

5th October 2012

Allen Consulting Group

[npareview@allenconsult.com.au](mailto:npareview@allenconsult.com.au)

Dear Sir/Madam,

**Re: Second Draft Evaluation Framework - Review of the National Partnership Agreement on Legal Assistance Services**

**Introduction**

NLA was pleased to receive the Second Draft Evaluation Framework incorporating changes and improvements sought by us.

Our feedback (below) on the Second Draft Evaluation Framework is provided in the context of the comments we provided to you on the First Draft Evaluation Framework.

**Feedback**

**Proportionality of services**

It is suggested that the utility of the Second Draft Evaluation Framework would be best assessed by whether it will help to determine whether a service provided was *proportionate*, or not, having regard to the nature and extent of the particular need or problem.

Proportionality is a concept embedded in the Access to Justice Principles "which contribute to the Draft Evaluation Framework."<sup>1</sup> It also appears in the stated "Program Logic Desired Outcomes (high level)," i.e. "Costs and methods of resolving disputes proportionate to the issues,"<sup>2</sup> (although not in the "Evaluation Questions 1. High level outcomes"<sup>3</sup> or Figure 2.2<sup>4</sup>).

The issue of proportionality is relevant to decisions about expenditure of limited resources on different problems for different clients and at varying levels of intensity. It is a question separate to 'provider type' or who might be best placed to provide a service.

---

<sup>1</sup> P.5

<sup>2</sup> P.11

<sup>3</sup> P.15

<sup>4</sup> P.14

Clarification about how the framework will take account of proportionality and also efficiencies achieved by services which minimise wider system costs is sought. For example, enhanced system efficiency is achieved by way of duty lawyer and representation services and also through strategic litigation which seeks to tackle problems at their source to avoid the need for multiple individual services to be provided.

### **Outcomes, Evaluation Questions and Indicators**

We understand that the evaluation questions are intended to be aligned to the outcomes and that the indicators being developed to "measure progress against outcomes"<sup>5</sup> are intended to give a picture of whether the right or appropriate services are provided, and will support "assessment of cost effectiveness, efficiency and quality."<sup>6</sup>

We are unsure however, that the indicators as drafted will provide a clear picture of proportionality in service delivery. For example, except as set out in the Program Logic there does not appear to be anything appearing in the "High level outcomes" and the related questions and indicators about proportionality of service to need, and proportionality in the Legal Assistance Sector Outcomes<sup>7</sup> appears limited to the "right mix of services" to be established by way of survey of justice system participants (indicator 2.2), "proportion of clients by law type and service category who perceived the legal assistance provided was relevant, responsive and made a positive difference to outcome" (indicator 2.5), and to "service costs being proportionate to the dispute" (indicator 2.11).

In relation to indicator 2.2, other justice system participants will for a range of reasons understandably be limited to some extent in the feedback that they can provide re decisions made by legal assistance service providers to fund or not fund particular matters, eg lack of familiarity with funding situations and competing priorities, legislative secrecy provisions, confidentiality requirements etc.

In relation to indicator 2.5, Client perception in relation to proportionality can be based on unrealistic expectations.

In relation to process indicator 2.11 "Processes are in place to ensure service costs are proportionate to the dispute", will confirm that legal aid commissions are discharging their respective statutory obligations to manage their Legal Aid Funds, with policies, guidelines, processes and systems in place to support this obligation, but the issue of proportion in this indicator appears to be limited to cost. We understand that you appreciate that the cost of services, particularly those in relation to dispute resolution and litigation, are affected by matters outside legal aid commission control, such as court processes, and the necessity for some relationship between legal aid rates and private legal fees. We would like some assurance that the Evaluation Framework will take account of such issues, including into the future.

Policies, guidelines, processes and systems have also been put in place to determine the nature and extent of the particular service to be delivered. These too are related to the wider justice system in which we operate. It is understood that these will be picked up by the Review in relation to "disadvantaged groups" in

---

<sup>5</sup> P.14

<sup>6</sup> P.14

<sup>7</sup> P.16

indicator 2.3, but we are not sure that they will be picked up in relation to the question of proportionality and service delivery generally.

We also have some concerns that some of the draft indicators will not appropriately/fully inform the outcomes, eg Indicator 1.4 "Proportion of Aboriginal and Torres Strait Islander Peoples accessing legal assistance services" will not inform the "High level outcome" of "Is there over representation of ATSI offenders in the criminal justice system compared with that for the total population."<sup>8</sup>

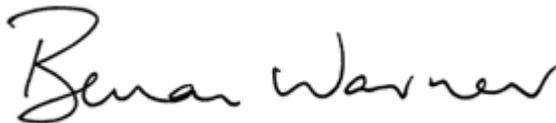
**Draft Data Definitions: Service Categories and Types - Table 2.6**

We are not clear about how it is envisaged that the draft data definitions will be used. In so far as the Second Draft Evaluation Framework relies on these data definitions we refer to our previously expressed concerns and confirm that the definitions are yet to be agreed by legal assistance service providers and the Commonwealth Attorney-General's Department. Further work by the National Legal Assistance Data Collection Working Group is required.

**Conclusion**

We would appreciate the opportunity to discuss the matters raised further with you, as it may be that the Second Draft Evaluation Framework needs to be further amended so as to ensure that the important public policy issue of proportionality of services is appropriately addressed, and the indicators are appropriately aligned to outcomes.

Yours sincerely

A handwritten signature in black ink that reads "Bevan Warner". The signature is written in a cursive, flowing style.

Bevan Warner  
Chair

---

<sup>8</sup> P.15