contextual, unforeseen and contingent circumstances in the more abstract and de-contextualised planning processes which see them as 'noise' which needs to be managed away.<sup>33</sup> Tendering is appropriate for matters such as building where the number of bolts, planks and floors of a building need to be worked out in advance but when it comes to legal assistance services which is more problematic and can have significant impact on lives if the service is unable to respond. E.g. domestic violence, children going into state care. As the 2012 report highlights pre-determined out puts that are inflexible, pre-determined and divorced from the reality of service contexts and which bind agencies to their performance due to tied funding are not appropriate if tax payer funded services are to be effective and make a difference.

There is value in remembering why publically legal assistance services remain essential and came into existence. The public funding of legal assistance services emerged because the private profession, even though there was some informal pro bono work being undertaken was failing to meet the needs of the poor and disadvantaged.<sup>34</sup> There were huge and significant gaps with many poor and disadvantaged people being invisible and forgotten as they could not afford a private lawyer. It was effectively a market failure.

It cannot be assumed that if legal services are left to the private profession that the rule of law nor substantive equality before the law and access to justice will be attained. At the end of the day, private law firms (which are of immense value in the pro bono landscape) are businesses. The poor and disadvantaged are often not easy clients (drug, alcohol, intellectual disability, mental illness) and as a result it takes time and thought to legally represent them. Properly interviewing a client with an intellectual disability and difficult behaviours takes time and patience. In private practice, time is money. The poor will never pay the amount for private firms to want to assist them and keep their businesses viable. An end to publically funded legal services will always be a case by case piecemeal response that is fragmented and so the value-add of legal assistance services which include holistic and strategic responses and trend identification are lost. Rosemary Hunter has documented how many family lawyers have decided not to take on legal aid cases as they are too time consuming and difficult. Although Hunter's report was from 2003, little has changed.<sup>35</sup>

Community legal centres started in local communities as a response to serious unmet legal needs and the abuse of people by the legal process (e.g. young people in Fitzroy in the 1970s were being beaten by police in prison cells and interview rooms using phone books). Often CLCs have been left to pick up the pieces when legal aid budgets have been cut/reduced over many years or when private lawyers turn client

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<sup>31</sup> 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, 804-820.

<sup>32</sup> Brackets inserted by the author.

<sup>33</sup> 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, at 808.

<sup>34</sup> M Noone and A Tomsen, *Lawyers in Conflict: Australian Lawyers and Legal Aid*, The Federation Press, New South Wales, 2006.

<sup>35</sup> R Hunter, J Giddings, A Chrzanowski, 'Legal Aid and Self Represented Litigants in the Family Court of Australia', A Report, Griffith University, May 2003.

away who are too difficult or time consuming or when they cannot pay. Often CLCs have done this with many limited resources.

CLCs have found ways forward to address unmet legal need and deficits in expertise on matters affecting groups of clients by establishing much needed specialist legal centres. These specialist centres deal with complex areas of law that client experiencing disadvantage encounter that private firms would never be interested or see as financially viable in developing. In fact, Victoria Legal Aid and CLCs often train the private profession in areas such as 'dealing with client who experience difficulties'. The private profession often has little desire to develop such expertise in areas such as social security, homelessness as they are non-lucrative areas of practice and often involve issues around specialist areas affecting the poor or disadvantaged. These include Consumer Action Law Centre, Welfare Rights, Women's Legal Service, Family Violence Prevention Services and Aboriginal and Torres Strait Islander Legal Services, Villamanta Legal Service for people with intellectual disabilities and so on.

Legal Centres also showed innovation when they developed the idea for pro bono legal clearing houses like Justice Connect (then PILCH) which were not easy to get off the ground. Much work was required to convince the private profession to participate. Such initiatives took time to develop and were largely led by community legal centres. This fact is often overlooked and is explored by Noone.<sup>36</sup> It still takes a lot of effort by the CLC sector to encourage pro bono contributions at times and it cannot always be relied on for clients in dire need.

In recent times, in debates around reduced legal aid funding, the private profession has largely lamented the loss of funding for the private profession in grants. While such grants may be needed, the real issue that should be front and centre is not reductions in payments for the private profession but the impact on clients, what dangers they are exposed to when they miss out and the impact on the rule of law and people's human rights.

In Curran's paper with A Crockett at the International Legal Aid Conference in June 2013<sup>37</sup>, it states:

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

*Furthermore, since efficiency does not necessarily equate with lowest cost, even if it was established that one provider type was less costly than another, this would not justify the exclusive use of the less costly provider to deliver those services.<sup>iii</sup> If this were the paradigm, then*

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<sup>36</sup> M Noone and A Tomsen, *Lawyers in Conflict: Australian Lawyers and Legal Aid*, The Federation Press, New South Wales, 2006.

<sup>37</sup> A Crockett and L Curran, Conference Paper International Legal Aid Group Conference, A Practical Model for Measuring Effectiveness, The Hague, June 2013 at 9.



*governments would be at risk of funding ineffective services which would be an inefficient use of public money.<sup>iv</sup> An analogy may be drawn with competitive tendering where the lowest tender price is not accepted without regard to factors such as quality and reliability.*

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

#### INFORMATION REQUEST 23.1

*Would there be merit in exploring further options for expanding the volunteering pool for Community Legal Centres (CLCs)? For example, are there individuals with specialised knowledge that could provide advice in their past area of expertise such as retired public servants or retired migration agents, that CLCs could draw on in the relevant area? Are there currently any barriers to prevent this?*

There are many retired lawyers. They are under-utilised and the PC's suggestion is sensible. Training and recruiting them as volunteers and advocates in the legal assistance sector would see more people being assisted and expertise harnessed rather than lost. Already some CLCs utilise this expertise but more could be done to encourage greater participation. It is noted that unlike many other professions, many lawyers provide their services pro bono.

In Curran's own experience, like so many other legal professionals, she spends at least 150 hours per annum of her free time as a volunteer. Why? to improve access to justice through services to legal aid, community agencies and community legal centres. This commitment recognises how poorly funded and terrific community services are and the huge needs of those who are vulnerable and disadvantaged. Publically funded legal services and their value in supporting the 'public good' justify this commitment and those of so many other legal professionals. One critical issue however that cannot be underestimated is that lawyers who volunteer tend to do so in locations that are easy to get to and from. This presents real challenges for rural and remoter locations in attracting volunteers.

Such volunteerism and the millions of dollars that such efforts save the tax payer would not be provided by volunteers to private law firms whose overall aim is to make a profit (which as they are businesses is fair enough) and is made possible through existing public legal assistance structures such as legal assistance services with staffed services offering training and support.

Many staff of publically funded legal assistance services go well beyond the call of duty working long hours/being available after hours, not just to earn a salary (which are lower than those offered in the private profession), but because of their commitment and conviction to assist people who most need help and to give back to and enliven local communities. This is the significant benefit/byproduct of having publically funded legal services and means these services go much further.

In addition, as the National Pro bono Task Force set up under the Howard government noted on numerous occasions that pro bono services are not a substitute for publically funded legal services as they are often

fragmented, piecemeal and dependent on availability. A stark example of this is in family law where on numerous occasions (where due to legal aid limits) the barristers providing pro bono services have pulled out of cases leaving the victims of longstanding family violence to face the perpetrator in court and be cross-examined by them and re-traumatised.

#### INFORMATION REQUEST 23.3

*The Commission invites views on whether other larger jurisdictions beyond the Commonwealth and Victoria, such as New South Wales, Queensland and Western Australia, should adopt a pro bono target, with conditions tied to government tender arrangements. What prevents the use of a single target by multiple jurisdictions? What approaches should be adopted by smaller jurisdictions to pursue similar objectives?*

Yes. Certainly linking legal assistance service pro bono work to government contracting has helped in Victoria in growing the pro bono pool and resources of larger firms who not only provide legal advice to clients, partner with CLCs but also often provide much needed spacious venues and advice to community agencies that CLCs work with.

#### INFORMATION REQUEST 6.3

*How could information on quality of service elements best be gathered and reported? Are there international examples that would be applicable in Australia? Where should such ratings be reported — should they be ‘hosted’ by governments, professional associations or independent providers?*

Curran hopes that the reports on measuring quality service elements especially her report, ‘We Can See Now there’s Light at the End of the Tunnel: Demonstrating and Ensuring Quality Service to Clients’ for Legal Aid ACT in 2012,<sup>38</sup> might provide many of the answers as to gathering the elements and reporting on them.

*‘...research demonstrated that the action participatory research approach is critical to garnering the expertise of those who actually deliver services in the ‘real life practical’ scenarios that they face when dealing with disadvantaged clients and making suggests around social inclusive legal practices. The fact that two practice areas were prepared to participate in the trial (rather than the one that had been intended) indicates that the action participatory research approach successfully engaged staff. This critical: if research, evaluation and measurement are to drive quality of service for clients up, then staff must embrace the process. This is particularly the case in this research, because staff will have a key role in the roll-out of any future snapshots. Staff engagement means*

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<sup>38</sup> L Curran, We Can See Now there’s Light at the End of the Tunnel’ Legal Aid ACT: Demonstrating and Ensuring Quality Service to Clients, Legal Aid ACT, 2012 at p132 -133.  
[http://www.legalaidact.org.au/pdf/Light\\_at\\_the\\_end\\_of\\_the\\_Tunnel\\_Legal\\_Aid\\_Services\\_Quality\\_and\\_Outcomes.pdf](http://www.legalaidact.org.au/pdf/Light_at_the_end_of_the_Tunnel_Legal_Aid_Services_Quality_and_Outcomes.pdf)

*the process will be more sustainable as it is owned by and inclusive of staff and assists them in their professional development.'*

#### DRAFT RECOMMENDATION 21.1

***Commonwealth and state and territory government legal assistance funding for civil law matters should be determined and managed separately from the funding for criminal law matters to ensure that demand for criminal assistance does not affect the availability of funding for civil matters.***

Yes. There is currently a problem with criminal law eating up funds for other critical areas in the civil sphere such as family violence, discrimination and other matters.

#### INFORMATION REQUEST 21.1

*The Commission seeks views on whether the above demarcation of funds would be sufficient to ensure that appropriate resources are directed towards non-criminal, non-family law matters.*

Curran has a funding application currently being considered with a philanthropic organisation to explore then impacts on clients on this very point to build empirical research in this area.

#### DRAFT FINDING 22.1

*Specialised legal assistance services for Aboriginal and Torres Strait Islander people remain justified.*

#### INFORMATION REQUEST 22.1

*The Commission seeks views on the most appropriate model for engagement between governments and Indigenous-specific legal assistance services. Practical examples of successful models and the lessons from implementation are also sought.*

Yes. This was noted in Submission Part Two by Curran. It is also considered in detail in the Literature Review Curran conducted for the AG's Department in 2012.<sup>39</sup> The latter document summarises a range of evaluations that note the importance of culturally sensitive services which are more likely to be used by indigenous people in view of past experiences of generalist services e.g. Stolen Generations and removals by non-indigenous services.

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<sup>39</sup> L Curran, 'A Literature Review: examining the literature on how to measure the 'successful outcomes': quality, effectiveness and efficiency of Legal Assistance Services, Attorney General's Department, 2012 at 49-56. <http://www.ag.gov.au/LegalSystem/Legalaidprograms/Documents/Literature%20review%20of%20legal%20assistance%20by%20Dr%20Liz%20Curran.pdf> at pages

## INFORMATION REQUEST 22.2

*The Commission seeks feedback on how the funds determined in draft recommendation 22.2 should be distributed across providers and how the relatively small scale of some providers affects the efficiency and effectiveness of services. Would there be benefits from further amalgamation of services and if so, how might this process be brought about?*

As noted above care is needed so that expertise and responsiveness are not lost.

One suggestion is that a group of CLCs might centralise the services that do not require client responsiveness but that can take up time such as finance management, human resources and data collection. Having numerous centres all having to do this work can be onerous, time consuming, repetitious and costly. Then the centres could be left to focus on service delivery and still have their localised Boards and Committees of Management oversight.

Services that work with local people and build a specialist approach in dealing with the diversity of people in specific demographic areas and groups of clients, e.g. street girls, people with mental health issues, homeless people, public housing residents, newly arrived communities and so on can build trust and relationships which are often significant the barriers to access to justice services for those groups. This means that unique, responsive and often effective tailored service delivery can be extremely effective. What is important is that local services are constantly engaging with hard to reach communities, assessing levels of legal need and how to best respond and working collaboratively with local agencies to provide holistic and joined up services.

## DRAFT FINDING 22.2

*The policies of state and territory governments can impact significantly on demand for services provided by Aboriginal and Torres Strait Islander legal services and family violence prevention legal services. Given these services are funded by the Commonwealth Government, there are poor incentives for state and territory governments to consider the ramifications of their policy changes on demand for these Commonwealth funded services.*

Yes, but the reverse can also apply. In Victoria, there has been a ground breaking response to family violence. Much could be learned from the approach which can be undermined by Commonwealth interventions. The points about collaboration, information sharing and partnership in this submission also apply to the different spheres of government.

### INFORMATION REQUEST 22.3

*The Commission seeks feedback on whether the National Partnership Agreement on Legal Assistance Services should include state and territory government funding for Aboriginal and Torres Strait Islander legal services and family violence prevention legal services to provide a greater incentive for state and territory governments to consider the impact of changes in state or territory based policies on the demand for these services. Are there other ways this could be achieved? Where state and territory governments do not provide funding, or only provide limited funding, what role should they play in influencing service delivery and reporting requirements?*

Yes. The aims of the NPA are also highly relevant in these areas and states and territories should also encourage similar practices if they do not do so already. Namely, the NPA requires legal assistance services to:

- increase focus on early intervention and prevention services;
- encourage greater collaboration among legal and other service providers;
- find 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; and
- support the principles of the Australian Government's Strategic Framework for Access to Justice in the Federal Civil Justice System.<sup>40</sup>

### INFORMATION REQUEST 24.1

*The Commission seeks feedback on where a data clearinghouse for data on legal services should be located. Such a clearinghouse needs to be able to coordinate data collection from multiple civil justice stakeholders and disseminate the information in a timely fashion. It should also have some expertise in linking, using and presenting data, especially administrative data. Ideally, the clearinghouse should also have experience in liaising with legal service providers and different levels of government, have an understanding of the operation of the civil justice system and understand the principles behind benchmarking.*

The funding of legal assistance, measuring effectiveness/impact and identifying legal need are and ought to be integrally connected. There is a danger in governments being left to determine funding of services in a vacuum as often remote from the factors that impact on service delivery and community impact. This can lead to programs being under-funded or unfunded due to an absence of understanding of local factors that are at play e.g. diversity of different groups and way in which the legal system operates in practice.

As suggested a clearinghouse with experience in liaising with legal service providers and different levels of government, have an understanding of the operation of the civil justice system and understand the

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<sup>40</sup> Strategic Framework for Access to Justice in the Federal Civil Justice System, <http://ag.gov.au/a2>, accessed 5 August 2011.

principals behind benchmarking would be good. Such data should however be capable of being used by service themselves to inform better service delivery which is not currently possible even though the agencies collect the data themselves they often cannot retrieve it for purposes of informing the development and responsiveness of their services.

Rather than leave funding and priority determination only to government, in isolation from real experience of community and services on the ground, it would also be better to support, train and ensure bottom up needs identification occurs by the services at the coal face and then use this information to enable services to evaluate and work out priorities this then can inform the settings and context for funding decisions.

There is a need to value the vantage point of the services that work directly with people and community members who often can also identify what is needed to improve outcomes in their own community.<sup>41</sup> There is a huge risk that governments keen on reducing expenditure will not inadvertently defund effective services that make a difference. This leads to further problems that can lead to breakdown and further imposts on the system (e.g increases in crime) and defunding of programs that work and make the difference. Many programs are defunded despite evaluations indicating they are effective. Other programs are embraced for example training modules and on-line advice which are poorly executed costly and ill -conceived.

Trialing new ideas first, before major roll outs is wise. These then need to be evaluated before roll out and, if necessary, tweaked. Given the often entrenched nature of disadvantage some change and inroads take time. This needs to be acknowledged as a reality. Having a centralized point for research and to act as a clearing house and to collect data makes sense. A clearinghouse to coordinate data collection (both quantitative and qualitative) from multiple civil justice stakeholders and disseminate the information in a timely fashion is a great recommendation. It should also have some expertise in linking, using and presenting data, especially administrative data as suggested.

### **Conclusions**

This submission notes that there are areas where legal assistance service might be improved but stresses that this is best done in an environment of continuous learning and improvement which is connected to what is actually occurring in community so that it leads to responsiveness, appropriate service delivery and hence improved outcomes for clients and community. This submission has stressed the importance of valuing and utilizing the expertise of the legal assistance sector.

Often the service delivery is compromised by the whim of election cycles. The experience of Curran in evaluating services through a research informed and collaborative approach works well to bring practitioners and workers on board and own the necessary reforms and improvements whilst also acknowledging the good work as well.<sup>42</sup> Such evaluation should inform funding and policy decisions.

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<sup>41</sup> L Curran, 'Encouraging Good Practice in Measuring Effectiveness in the Legal Service Sector', May 2013  
<http://www.law.anu.edu.au/legalworkshop-gdhp/publications>  
<http://consumeraction.org.au/report-encouraging-good-practice-in-measuring-effectiveness-in-the-legal-service-sector/>

<sup>42</sup> A Crockett and L Curran 'A Practical Methodology for Measuring the Quality and Outcomes and Legal Assistance Services' Vol 32 (1) *University of Tasmania Law Review*, October, 2013.

Creating a climate of fear, threats to funding is counterproductive and leads to staff attrition. It causes stress burn out and a loss of expertise. Legal assistance work is challenging and uncomfortable and the clients that legal assistance services work with have little certainty and stability and immense barriers. It is important therefore, that, those who deliver the services are attuned to this and are there not to just 'tick the box' but to help and make a positive difference in lives through the legal and other interventions. This applies just as much to the people delivering the services as it does to the civil service which manage the funding and service frameworks and the governments who make the policy settings and funding decisions.

Please do not hesitate to email me with any questions.

As noted this submission is somewhat rushed and incomplete due to work pressures. Apologies for this but it is such an important Inquiry with so much thought and consideration having gone into the Draft Report by the PC a response was called for.

I hope to be able to give further evidence at the Melbourne Consultation and wish the PC well with its Inquiry.

Yours sincerely

Dr Liz Curran  
Senior Lecturer

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

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

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



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Since the better law firms tend to quit the legal aid market before less commercially competitive firms which need legal aid work to survive, there is a risk of quality declining combined with increasing pressure to raise fees to maintain a viable pool of private practitioners prepared to handle legal aid work.

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

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