Opening Address

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Thank you for inviting me to be with you this morning to open this conference on access to justice and the role of paralegals in the delivery of legal services. The great interest in the issues to be examined over the next few days is reflected in the numbers attending this conference.

As we enter the 1990s there is no doubt that the question of access to justice will become of increasing importance. Federal parliament recently established a committee on the issue which has the capacity to make wide-ranging recommendations. This conference - bringing together a diverse range of professionals and others who are interested and involved in the delivery of legal services - promises to provide a forum for diverse and stimulating debate and in the final analysis some conclusions about the future role of paralegals in the justice system for consideration by governments, the judiciary, the legal profession, academic institutions and the community.

In my opening remarks I will briefly canvass some of the key issues that face the community and policy-makers in the area of access to justice. Quite clearly there are issues to be determined and new situations confronting us, and policy decisions taken over the next decade will determine the quality of justice delivery well into the 21st century. These decisions will take clear thinking to ensure that the ready availability of justice continues to be a fundamental feature of our democratic community. Surveying the current situation, it is clear that traditional systems of justice are coming under increasing strain in their efforts to deal with our escalation in demand for legal services and in costs of delivering these services.

It is a truism to say that legal rights only have real value if they can be asserted or defended as the need arises. But the reality is that legal services are increasingly becoming the province either of the disadvantaged - who are able to obtain the benefits of government-funded legal assistance schemes, or of the well-off - who can afford to pay the escalating legal fees that are being charged.

As a consequence, increasing numbers of so-called 'Middle Australians' are finding it more and more difficult than ever to protect their legal rights, and the simple but painful reality is that if no major decisions are taken to improve, to some extent, access to justice, then there is a real danger that this access will increasingly be restricted to either the very rich or the very poor.

Demands on the public purse have escalated dramatically in recent years, across the full spectrum of services provided for the community, and this includes the provision of legal services. This, at a time when budget expenditures have needed to be constrained because of overriding economic priorities. But even if additional funding was readily available to federal and state governments, it would and could never adequately meet the legal expenses for all who need assistance.

The traditional response of Australians when they face a problem is to look initially to governments for a quick fix - a solution that almost magically remedies the situation. Politicians have generally had a vested interest in perpetuating this relationship of dependency. But no-one in the 1990s can realistically argue that governments alone can solve problems that, often as not, are the product of a complex intermingling and co-existence of vested interests by long-standing players in the field.

Currently the buzz-term that is often used to describe the breaking down of these relationships of convenience and to describe Australia's ongoing economic redevelopment, is 'Structural Readjustment'. It is an awkward term that hides a multitude of sins and consequences. All of us are affected by it. It impacts on the ways we live and work, for example, the rapid introduction of new computer technology into many work environments; the ways we consume, and the prices we pay for goods and services.

In developing new ways of thinking about reforming the legal process and ensuring access to the law, we cannot divorce ourselves from the realities of change that are taking place around us - we too, will be in a process of structural readjustment. The law and the processes of the law traditionally have been the least amenable to change, but as an industry that both services the business community and the wider community the legal system itself must re-examine some of its practices.

The issue of access to the law inherently raises wider issues concerning the costs of law, and the need to examine more cost-effective methods of delivering justice, and this is mixed with the problem of ensuring as far as possible, that the quality of justice is not compromised.

Currently the South Australian State Government is examining a range of initiatives which may contribute to improving access to the law. Already significant reforms have been taken by government or the judiciary, from administrative reforms to the legal process, procedural reforms, the introduction of pre-trial conferences and the development of a judicial 'Pool'. All are aimed at addressing the problem of undue delay before our courts.

Other areas that need to be examined include proposals for alternative dispute resolution as well as the possible role that may be played by mediation services. Community mediation is funded at Norwood, southern districts and Bowden-Brompton and community legal centres at Norwood, Marion, The Parks, Noarlunga, Bowden-Brompton and Para districts. The government is examining means of achieving a co-ordinated approach to the development of alternative dispute resolution in South Australia.

Many of these initiatives place an emphasis on attempting to resolve disputes outside of the mainstream adversarial system. The question today is one aspect of possible restructuring within the traditional system, that is the extent to which and the circumstances in which paralegals can be used in the court and legal system. The question of the future role of paralegals goes directly to the point of access to the law, and I am sure many speakers at this conference will point out that paralegals potentially have a role to play in helping produce an efficient system of justice.

Legal advice and representation has traditionally been in the hands of lawyers. But consideration must be given to whether improved access to the legal system is compatible with lawyers' monopoly of legal services, especially advocacy. It is possible that a greater use of paralegal workers, lay advocates and advisers, and greater encouragement of self-help may provide the community with better access to the law than is presently the case.

Paralegals have significant advantages. Generally they provide a very cost-effective way of providing legal information. Because they are non-lawyers, it is also argued that their communication skills with clients may be better than lawyers', (although it can be assumed that would be disputed by most lawyers).

Paralegal workers are involved in the delivery of legal services in a variety of ways. Many legal practices in fact, now have paralegal workers, who, under the

supervision of lawyers perform duties such as managing debt recovery practices, drafting company documentation, taking instructions for and drafting wills, conveyancing, and preparation of bills of costs in taxable form.

The use of non-professional staff in the delivery of legal services by private practitioners increases efficiency and releases professional staff to expand their practices in other areas.

Non-lawyers are also involved in the legal process directly (in that they are not controlled by or supervised by lawyers). Lay prosecutors have appeared in courts of summary jurisdiction, with the leave of the court, for many years. Police prosecutors prosecute most criminal matters in the magistrates courts. The Attorney-General's department and other government departments have teams of law clerks who prosecute summary offences under a variety of acts and who (along with other lay advocates) appear at unsatisfied judgment summons hearings.

The Department of Community Welfare employs family maintenance officers who appear in the family court on matters related to maintenance. In other areas such as Social Security appeals and the Industrial Commission lay advocates have acquired considerable expertise.

The Aboriginal Legal Rights Movement is now providing basic legal training for field officers to enable them to take instructions, attend at police interviews, and perform simple advocacy tasks - remands, bail applications and simple guilty pleas - when a lawyer is not available.

Further use of paralegal workers is demonstrated in the use the South Australia Legal Services Commission makes of experienced interviewing officers. The Legal Services Commission's model is an interesting one. With its establishment in 1979 it was one of the first commissions to develop an advising service staffed with paralegals trained to provide basic legal information to the public.

These officers have gained an extensive knowledge of basic legal rights and procedures in areas of most concern to clients of the commission, and provide legal advice, counselling and referral to other more appropriate agencies.

Further, the Commission was also the first to use paralegals in determining the eligibility of applications for legal assistance. In most legal aid bodies this assignments function has been traditionally performed by lawyers. However, the South Australia Commission clearly is of the view that it is a more efficient use of legal resources to have paralegals perform what is essentially an administrative and bureaucratic function.

There is a slow but perceptive trend towards the greater use of paralegals in many areas of the legal system. At present this growth is ad hoc and unstructured. It is clear that paralegals can and are filling a useful role in the legal system and that there is the potential for a more comprehensive use of paralegals in the delivery of legal services. This conference provides a useful catalyst for the examination of issues surrounding the use of paralegals.

The issues which both the specialist legal community and the wider community must examine include: the extent to which non-lawyers should play a role in legal service delivery and the nature of their training; the circumstances in which paralegals may be used; their relationship to lawyers; their specialisation and remuneration; and their training and accreditation if this is considered desirable.

No doubt these debates will force a healthy re-examination of traditional attitudes and this conference will contribute to developing a better focus and understanding of the potential role of paralegals. I look forward with interest to the deliberations of the next few days.

Professions and Paraprofessionals

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What is a Profession?

Some sociologists find formulating a theory of professions difficult, (for example Johnson 1972; FitzGerald 1978; Freidson 1983; Tomasic 1985) but this may be because the concept itself is socially constructed (Larson 1977; Abel 1979). However, some community of purpose, personnel and knowledge distinguishes a 'profession' from other associations (Goode 1957; but *see* Johnson 1972, pp. 26-7). This community extends to language, values, role definitions, and selection of future members (for example Goode 1957). The common body of knowledge shared by the members of the profession may be organised in a rational or consistent way: if so, the profession may be said to be 'supported by a theory'. At least a working definition of a profession is necessary if it is to make sense to talk of a 'paralegal professional', but it is necessary to bear in mind that

> Legal professionalism has come to be defined by lawyers. Legal professionalism is presented as necessary in the public interest, thereby justifying elaborate 'long distance' training and careful and constant monitoring to ensure the attainment of legal competence and the preservation of public standards . . . as suppliers of a market commodity or service, legal professionals claim to be possessed of discrete, technical knowledge, available under non-discriminatory free-market conditions . . . and rendered in a . . . non-partisan manner within an overall commitment to justice according to the rule of law' (Dhavan 1989, p. 276; cf Johnson 1972, p. 26).

In his discussion of 'the new class', Gouldner (1979: Thesis Five) suggests that a class or part of a class that gains its privilege from its special access to culture and information develops professionalism as an ideology, 'a claim to technical and moral superiority' over the 'old class' which gives the 'new class' legitimacy it would otherwise lack. This ideology is linked to the aims of the new class, which are to increase its own wealth and economic, social and political power. Any attempt to reduce or redistribute the class's monopoly of culture or knowledge is therefore to be resisted. Such a view suggests that members of professions are not so much concerned with knowledge or the provision of services as much as with enhancing or maintaining their own power. This is not meant to be 'anti-professional'. I am proud to be a lawyer, and I believe in law. And as one commentator put it, 'the professionals are

entrepreneurs and self-serving agents like everyone else, presumably including their radical political critics who are more often than not academic professionals themselves' (Halmos 1973b, p. 6). Good professionals will, however, be self-critical. Members of the legal profession probably have not been sufficiently critical of themselves or their profession.

Is it really true that another group of people working within a legal environment want to establish themselves as a 'profession' in this sense? Many people are concerned with lack of access to legal services, but is the answer to establish another 'profession'? The legal profession, with the clergy and the medical profession, has traditionally been regarded as one of the learned professions. The concept of a profession has changed. Consideration of qualifications, market position and function (Cain 1983) may be useful in mapping the territory.

- Lawyers must be qualified: admission to practice law in Australia requires academic and practical qualifications, generally comprising a degree and completion of a course of practical training through apprenticeship, a special practical course, or both; in New South Wales a practice-oriented educational qualification administered by the courts is accepted in fulfilment of the academic requirements (Pearce et al. 1987; Goldring 1988; Weisbrot 1989).

- Lawyers enjoy a special market position: in formal terms, on admission the practitioner becomes an officer of the court, and, in theory, subject to certain legal and ethical duties, in return for which practitioners are given a monopoly of certain types of paid legal work (called 'legal practice'). It is an offence for anyone other than an admitted practitioner to carry out such work for reward.

- That market position is related to the functions lawyers perform. 'Legal practice' is not defined, but is understood by lawyers and the courts in terms of the services provided: virtually all advocacy before courts and many tribunals; a great deal of the preparation of documents used in contentious business in the courts, preparation of virtually all the formal documents used in the sale or lease of interests in land; the preparation of wills and most documents required for the formation and registration of corporations and related securities; preparation of contracts and other commercial documents; and general counselling, advice and negotiation in various contexts (for example FitzGerald 1978, pp. 55-9).

An important element of the concept of a profession is the idea of the independent or autonomous expert, who provides a service which includes his or her own skill and judgment (for example Goode 1957; Halmos 1973b). Any external controls are expressed in terms of standards to be observed, not of how specific transactions will be handled. It has been suggested that the essence of a profession is that the professionals exercise power over the clients; they not only satisfy, but also define, those needs. This may be true of some occupations, especially some of the newer financial, marketing and other 'consultants', but most clients know fairly clearly what they want when they seek legal services, (Cain 1983) at least in more 'general' practices.

There are several different sources of legal services in Australia. Private solicitors tend to be either in small firms or sole practitioners, providing a wide range of general services to individual clients and small businesses, or in larger firms catering to the legal need of institutions - companies, public sector departments and agencies and trade unions - which have been described as 'mega-lawyers' (Galanter 1983; cf Mendelsohn & Lippmann 1979; Sexton & Maher 1982). Barristers do not

provide services directly to the public: community-based and publicly-funded legal services in some respects are more like the 'mega-law' offices than solo practitioners or small firms: they work in teams of relatively specialised workers.

Where lawyers offer their services to large organisations, they may be able, as part of their 'mega-lawyering' activities, to define client's needs, but it is difficult to envisage this when the client knows quite well that he or she simply wants to sell a property, make a will, or defend a charge.

Do we still need Professions?

The argument that professions, specifically the legal profession, are justified because they protect clients from unqualified charlatans is to some extent self-serving, but not entirely wrong. Because the law is complex and lawyers have made it mysterious, and because human affairs are themselves complex, an apparently simple transaction may have wide ramifications. Anyone affected by such a transaction should know as much as possible about potential consequences, if they are to be able to choose and direct the course of their own affairs. There is some value in ensuring that such information is provided by persons whose training, skill and experience fits them to see the specific transaction in a wider context, and to predict and advise upon wider consequences, no matter how technically competent the execution of the immediate transaction may be. But must every aspect of every 'legal' transaction be performed by - or, as we shall see, under the nominal supervision of - a person who has acceptable credentials? There is a very strong restrictive element among professions (Abel 1982, 1989; Dhavan 1989; cf New South Wales Law Reform Commission 1982). They may be bureaucratic (Johnson 1972, p. 15). All professional associations take pride in the quality and standard of the services provided by their members, but they are not entirely selfless. By insisting on high formal barriers to entry to the profession (credentialism) they are limiting competition, and, effectively if unconsciously, systematically excluding certain social classes from membership of the profession. They are maintaining the exclusive privileges of a relatively small group, which may reduce, overall, the type, quality and range of legal services available (Partington 1982). Their self-interest may increase the cost of services and so deprive other people of access to it. Everyone has a strong interest in the quality of the legal services ordinary members of the community - not just the large institutions serviced by the megalawyers - obtain from the legal profession. But there is possibly a stronger interest in the overall operation of, and the values embodied in, the whole system of legal and social ordering in our society. That interest may prevail over the interest in the maintenance of the quality of the legal services the profession can provide.

What is a Paralegal Professional?

A question this conference must consider is what is now meant by 'paralegal professionals'. The word 'paralegal' is very trendy. It can be used to cover all those who do work of a 'legal' kind, under the supervision of a qualified professional, but who lack the formal qualifications required for admission to legal practice. Abbott, in her study about 15 years ago, took as a paralegal 'an assistant with limited training in the law, working for and under the general supervision of a solicitor, performing responsible tasks which might otherwise be carried out by solicitors' (1978, p. 423). This definition is too narrow for the purposes of this paper. Legal services are not provided solely by solicitors, and the definition of 'responsible tasks' may itself be problematic. Traditional paralegals included the managing law clerks who were a feature of solicitors' offices until recently; police prosecutors, and certain court clerks

(Abbott 1978). They also included the articled law clerks, or legal apprentices, who performed a wide range of tasks while, in theory if not in practice, learning to be 'real' lawyers. The idea of a paralegal is not new. Their employment on a wide scale was advocated in the early 1970s as one way of satisfying the 'unmet need' for legal services (Statsky 1972; Basten & Disney 1975).

'Paralegal professionals' might include people who would formerly have been described as legal secretaries, library assistants and clerks. The introduction of electronic data processing and information retrieval systems to legal environments has led to a new class of professionally qualified personnel - specialists in data processing and information systems - working in legal environments, doing the job for which their occupational and professional qualifications fit them, yet who are not regarded as autonomous professionals. Their work is subsidiary to, and controlled by members of the legal profession. It is difficult to identify what work is specifically 'legal' unless lawyers have defined it as such. A range of workers, ranging from the unskilled to the highly skilled, may be involved in the delivery of legal services. All of these workers who lack the formal qualifications for legal practice might be regarded as 'paralegal professionals'.

The most obvious analogy is with the health care professions. Highly qualified persons - pharmacists, nurses, physiotherapists, dieticians, and social workers, to name only a few - work as part of a team delivering health care. Each member of the team has a skilled and specialised function. A question now being raised in health care systems is whether the doctors should retain their position at the apex of the health care hierarchy; indeed, whether there should be a hierarchy. Similarly, in the construction industry, the role once played by the engineer or architect is now filled by a team of specialist professionals, each with a special skill. In this team the organisation tends to be far less hierarchical.

The mega-lawyers are tending to supply members of teams of expert providers of corporate services, or to form such teams themselves. Suggestions for 'multi-disciplinary' partnerships of lawyers, accountants, and bankers are part of this development. The legal services they provide are only part of a wider package of specialised corporate services. This is not unique to the large firms of 'corporate' lawyers. Lawyers in government departments have been doing this sort of teamwork for years. The questions this raises about their professional loyalties and identity have been more obvious over a longer period (Johnson 1972; Goldring & Hawker 1985).

What Functions are currently performed by Paralegals?

The work being done in legal offices has changed. Much of it is not done by fully qualified lawyers. Some is carried out by professional specialists from other disciplines, who are not paralegals; for example, information retrieval or forensic biology; but other aspects of the work may be so clearly ancillary to the work of professional lawyers that those doing it, even though within the scope of their ordinary occupational tasks, can be described as 'paraprofessionals'.

Those without full legal qualifications who work in legal environments are, with few exceptions, employees of large institutions or qualified legal practitioners. While there have been some studies of exactly what Australian lawyers do in the course of their work, (Tomasic & Bullard 1978; Hetherton 1981) little attention has been paid to the other types of work that is done in legal offices, to who does it, and to how it is done. Apart from the limited study by Abbott (1978), any information available is anecdotal. What happens in different types of legal offices varies considerably. However, unless accurate information is available about what 'paralegals' are - or should be - doing, it is difficult to suggest what sort of training they require, and other

ways in which they could be useful. It is possible that much support work for litigation and corporate law is being done by other professionals as independent contractors.

In some larger offices, both public and private, some relatively routine work, and some which could not be considered routine, is in fact performed by people who are not admitted to practice as lawyers. This may be seen as the 'bureaucratic' side of professionalism. Smaller practices and offices have traditionally relied extensively on secretaries and clerks to handle conveyancing, probate, and some litigious work. Community legal centres rely on fieldworkers, social workers and student volunteers for considerable amounts of interviewing and case management. Many barristers now employ law students as research assistants, to some extent replacing the more traditional 'master/pupil' relationship, which has become more formal.

Before too many plans are made for future deployment and training of paralegal professionals, some further enquiries need to be made as to whether the functions currently performed by paralegal workers are different from those performed by fully-trained lawyers. If there is little or no difference, it would seem either that lawyers are overtrained, or the public is not getting the services it is charged for.

There are now more law schools in Australia than at the time of Pearce et al.'s (1987) report, and the prospect of more opening, but even these will not satisfy current demand for places. The legal profession in all states complains about the lack of young lawyers, at a time when more graduates than ever are qualifying for admission to practice. More law graduates are women. A higher proportion are being absorbed by the large city law firms, who are involved in 'mega-lawyering' and who now devote special resources to in-house specialist training. The number of post-graduate law degree courses has also increased, suggesting that more junior lawyers see advantages in obtaining specialist qualifications. However, the specialisation seems to concentrate on areas of legal services of direct interest to larger corporations: taxation, company law, intellectual property, international trade and finance. There is little concentration on the areas of law more closely relevant to general practice. Does this mean that general practice is neglected, or that the proportion of lawyers going into general practice is declining? Does it mean that qualified lawyers are now doing much of the work which paralegals did previously? What are the implications of this for questions of access to justice?

The Effect of Paralegal Professionals on Questions of Access to Justice

Can paralegal professionals change access to justice?

The general view is that if there is an unmet need for legal services a number of different ways of meeting this need should be explored. These include:

- allocating greater resources to the provision of legal services;
- reallocating resources available for the provision of legal services;
- changing the nature of the legal services provided;
- changing the way in which the legal services are provided; and
- educating the users of legal services to do without lawyers.

All this makes a number of assumptions which need to be examined, though there is little time to do so here:

- there is a need for legal services;
- this need is not met;
- access to justice requires those legal services; and
- the legal system provides justice.

Many legal problems are problems because lawyers who, institutionally, exercise significant power in our society, require that the law be applied to certain facts in certain ways. If ordinary people can be enabled to develop and protect their own interests without the need for lawyers' intervention, this is probably the most desirable way of removing any unmet need (for example Hanks 1978). It is cheaper, and it gives the people affected a greater sense of control over their lives. However, the law is and will remain relatively complex and mysterious. Some people may be enabled to deal with some legal problems, but only rarely will they have sufficient skills and information to find their way through the legal maze without exposing themselves or others to harm. While the law remains complex and mystified, people will need legal services. The employment of paralegals is a way of changing the resources devoted to, and the means of providing, legal services. If paralegals are paid less than fully-qualified lawyers for the same output, then the same services will cost less, at least in the short-run, but there is a question whether or not the quality of those services will change.

What sort of services can paralegal professionals provide?

The answer to this question depends on the type and quality of the service desired. However, despite extensive inquiries into the legal profession and the cost of justice, both in Australia and overseas, with one rather dated exception (Sackville 1975) there is little publicly available research on what the needs of the community for legal services may be (Campbell 1982). In principle just about every 'legal' task imaginable could be broken down to routine functions which could be performed by machines - a technique to which a new breed of legal 'systems' experts are now devoting considerable effort. Legal expertise of a high order is required to design expert legal systems, and to supervise the way output is integrated with the output of other machines. This sort of mechanisation is probably to some extent inevitable. However, it is not difficult to substitute for the word 'machine' the words 'paralegal professional' or even 'employed solicitor', without significantly changing the effect. The increasing specialisation of the legal profession may be part of this process (cf Oppenheimer 1973), so may the large-scale introduction of paralegal professionals. If the paralegal professional is no more than a process-worker in a legal production line, the quality of the services provided may change. They will become less personal, and less human. Yet it may be the only economically rational way to provide services at the lowest possible cost. If the human and professional element is to remain, the public may have to learn to bear the additional cost: a more bureaucratically organised profession.

Paralegal professionals can be introduced into a wide range of legal work, however, without destroying the technical, expert, broad-based nature of those services. Indeed, some sections of the community may only have access to legal services, or have improved access, because paralegal professionals are involved in providing them. The experience of Aboriginal legal services throughout Australia has been that fieldworkers drawn from particular Aboriginal communities are invaluable in providing communication between clients and lawyers, and especially in providing information and a degree of education about the legal system. Other lawyers and legal services have drawn invaluable assistance from partly-trained members of certain community groups whose first language is not English. They have potential as 'special advocates' before some tribunals (Basten & Disney 1975) and organisations like the Returned Services League have a long history of supporting applicants for various veterans' benefits by supplying lay advocates. Advocates without formal legal qualifications have played a leading role in Australian industrial and housing tribunals.

There is probably both a substantial supply of and demand for paralegal workers in Australia today. Entry to formal law courses is difficult, especially for poorer

sections of the community who tend to be disadvantaged in schools, even if they can afford to finish secondary schooling (Weisbrot 1989). Legal work offers challenge and interest, especially if it provides opportunities for further training on the job. Paralegal workers may be essential, even in larger practices, as managers of information systems, as assemblers of factual information, and as assistants to qualified lawyers. Not only is it bad economics to employ qualified, able lawyers in routine tasks, but it is also often a bad mistake in terms of human resources management. Intelligent, able people who spend time and effort obtaining academic and professional qualifications generally want work which requires them to exercise the skills they have spent years developing, as well as being challenging and rewarding. Despite the fact that some lawyers, at least, indicate that what they do in practice may not be closely related to their formal education (Dhavan 1989), most law graduates have particular expectations of the work they will do. If they have been well educated, they will see themselves as having the professional duty of providing the overview, the broad perspective, as well as the details.

How should any changes be evaluated?

It would be unwise to evaluate the effect of paralegal professionals on access to legal services simply in terms of their effect on the volume of services provided, though this is undoubtedly important. Meeting unmet demand may significantly improve overall the level of services available to the community. However, it is also important to consider the effect of more paralegal professionals on the quality of services provided. One of the essential elements of services a profession can provide is the 'overview' element - the degree of experience, skill and judgment that only a properly trained and experienced professional offers, which sees the particular problem or transaction in its wider context, and offers advice as to how other related or consequential matters may be handled. This element may not be needed; indeed, in cases of routine conveyancing or debt collection, it probably is not. Nor are those with particular formal qualifications or licences to do certain work the only people who can provide such an overview: it is more likely that they are able to do so. Some clients may, of course, choose not to have this element of services, provided they can get specific services more cheaply. However, the full professional service is usually the ideal which ought to be aimed at. People in desperate need would not want to be denied the services of a 'barefoot doctor' who can provide basic health care, just because they cannot afford a neurosurgeon. Similarly, the sort of legal services which would not be provided unless paraprofessionals were employed may be better than none, but might in some cases be worse. The main thing a paraprofessional (or, indeed, a fully qualified lawyer) needs to know is the limit of his or her knowledge and capacity.

From whose perspective should any changes be evaluated? The entrepreneurial lawyer will, no doubt, think of the bottom line first, even if she is also concerned with the quality of services. Those who wax idealistic on the subject of professional standards are prone to ignore the everyday economic realities which press on the majority of professionals. Employment of paralegal professionals may make more economic sense than employment of more salaried junior lawyers or keyboard operators. Institutional legal offices - community legal centres as well as the legal departments of governments or corporations - which have to work within fairly rigid budgetary constraints may reach the same conclusions. More likely they will not be able to employ salaried lawyers even when they wish to, and have to accept paralegals as second choice.

The client may think of services provided by paralegal professionals in different ways. Many clients want to be served only by someone who is and who is seen to be a lawyer. They feel that attendance by a paralegal is somehow inferior. The analogy with medical services is obvious. Ultimately, the client determines what services are

required, even though this choice may be structured or influenced by the profession: that is an important element of the power relationship between professionals and clients (*see* Partington 1982). A few (discerning) clients may appreciate that some services performed, under supervision, by paralegal professionals may represent better value for money than the same service provided by a fully qualified professional. Appearances are important. A professional may insist on personal contact with clients, even though the routine aspects of the work are performed by an unqualified paralegal worker.

People are much more aware of legal rights than they used to be. They demand legal services, but their income may not have kept pace with the current cost of legal services. Provision of those services at lower cost may be the only way ahead. The legal system as a whole must balance the interests of quality and quantity. The survival of social ordering as we know it in Australia may depend on ensuring that the legal system, which is an essential part of that social order, is able to provide the legal services demanded by an increasingly informed and articulate population.

The question of the cost of justice (currently under consideration by the Victorian Law Reform Commission and the Senate Standing Committee on Legal and Constitutional Affairs) is probably the most important question facing the legal system in Australia today. Indications to date are that the cost of the services provided by legal professionals form a significant part of the cost of justice, though certainly not the only, or even the major, cost. If the employment of paralegal professionals can reduce the cost of justice significantly, without significantly reducing the quality of legal services, then wider use of paralegals is obviously indicated. But who will form this body of paralegal workers? How will they be trained?

Training, Credentialling and De-skilling

What sort of education and training is required?

The heading of this section is deliberate. A school of thought suggests that employers have a vested interest in 'de-skilling' the workforce, that is, in breaking down tasks into simple, mechanical activities. That way no one becomes indispensable, and workers are easily replaced. The law is becoming more complex, but it is not yet the sort of process that can be assimilated to a production-line in a car factory. The assignment of certain more routine tasks to paralegal workers does not necessarily mean that the tasks are being 'deskilled', though it is difficult to escape the conclusion that in many cases increasing bureaucratisation of legal practice may involve such a decrease in the autonomy of partners and employed lawyers that there is significant de-skilling. It could be argued, perhaps unconvincingly, that by assigning the tasks to paralegal workers who are not faced with the same quota of 'billable hours' as employed solicitors (or their employers), there may be a greater chance of obtaining the meticulous skill and attention to routine detail which many conveyancing and litigation-related tasks require. However they may be deployed, the 'good' paralegals will develop particular skills, requiring particular knowledge and ability to make judgments, though within a narrower range than a qualified legal practitioner would be expected to cover.

The next question is whether special formal education or training is needed. Some paralegal work and some of the work done by lawyers may be and should be learned on the job. However, if the work involves technical complexity or a broader perspective, or if employers and paralegal workers seriously see training as a paralegal as a step to full qualification for legal practice, some formal coursework seems desirable. If so, there are some precedents. In the United Kingdom, where the legal profession depends far more on 'managing clerks' than is now the case in Australia, the Institute of Legal

Executives has offered a certificate course by correspondence for many years. Its structure and content are based on those of English law degree courses and the professional courses offered by the English College of Law, though the standards for entry are considerably lower. It is possible for those who complete this course to be admitted as solicitors, though increasingly rare (Kibble 1989). In Australia, the New South Wales Technical and Further Education (TAFE) system has announced a special course for legal secretaries, which includes some elements of study of law. The Graduate Diplomas in Legal Studies now available in several Australian tertiary institutions have attracted graduates working in legally related areas. (The first was at the Canberra College of Advanced Education, now the University of Canberra, starting in 1980: students included several professional officers from the data processing section of the Commonwealth Attorney-General's Department.) The University of Wollongong is planning postgraduate courses in the administration of legal institutions. Each of these courses has a different market, and some thought needs to be given to whether special courses should be designed specifically for paralegal workers, and if so, what sort.

There is general agreement that a university degree course in law should provide both a general education and the academic foundation for a career in legal work. That academic foundation should give the graduate a broad perspective on the operation of law in society, coupled with sufficient knowledge of the main areas of law to found an ability to recognise the types of social relations to which specific rules of law may relate. This breadth of perspective is the educational foundation for the professional judgment of the professional lawyer. It could be argued on the basis of the work most lawyers do, that, contrary to the findings of the Pearce Committee (Pearce et al. 1987), most law students are overtrained. It may not be necessary to replicate the general or broader aspects of university level legal education in the training of every paralegal professional, though in pedagogical and social terms it could be desirable. What paralegals need will, in large measure, depend on the sorts of task they will be called upon to perform. Those engaged in land transactions would probably be better fitted to perform their task if they had a basic knowledge of land law and the law of contract. A broadly educated workforce is more likely to resist increasing bureaucratisation and diminished working autonomy. Those engaged in probate work could benefit from some knowledge of the law of trusts and succession. Those engaged in litigation support would find knowledge of the rules of evidence and procedure helpful. But how much and in what context?

The various systems of secondary schooling in Australia now accept that legal studies provide a valuable road to a wider understanding of society and culture. These studies generally are not offered until the final years of high school, and assume some background in language and history. Not all paralegals will have these formal qualifications. There may be no need for formal prerequisites. Both written and spoken English are fundamental in the operation of the law. Language skills should be the main requirement for formal training of paralegals. The remainder depends very much on what the students might want. While the New South Wales system of education should not be a model for anyone, it has developed a syllabus in legal studies for the Higher School Certificate which assumes that the operation of the legal system requires both a general foundation - an introduction to legal language, concepts and institutions - as well as study of the operation of the law in specific areas. It would be a mistake to assume that it is desirable or possible to start with detailed study of, say, the law of land contracts, without an appreciation that the rules studied are part of a wider system of law and of a political and economic system; and that understanding those rules requires at least an appreciation of how the professional lawyers control legal discourse, how statutes are made and interpreted, and how courts develop rules through the doctrine of precedents. Even this knowledge would familiarise paralegals with some general characteristics of the legal system. Those who wanted more

challenge and responsibility could supplement these basic studies with more detailed studies of the rules most directly relevant.

Who can provide it?

Again, the answer depends on the background of the paralegals and what they are to do: some paralegals, for example those employed to do research, management, counselling and information systems tasks may need to have tertiary qualifications in some other area. For them, tertiary studies at the post-graduate diploma stage would be appropriate. For other paralegals, whose work will be of a more traditionally clerical kind, tertiary studies are probably not indicated at the outset. For fieldworkers drawn from, and working with particular minority groups, depending on educational background, again, tertiary studies are not necessary at the outset. The TAFE system may be able to provide some courses, but in some states, at least, TAFE is suffering from acute shortages of resources. In-house training is also a possibility, especially as government law offices and larger law firms are now employing educational specialists to prepare and coordinate training and continuing legal education.

Training of paralegal professionals will almost certainly need to be mainly on a part-time and cooperative basis; study will have to be through evening or distance teaching, possibly combined with intensive sessions at the relevant institution or in selected local centres. Cooperative and distance education is not a cheap alternative. In purely pedagogical terms, it is not necessarily the ideal solution, but cooperative education where more wide-ranging intellectual activities can be related to a familiar working environment has some educational advantages. However, paralegal professionals will largely be drawn from people who cannot afford full-time study, or for those who are undertaking it at the request of their employers in order to develop career opportunities. Their needs must be considered.

One difficulty that has faced the health care professions is the lack of mobility between the various branches. It is unusual say, for a physiotherapist to become a doctor, or a nurse to become a social worker. It is even more unusual for a surgeon to become a ward attendant. There is certainly no encouragement or facilitation of such movement. A nurse studying to be a social worker is unlikely to receive any academic credit for either practical or academic work completed as part of nursing training. Once a person is fixed in a particular working stratum, he or she remains in it. This leads to frustration, and a relatively high turnover. In the legal profession, paralegal work has traditionally been an avenue of upward professional, if not social, mobility. Special dispensations were provided for managing clerks of several years standing to obtain admission to practice as a solicitor without the need to satisfy the same formal educational requirements as were available to others. There appear to have been similar provisions in the United Kingdom and several other Commonwealth countries, but fewer people are taking advantage of them, and there appear to be general moves for a 'standard' graduate entry to the legal profession, even though it is increasingly obvious that this narrows the ethnic and class composition of the profession (Dhavan, Kibble & Twining 1989). Several leading solicitors were admitted by this route. Avenues for professional advancement and development should be available to paralegal workers who have demonstrated intellectual ability, and capacity in other respects to do legal work, provided that the additional studies they are required to undertake are of a sufficiently broad nature to give them the breadth of perspective which is so important in providing proper professional services.

A problem facing legal education at all stages and levels is the lack of adequate teaching staff. Because teaching law, at any level, requires a perspective at least as broad as that of the practitioner, most teaching positions require a law degree, and often a higher degree in law. These qualifications are not required for secondary teachers of legal studies, but some tertiary studies in law are required, and this is probably also

necessary for anyone attempting to teach paralegals. At all levels of legal education, practical experience of a relevant kind is highly desirable; as paralegals, at least at first, will need a decidedly practical kind of training, some, at least, of the teachers will need to be experienced legal or paralegal professionals.

Who pays?

Finally, but perhaps, most importantly, if the community is serious about its desire for properly trained paralegal professionals, who is expected to pay for the training? These days governments espouse the philosophy of 'user pays' - but which user? The employer, or the client? If the public sector is to provide the courses, through the TAFE or tertiary sectors, can the need for training of paralegal professionals deserve priority over other social needs? If the model of cooperative education is adopted, should it be funded by a levy on potential employers? But would such a levy be a disincentive for those employers to employ paralegal professionals at all? These questions must be answered before any further ideas about training paralegals are entertained. The clear indication is that those who want to employ trained paralegals should pay; but these costs will in some way be passed on to the ultimate users of legal services in the long run.

Directions for this Conference

A number of ideas have been presented fairly superficially. Some ideas which need further discussion are:

- What functions are currently performed by paralegals?
- What functions should be performed by paralegals?
- Can paralegal professionals change access to justice? For whom?
- How should any changes be evaluated? What account should be taken of the effect on the volume and quality of services? From whose perspective?
- What sort of education and training is required? Who can provide it?
- Who pays?

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The Senate Inquiry into the High Cost of Justice: 'The Money or the Gun!'

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The best way to commence this address is to relate to you one of the constituent issues my office has had to deal with; and it is due to the fact that cases like these are not just isolated aberrations that the Senate Standing Committee on Legal and Constitutional Affairs has been prompted to inquire into the high cost of justice in Australia.

This case can probably best be described as a descent into a legal abyss. Some months ago a building consultant approached my office, in a very distressed state, seeking assistance. He was expecting to be evicted from his home later that day, the result of litigation that had been dragging on for several years. In 1981, he had inspected a building and provided a report to a prospective buyer in which he had advised that the building was 'structurally sound'. The property was subsequently purchased and the new owner carried out a number of major alterations and additions, apparently without following proper building guidelines. Subsequent to this work being carried out, the building once again changed hands. Unfortunately for the new owner, the structural deficiencies of the alterations and additions came home to roost and the building began to fall apart. Although it was some three years after the building consultant had made his original inspection, suddenly he found himself the subject of a Supreme Court writ and a claim for several hundred thousand dollars. The building consultant's name in fact, should never have been included on the writ; however, there exists no requirement to make a prima facie case for including a name on a writ and the practice is, to make an 'ambit claim'. It is now admitted and accepted that he carries no responsibility for what happened to the building but in the process his business has been destroyed, he has lost his house and his health has suffered enormously. Apparently, there is no avenue through which he can claim compensation. His livelihood and indeed his life has been shattered because someone decided to add his name to a writ, and in the process cost him thousands of needless dollars in legal fees and loss of earning capacity. For this man, the cost of justice has been enormous and in fact, he would quite rightly question whether he has received anything remotely resembling 'justice'.

No doubt many other similar cases could be cited. The fundamental question that must be addressed, and hopefully will be addressed by the Committee, is whether we have a fair legal system to which all citizens have reasonable (and equal) access. And notwithstanding the bleatings that have emanated from some sections of the legal profession, the community has not only the right, but also the responsibility to assess in all areas whether or not we have a legal system which is delivering justice in an

effective and efficient manner. There is no reason why the legal system should be immune from public scrutiny.

Restructuring the Economy

One of the major tasks that the current Labor Government has had to confront is the reform and restructuring of many aspects of the Australian economy and social infrastructure. No-one has ever pretended that the consequent changes have been without pain or difficulty for those affected. Very early in the life of the Hawke Government the Australian car industry was faced with a need for dramatic change; so too, the steel industry. The medical profession has fought long and hard against a fundamental change to the operation of the health system, primarily through a fear of their power being eroded. The higher education system has undergone significant reform and the ramifications of those changes are still causing pain to the participants of that system. The changes that have been introduced over the last seven years are overwhelmingly in the best interests of this nation; but, wherever you begin to examine existing work practices and conditions you inevitably meet resistance. And that resistance is not a reflection of any concern for the 'common good' or logical defence for things as they are. It is a resistance to anything that might threaten or compromise benefits, privileges and power that have been built up over time and are jealously protected. It is interesting to note that in the case of blue-collar industries where significant restructuring has been, and continues to be implemented, the trade union movement, despite some resistance, has been prepared to acknowledge the need for reform and approach the process in a co-operative manner. The Law Council, too, should have demonstrated such vision.

One of the constant themes of the Hawke Government has been the need for the Australian economy to become much more competitive. By necessity, this means that we must always strive for the most efficient allocation of the nation's resources. Unfortunately, many people assume that this is just an issue that needs to be confronted by the country's industrial base. It is not. Our resources are not simply ploughed into factories, farms and mines; our resources are also swallowed up by health, education, welfare, leisure and the law. The plain fact is that if any one sector of our economy is inefficient this automatically leads to a distortion in the allocation of resources. If we want to enter the twenty-first century as a competitive, efficient nation, we must ensure that industries, governments and the professions are delivering value for money. The legal system and the profession has no right to curl itself up and expect that it can be judged by a different set of standards.

So the context for the inquiry is essentially that we want to examine whether we have a fair system that can justify the enormous amount of public and private money that it consumes. Further, are there changes that could be implemented to make it fairer and are there ways in which the cost of the system could be reduced. Now before turning to some of the specific issues which will be examined by the Committee, it will be useful to look at the response there has been to the establishment of the inquiry.

The High Cost of Justice Inquiry

When it comes to experiences with the legal system, there is no shortage of anecdotal evidence indicating that justice is not being delivered due to the cost and method of operation of the system. It should come as no surprise then to learn that considerable community interest has been generated by the inquiry. My office has received a steady stream of telephone calls and letters from people who have a story to tell and want

details on how to go about making a submission - indeed, no other parliamentary committee's deliberations have generated so many approaches to my office. The Committee Secretariat in Canberra has reported that electorate offices all over Australia have experienced similar levels of interest and the Secretariat has been inundated with submissions from a very diverse range of concerned individuals and groups. Clearly, we will have no shortage of material to sift through and already it has become evident that cases of individual hardship, frustration and distress abound.

Of course, on the other hand, there has been no shortage of submissions received from members of the legal profession and their peak representative bodies. There have also been comments forthcoming from the profession relating to the makeup of the Committee. Apparently, because the majority on the Committee are not lawyers, we just will not be able to understand how the system works and why it costs so much! However, as a Committee, we are not concerned about the nuances and technicalities of the law; we should be concerned primarily about the delivery of a fair and efficient system. As a layman I have the right and ability to question all systems. Imagine the furore that would be created if we politicians were to suggest that the community is not competent to judge how we work and how the political system operates, on the basis that only the practitioners of politics have a proper understanding - such a proposition sounds pretty much like a dictatorship to me!

Of all the submissions looked at so far, one of the most disappointing came from the Law Council of Australia. I had hoped that the Council would have taken the opportunity to embark on a thorough examination of the profession it represents and the system within which its members operate. In many respects the submission reads more like an undergraduate law book providing an introduction to the Australian legal system; for a layman like me, that has been useful, but I could just as easily have asked the parliamentary library for a standard textbook to read. Despite having spent reportedly over $200,000 on preparing its submission, the Law Council has come up with what is essentially a pedestrian and self-serving document which provides a defence for the system as it exists, and suggests a few minor changes at the periphery.

One of the difficulties that the Committee will undoubtedly encounter is actually piercing through the armoury of the legal system and profession. The armoury referred to is all the obstacles that seem to be designed to ensure that ordinary people are prevented from getting too close to the system. The legal system has an aura about it which ordinary people find intimidating: there is the archaic language, the complex administrative procedures, the high cost and of course all the paraphernalia, such as the wigs and gowns. Then we have Junior Counsel, Senior Counsel, QCs, barristers, solicitors, Your Honour and Your Worship - and that is without even wondering which court system you are actually in! Much of our legal system is based on the British system so perhaps it is no wonder that it is embellished with so much elitism, and pomp and ceremony; but the fact remains that the legal system is very distant from the ordinary person and therefore deters people from approaching it, let alone questioning how it operates. In one way or another, the legal profession has very successfully established a rigid 'closed shop' and it is a system which would have many trade union leaders green with envy. The supply of lawyers is very carefully controlled and the number who go on to become Senior Counsel is strictly limited, thereby guaranteeing them the freedom to charge what they like. If an ordinary company engaged in the same restrictive trade practices it would be called very quickly before the Trade Practices Commission.

Turning now to particular issues, there is the question of reforming the legal aid system. Many of the submissions so far received have dealt with legal aid and have pointed to problems with the system as it currently operates. A common assumption within the community is that if you cannot afford a lawyer then you can turn to legal aid; clearly, this is not the case. All of you would know that it is much closer to the truth to say that if you are well-off you can get a lawyer and if you are really poor, you can get legal aid. If you happen to be in that huge strata of moderate income earners then the

only certainty is that a decent joust with the legal system will soon have you eligible for legal aid! There is no easy answer to the problem; certainly, increased budgetary allocations to legal aid necessarily provides a solution. It was mentioned earlier that inefficiencies lead to distortions in the allocation of resources and providing legal aid with more money to do more casework would probably be such a distortion. If on the other hand we can find ways of reducing the overall cost of justice, not only will that make it easier for those middle income earners who are currently left out in the cold, but it will also reduce the individual case cost for legal aid. It is a complex problem and one that will not be answered simply by throwing more resources into legal aid; but it is a problem that needs to be looked at carefully by the Committee.

The 'closed shop' syndrome referred to earlier contributes significantly to high legal costs and although I would not normally want to align myself with Margaret Thatcher's way of thinking, I could not agree more with the challenge she is mounting against the legal profession in the United Kingdom. Admittedly, the British system is even more closed than ours; nevertheless, no other profession goes to such extraordinary lengths to protect its 'need to be needed'. (It is worth noting, for instance, that the medical and dental professions recognise the community value of preventative rather than reactive health care and have embraced such programs.) In a submission to the Legal Aid Advisory Committee last year, the Law Council of Australia made it clear that as far as it was concerned no countenance could be given to the concept of having 'non-qualified' persons providing legal assistance and advice; and one could easily gain the impression that community legal centres are a blot on our democratic landscape and threaten to destroy the very fabric of society. When it comes to paralegals, the Law Council seems to believe that their function should be confined to duties such as directing members of the public to the nearest tribunal or court, or providing them with the address of the Legal Aid Commission. Nowhere does it mention for instance that in South Australia, where conveyancing can be carried out by landbrokers, we have very low cost conveyancing, whereas in New South Wales conveyancing accounts for up to 50 per cent of legal fee revenue! One cannot help but gain the impression that the Law Council's paranoia is a reflection of the potential paralegals have to reduce the amount of easy money the legal profession is able to pick up. This reminds me of a phrase used in one of the submissions the Committee has received: 'Dollars disable decency'. Whilst there are areas of legal practice and court representation which require the expertise of fully qualified lawyers, I am not convinced by the Law Council that there is no place for paralegals within the system. Hopefully, the Committee will be looking very carefully at the current monopoly situation as it exists.

If we are to go to the core of questions relating to the cost and accessibility of justice, we are going to have to examine not only elements of legal practice and the profession, but also the role of the court system. In relation to that is the area of alternative dispute resolution (ADR). It is important to point out that ADR is obviously not appropriate in all cases nor is it, in itself, going to provide a solution to the escalating cost of justice. However, for many disputes the services provided by community mediation centres clearly offer not only a more cost-effective means of resolution, but also a more constructive method of dealing with conflict. And ADR is not just confined to what might be termed 'domestic' or 'neighbourhood' disputes; the establishment in 1986 of the Australian Commercial Disputes Centre has shown that commercial cases which previously would have been listed for hearing before a court can be resolved through mediation, thereby reducing costs across the board. Had the case mentioned earlier involving the building consultant been mediated rather than litigated, there would probably be one less individual on the legal casualty list.

Alternative dispute resolution clearly provides an option outside the court system which needs to be examined; but it is also important to look at alternatives within the court system and that includes alternatives to the fundamental basis of operation of our courts, the adversary system. What is so sacrosanct about a system

which often produces a situation where in the courtroom there is a fair chance that half the people involved are lying and the aim of the game is to convince the jury that you are not in that half? In the aftermath, the question that's asked is: 'Who won?' Perhaps it should in fact be: 'Was the truth revealed?'

Without wishing to revive the horrors of the Star Chamber or the Spanish Inquisition, the Committee will have to give serious consideration to the alternatives offered by the 'inquisitional' or 'investigative' systems. Especially in the area of criminal law, we may well be able to learn something from Continental European criminal procedure where they combine both adversarial and inquisitional elements. The essential feature is that rather than sitting as an impassive referee, the judge becomes an active participant in the search for the truth; and truth must surely be an integral part of justice. The adversarial system tends to transform the courtroom into a legal boxing-ring where the jury must ultimately determine who has landed more blows. If the introduction of a more investigative system can direct the emphasis away from legal combat, then it is well worth looking at. If we are concerned about reducing not only the financial cost but also the human cost of our justice system then we must give paramount importance to the discovery of truth, rather than legal thespianism. Australians deserve more than being placed in a situation where they have to choose between the money or the gun.

There are a number of issues that have not been covered in this paper and these include contingency fees and class actions. The issue of contingency fees is a controversial area and one where there is not uniform agreement even within the profession. We need to find out more about how the system of contingency fees operates and arguments on both sides of the debate should be examined. The concept of 'class actions' is also important, although having essentially originated in the United States it is of concern that the idea has been spawned by a society that thrives on litigation, to the point of obsession. Australian society does not need a situation where the only means by which individuals or groups in society can get justice is to pursue litigation.

Elected governments in a democratic society have the responsibility to establish the legislative and administrative framework whereby individuals in the community can be fairly treated without having to hire lawyers and initiate expensive litigation procedures. For example, class actions associated with environmental protection are not only costly, but also chaotic. It is much more efficient if the community, through its elected government, establishes guidelines that eliminate the worst excesses of environmental neglect. It may well be that rather than 'class actions' what we need is more community action, not only because this is far more constructive, but also less expensive.

Finally, talking about a concept of 'community action' brings us back to the focus of this conference and that is the paralegal profession. When we talk about paralegals, we are in a sense talking about a form of community action. Paralegals are predominantly employed and active at the local community level. They are involved in services which are designed to empower individuals to resolve conflicts not only with each other, but also with 'the system'. The growth and expansion of the paralegal profession and paralegal services is to be welcomed and encouraged. Naturally, the Law Council does not see a move towards paralegalism as a positive reform, but then frankly in terms of reform, initiative and vision, the Law Council may be largely irrelevant. If paralegals can assist in the provision of justice to our community at a reasonable cost, then their participation should be encouraged.

Conclusion

To conclude, let us look towards the next century. Arguments based on tradition and precedent are not appropriate. Indeed, many of the difficulties this country has had to confront over the last few years are related to the stagnation that set in after the war when little thought was given to the future development of the nation, and there was a preoccupation with bolstering everything that had been inherited from the 'beloved mother country'. The most important lesson to be learned from the seventies and eighties is that we must constantly be asking ourselves the basic question: what will be the requirements of a modern, technologically-based nation in five, 10 and 20 years' time? We found in the eighties that in many respects Australia had been left behind and there has been much pain associated with catching up again. Unfortunately, there is little evidence that the legal system has ever been interested in keeping up with anything, adapting to change or adopting new technologies. Indeed, it seems as if the profession still bases its fees on the amount of time it takes to transcribe a document by quill! The Committee has received a submission from Legal Management Consultancy Services which indicates that one of the reasons for the extraordinary overheads associated with legal practice is the existence of outdated work practices and an unwillingness to take advantage of new technologies. In view of this, it is particularly galling that in its submission the Law Council of Australia was unwilling to concede that there was any need to even consider reforms within the profession. The reforms the Law Council was prepared to suggest were akin to rearranging just two deck chairs on the legal Titanic as the whole system sinks under the weight of burgeoning costs.

Australia not only needs, but also deserves to enter the next century with a dynamic, fair and accessible justice system. The legal profession must accept that our Committee is not concerned with carrying out a wholesale attack on the profession as such; we want to ensure that every citizen of Australia has access to justice and if that requires changes to the existing system then so be it. No group has the right to clutch onto its own vested interests at the expense of the common good of society as a whole and if bodies such as the Law Council will not participate in the 'reformation' then they might find that they are completely bypassed. The profession might have a monopoly on the right to practice, but they do not have a monopoly on knowledge or indeed power. At the moment, paralegals are knocking on the door of the legal system; unless the profession is willing to at least answer the door and give them a hearing, they might well find that the door is forced open.

I wish you well for the conference and trust that you will continue to contribute useful ideas and a dynamic influence to the process of reforming our legal system.

Paralegals - in the Community's Interest?

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Many sectors of the community who seek justice complain about their inability to tap into the legal system. The reason most often given is that the cost of legal services is too high. But this is not the only reason why the legal system is inaccessible to many people and currently under scrutiny[1].

In a discussion about improving the community's access to justice, it is important to recognise the different concerns about access to the legal system and to be aware of all the barriers individuals and groups face when confronting this system. A solution to a problem will be inadequate or wrong, unless a proper assessment of the causes of the problem has first taken place.

Access to justice may be restricted because of geographic factors; institutional limitations; racial, class, and gender biases; cultural differences as well as economic factors. The way legal services are delivered by the legal profession, the nature of court proceedings, including procedural requirements and the language used, are also barriers limiting people's opportunity to obtain justice.

In considering options for improving access to the legal system it is critical that due attention be given to all the barriers and not just economic ones. Even if a large proportion of the population were readily able to purchase legal services in the current system, there would still be many others who would believe that they were being denied justice.

It is in this broad framework that discussion of the future of paralegals should be placed. The merits of developing the role of paralegals must be discussed in relation to all the barriers preventing access to the legal system in order to decide whether this will improve the community's access to justice.

Obviously, there will be many other possible solutions to the problem of creating greater access to the legal system and the relative merit of these alternatives must also be considered and weighed against the suggestion of increasing the use of paralegals.

Access to justice can have many meanings, depending on the scope of the definition of justice. But in the context of this conference and paper, the definition of justice is limited to 'the exercise of authority in the maintenance of right' (The Oxford Reference Dictionary 1989, p. 448): and the 'judgment of persons or causes by judicial process' (*The Macquarie Dictionary* 1981, p. 961). Consequently the following discussion about access to justice is really about access to the legal system. The focus of the paper is primarily about whether the development of a paralegal profession can

improve the community's access to the legal system and not the broader question of access to social justice.

It is with this approach in mind that this paper will :

- Discuss the definition and work of paralegals drawing on overseas information[2].
- Outline briefly, overseas developments in paralegal work particularly in legal aid agencies;
- Discuss whether the development of paralegal professionals would be in the community's interest highlighting three central issues:

  The legal profession and the delivery of legal services;
  Access to the legal system; and
  The cost of legal services;

- Draw some conclusions on future directions for paralegals.

Definition and Work of Paralegals

Paralegals are workers who, although not admitted to practice, often perform legal tasks which are also performed by lawyers. They may work beside lawyers; in the stead of lawyers or be supplementary to lawyers. The term paralegal is often used interchangeably with the terms legal assistant, law clerk, lay advocate, non-lawyer and community legal worker.

In any discussion about paralegals it is important to make a clear distinction between those paralegals who act under the supervision and control of lawyers and those who do not.

Supervised Paralegals

Supervised paralegals exist in the offices of both private practitioners and legal aid agencies. Generally the work performed by these paralegals ranges from ordinary clerical work to work which is little different from that of a solicitor. The major distinguishing feature in the work of paralegals to that of lawyers, is that paralegals frequently do not have a right of appearance.

In 1986 a position paper prepared by a Standing Committee of the American Bar Association included this definition of legal assistant:

> A legal assistant is a person, qualified through education, training, or work experience, who is employed or retained by a lawyer, law office, governmental agency or other entity in a capacity or function which involves the performance, under the ultimate direction and supervision of an attorney, of specifically-delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts that, absent such assistant, the attorney would perform the task (American Bar Association 1986).

The role of paralegals in the private profession and government has been documented (Johnstone & Flood 1982; Johnstone & Weglinsky 1985; Statsky 1974; Abbott 1977), and it is clear that law clerks, legal secretaries and legal assistants play

an important part in the delivery of legal services. The trends in Canada and the United States indicate that this role is on the increase[3].

Commentators suggest that more attention should be paid to the 'rational use of paralegals' as a means of making 'law offices more cost and quality effective' (Johnstone & Flood 1982, p. 190). They conclude that 'to a greater extent than most lawyers recognise, their future may be linked to that of their support staff, paralegals in particular' (Johnstone & Flood 1982).

In England, senior paralegals in private solicitors offices 'commonly interview clients and in some instances handle cases through to completion without intervention of a qualified solicitor' (Johnstone & Flood 1982, p. 177). There have been English paralegal associations since the turn of the century. Their primary concern has been the education of their members. The Institute of Legal Executives (ILEX) has an extensive educational and qualifying system and powers to discipline its members for unbefitting conduct (Johnstone & Flood 1982, pp. 173 & 186).

In Canada, the Law Society of Upper Canada recently stated that law clerks or paralegals 'are a significant part of the practice of law in almost every field' (Law Society of Upper Canada 1986).

In the United States paralegals are used extensively by the private profession in the delivery of legal services, especially assisting in the preparation of litigation and research. Their numbers have increased dramatically in the last 20 years.

There are two national paralegal organisations in the United States. The National Federation of Paralegal Associations (NFPA) formed in 1974 and the National Association of Legal Assistants (NALA) in 1975. NALA administers a voluntary certification examination enabling successful legal assistants to use the designation CLA (Certified Legal Assistant) after their name. Both organisations seek to promote the occupation of legal assistants and further the interests of their members.

An indication of the scope of the functions performed by paralegals in legal aid agencies is given by the classifications adopted by the United States Legal Services Corporation in 1977. They included case investigator, generalist, information and resource specialist, intake interviewer, lawyers assistant, litigation specialist, education and community education worker and paralegal co-ordinator (Legal Services Corporation 1977).

Unsupervised Paralegals

Unsupervised paralegals are those who perform tasks normally undertaken by a lawyer including appearing in court, but are not under the supervision of a lawyer. Often they perform this work for a fee; considerably less than that charged by lawyers to perform the same work.

In Australia, the work of land brokers/conveyancers, trade union industrial officers, police prosecutors, and financial counsellors could be described as unsupervised paralegals. It is obvious that it is this area of work, where individuals can do similar work to a lawyer and charge for it, that causes the greatest concern for the private profession. In most Australian states, performing this work for a fee is prevented by legislation (*see* for example, *Legal Profession Practice Act 1958* (Vic) s.90(1), *Queensland Law Society Act 1952* (Qld) s.39, *Legal Practitioners Act 1898* (NSW) s.40, and this is how the profession has been able to maintain its monopoly on the delivery of legal services. Other countries have recently had to address this issue.

In Canada there is an increasing number of paralegals who work unsupervised and charge a fee for their services. Although the Law Society of Upper Canada regularly prosecutes offenders under its unauthorised practice provision, there has been a huge growth in the number of paralegals offering an expert service (for example immigration consultants, simple divorces and wills) at a fee lower than those of lawyers. The activities of certain former police officers who were offering their

services to represent clients in traffic violations hearings prompted the introduction of a private members bill to regulate the activities of paralegal agents (Bill 42 An Act to Regulate the Activities of Paralegal Agents First Reading May 22nd 1986).

This type of activity has caused a great deal of public debate and led to a Canadian Bar Association (CBAO) report (1986) as well as a submission to the Attorney-General of Ontario by the Law Society of Upper Canada on the provision of legal services by unsupervised persons (Law Society of Upper Canada 1986).

The CBAO report concluded that a preferred course of action 'was for the creation of a licensing scheme for designated groups of paralegal agents who would be permitted to perform specified legal services independently of lawyer supervision' and it recommended that a task force be established to research and develop new arrangements for regulating legal workers in the public interest (The Law Society of Upper Canada 1986, pp. 24 & 40).

The Law Society believes that the public is better served by lawyers than by unsupervised persons but it would not object if appropriate legislation was enacted to allow unsupervised people to represent people in matters relating to: minor traffic offences; the civil division of the Provincial Court; 'those administrative tribunals where it can be shown that in the past, the public interest has not been put at risk'; Federal and Provincial labour relation matters; so long as they were subject to strict controls (Law Society of Upper Canada 1986, p. 2).

In England, the recent White paper presented by the Lord Chancellor 'Legal Services: A Framework for the Future' (1989) recommends that 'the public should have the widest possible choice amongst properly qualified advocates, who should be able to compete freely with one another for the business available from clients'. It also goes on to state the government intends to allow lay representation in small claims cases and debt and housing cases in the county court (Lord High Chancellor 1989, pp. 12 & 13).

In 1985, the British parliament enacted legislation which removed the monopoly that solicitors had over conveyancing. The recommendations from the Conveyancing Committee, including the establishment of a governing Council for Licensed Conveyancers, the requirement of certain educational, skills and experience standards together with mandatory indemnity insurance and a code of conduct, have now been implemented. Independent conveyancers are now operating. The Law Society has reacted to these changes by loosening its own restrictions on advertising and other rules of conduct (Selinger 1987).

A recent newspaper report indicates a similar development has occurred in California:

> The California State Bar has agreed in principle to allow non-lawyers to perform simple legal jobs for competitive fees . . . The lay practitioners would be called legal technicians and could work from shopfront establishments. Their work would include uncontested divorces, simple wills, name changes, straightforward adoptions, immigration and bankruptcy problems and aspects of property purchase. Although all US lawyers may plead in court for clients, the lay practitioners would not be permitted to do so. The California state legislature is to be asked to set up a simple registration system for qualified practitioners, who would pay a fee (*The Age*, Friday 8 September 1989, p. 7).

There is nothing to suggest that similar developments to those overseas will not also occur in Australia. It is possible that the reports of the various government inquiries into the cost of justice and access to justice may include discussion on these points and recommend a loosening up of the regulations which currently prevent unsupervised paralegals from operating.

Paralegals in Overseas Legal Aid Agencies

Overview

The information available suggests that the work of the legal aid paralegal is often identical to that of a lawyer. The major distinguishing feature is that paralegals frequently do not have a right of appearance in courts. Usually paralegals in legal aid agencies and community legal centres are employed for their specific skills, particularly their experience within the community. Any training is normally obtained 'on the job'. Although training courses exist, the completion of such a course is not thought to be a necessary requisite by employers. Instead the paralegal's ability to relate to the client community was viewed as a more important attribute.

Canada

In the provinces of British Columbia and Ontario, community legal workers and legal information counsellors are essential to the provision of legal aid direct client services. The importance of their role is indicated by legislation which defines their role and provides for funding of paralegal services (Legal Services Society Act [RSBC 1979 c.227] s.9 and Ontario Regulation 59/86 made under the Legal Aid Act, RSO 1980 C.234).

In British Columbia, the Legal Information Counsellor Program is funded and administered by the Legal Services Society (similar to Australian state legal aid commissions). Legal Information Counsellors are used mainly in Community Law Offices and Native Law Offices, which are independent agencies providing summary advice, counselling, information about the law and some extensive casework. They also have the responsibility for community development and public legal education.

The Legal Information Counsellors are paralegals who provide information and advice to clients while under direct or indirect lawyer supervision. Legal Information Counsellors also represent individuals in tribunals or lower courts, process legal aid applications, undertake public legal education and sometimes are involved in community development activities (Brantingham & Brantingham 1984).

Paralegals are used in delivering legal services to remote areas or native populations. This is often because it is more cost-effective and the paralegal is better able to relate to the local community.

In British Columbia, the Legal Services Society has established a system of supervision which caters for the differing levels of a paralegal's experience. Supervision occurs either directly in small offices by a lawyer or in a large office, in which case 'the Board of Directors may designate a specific non-lawyer (typically a senior Legal Information Counsellor) to undertake direct personal supervision of Legal Information Counsellor work in specified areas of law' (Brantingham & Brantingham 1984, p. 342). The direct supervision is then divided into three stages of supervision, from full to partial to minimum as the Legal Information Counsellor gains experience and the supervisor comes to understand the Legal Information Counsellor's working patterns (Brantingham & Brantingham 1984, p. 345).

Historically, paralegals have a unique place in the delivery of legal services by Ontario's Community Legal Clinics. Community Legal Workers-paralegals were central in the establishment of clinics. One of the original objectives of the Parkdale Community Legal Service was to develop 'the role of indigenous aides' in the provision of legal services. A stated aim was to 'train lay people to handle some of the legal services which were being handled by lawyers and law students; . . . to have lay advocates involved in the offices of the community education program (Zemans 1980). The Ontario Legal Aid Act provides for 'the payment of funds to a clinic to enable the clinic to provide legal services or paralegal services or both . . . on a basis other than

fee for service' (Ontario Regulation 59/86 made under Legal Aid Act RSO 1980 C.234).

Community Legal Workers initially staffed clinics in Ontario and worked in areas not normally handled by the private profession and in which there was no specific lawyer expertise, for example tenancy, injured workers rights and environmental issues.

Currently Community Legal Workers perform a variety of tasks. They may be involved in summary advice, intake, casework, representation, law reform, legal education, community organising and development. At least half the staff at clinics will be Community Legal Workers. There is often little to distinguish the work of lawyers and Community Legal Workers.

As a general rule it appears that Community Legal Workers are employed for the skills they are able to offer the clinic. It is usual for the Community Legal Workers to have either lived or worked in the community serviced by the clinic, often in a role involving community development work. This approach reflects one of the original stated aims of clinics: to provide a greater access to justice for the poor and to answer the specific legal needs of the poor on their own terms. It was thought that community legal workers, who had not been subject to a lawyer's training and conditioning, were usually 'closer to the people' and best suited to this purpose.

England

In the report of an English conference entitled 'Life Without Lawyers' held in 1978 it was stated that paralegals were not to be seen as handmaidens to the legal profession nor as a substitute for lawyers. Rather they were to be seen as advisers performing a fundamentally different role.

Although it was acknowledged that there were economic arguments for paralegals, their more positive advantages were emphasised. Paralegals tend 'to be more accessible than lawyers, more capable of understanding and working with ordinary people, less likely to distort the informal procedures of tribunals and more capable of providing a broad and flexible range of assistance, going beyond the immediate (and possibly superficial) 'legal problem' (Legal Action Group 1978).

In English law centres paralegals are used in a variety of roles, specifically in the areas of social security, immigration, housing, womens rights, anti-racism, and broad information provision. These workers are involved in providing information, advocacy, advice, liaison, interviewing and research. A large proportion of their time is devoted to increasing access to tribunals and advocating for people's rights.

Only 25 per cent of employees in law centres are lawyers, the remaining 75 per cent being a combination of community workers/paralegals and support staff.

United States of America

In the United States, legal assistants are an integral part of the delivery of legal services. However, the function of paralegals in legal aid agencies is quite different from that in the private profession. Legal services' paralegals are usually expert in their specific area of the law and do all the work to prepare a case except the actual appearance.

Legal services have been innovative in their use of paralegals. They are not seen merely as appendages to lawyers but encouraged to act independently. Johnstone and Weglinsky in their New York study found that legal aid organisations utilise paralegals for a broad and diverse range of tasks (Johnstone & Weglinsky 1985 p. 53).

During the late 1970s the Legal Services Corporation ran special training programs for paralegals at local, regional and national levels. The aim was to develop the advocacy skills of the community workers and others. This work of the Legal

Services Corporation appears to have been instrumental in the development of the paralegal role in legal services.

Unfortunately, the change in policy and staff at the Legal Services Corporation together with funding cutbacks means that this support is no longer available. The emphasis is now on providing individual casework rather than encouraging community education programs, test cases or community development.

Consequently training of paralegals often occurs on the job. It was noted that a number of paralegals had tertiary qualifications in education, politics or social work. Others had completed a legal assistant's course.

In a survey of New York paralegals, it was noted that paralegals in legal aid agencies often had different qualifications and career lines than other paralegals. They usually had close ties to and deep understanding of poor communities, no formal education beyond high school, were older than the average in the occupation, remained longer in the job and generally were more satisfied with their jobs than most paralegals.

> Some of the earliest community paralegals were products of a special new careers training program in New York City that had as one of its principle goals providing new careers through affirmative action to persons from low-income minority neighbourhoods (Johnstone & Weglinsky 1985, p. 97).

Although this training program has disappeared, community paralegals are still an important part of the operation of legal aid offices.

There is a class and race distinction in the paralegals working in legal aid agencies; for example, paralegals are more often non-white (Johnstone & Weglinsky 1985, p. 97). This was thought to be a positive development as it enabled disadvantaged groups to break through the discrimination existing within the legal system. Legal services were seen to have provided a mechanism by which people from poor and disadvantaged communities were able to work in the legal area. The training and experience gained enabled these workers to provide legal services back to their own communities.

Summary

The experience both overseas and in Australia suggests that the role and development of paralegals in legal aid agencies and the private profession has occurred for different reasons and consequently resulted in a distinct type of worker.

In the private profession, the role of paralegals is complementary and subordinate to the supervising solicitor and developed to increase efficiency in delivering legal services, whereas the legal aid paralegal is more often developed as a preferred alternative to a solicitor in areas of the law not normally serviced by the private profession[4].

Paralegals - in the Community's Interest?

An initial question which must be answered when discussing developing the role of paralegals is why do we need/want them? The title of this conference implies that we need them to increase the community's access to the legal system. But the question remains why? Is cost the only rationale or are there other reasons? Are the established methods of delivering legal services not addressing the community needs?

As mentioned at the start of this paper the cost of legal services is only one of a number of factors that affect people's ability to access the legal system. The way that

services are delivered by solicitors, the type of service (or lack of service) provided by solicitors and where services are delivered are also issues of accessibility. The control maintained by the legal profession in the delivery of legal services, court procedure and the use of legal language are also barriers. Other factors limiting people's ability to access the legal system include geographic location, institutionalisation, and racial, class, cultural and gender biases.

To answer the questions of 'Why paralegals?' and 'Will the development of paralegals improve the community's access to the legal system?', attention must be given to all the above issues. The following paragraphs focus on three particular areas and pose several questions for further discussion.

The Legal Profession and the Delivery of Legal Services

Common complaints about the current system of delivering legal services include the lack of information given to the individual about the nature of their matter and ongoing information about what is happening, insensitivity and lack of cultural awareness on the part of the solicitor, not understanding the court processes and obviously the cost of obtaining legal services. But in developing alternatives to address these concerns, it must be asked will the community be prepared to accept services from someone who is not a lawyer even if they are cheaper? What does the community want from someone delivering legal services? If the community is not content with the way that legal services are currently delivered, how should it be different?

In our consumer society, the issue of cost must be balanced against the issues of quality control, supervision and regulation. These are precisely the issues that the lawyers' professional bodies raise in support of the maintenance of their control over the delivery of legal services and in opposition to the development of unsupervised paralegals. But are the interests of the private profession the same as the community's and are these issues adequately addressed by the self-regulation currently operating?

It is unlikely that the role of paralegals can be fully developed (as independent operators) and not just encouraged for managerial and efficiency reasons, until 'the profession's overall dominance' (O'Malley 1983) is altered. Currently the 'dominance of lawyers in the legal services field and [the] dependence of paralegals on lawyers are very basic restrictions' on the development of paralegals (Johnstone & Weglinsky 1985, p. 210).

However, recent developments indicate that the profession's monopoly may be under threat. Overseas experience suggests that eventually the private profession will have to acknowledge that there is some limited role for non-lawyers to play in delivering legal services to the community (*see* Unsupervised Paralegals section above). The various government inquiries will probably address the connection between the costs of legal services and the profession's control, and make appropriate recommendations. The Victorian Law Reform Commission has a reference on the legal profession which allows scope to answer the question raised recently by one commentator - 'why don't we develop legal professions linked to levels of legal need?' (Regan 1988).

Further questions then arise about the tasks lawyers perform. What levels of expertise and training are needed for these tasks? Can they be performed by a variety of legal workers? And are there some tasks that can only be performed by qualified lawyers?

The tasks performed by paralegals are often called 'routine' or 'simple' but this is not always the correct classification and caution should be exercised in making these decisions. An initial intake interview may be critical in the identification of test cases or law reform strategies. Similarly if problem solving is left to a lawyer, the lateral approach of non-lawyers to solutions will be lost. 'Making service functions routine

greatly biases the service in favour of the status quo or already recognised claims' (Menken-Meadow 1985).

The solution to this problem may lie in a non-hierarchical approach to the delivery of legal services - lawyers and non-lawyers working as a team. The experience of legal aid agencies, who utilise paralegals effectively, supports this idea.

> In an ideal world, the role of nonprofessional advocates would not be determined by examining what legal tasks could be delegated to a person with less or different training, but by a broader functional view, including consideration of all the possible ways to handle, manage, or solve a problem and then identification of those groups of people who might best be able to perform those functions (Menken-Meadow 1985, p. 407).

Experience shows that often the work of paralegals is within a particular area of work. They become 'specialists' in that area, sometimes to the exclusion of lawyers. The idea of specialisation has recently gained acceptance in the Victorian Law Institute (O'Bryan 1989) and there is no reason to suggest that the same rationale and certification procedure could not be applicable to paralegals.

Clearly the delivery of legal services in different ways is a challenge to the dominance of the legal profession. Language can also play a part in altering the status quo and accordingly, rather than use the word 'paralegal', which has implications of 'less than' and supplementary[5], it might be a more beneficial to those wishing to promote the role of paralegals to use the term 'legal worker'. Legal Worker connotes independence and could be used to indicate areas of specialty for example Criminal Legal Worker, Aboriginal Legal Worker, Probate Legal Worker, Community Legal Worker.

Access to Justice

The implications of an increased role for paralegals on the question of improved access to the legal system will be partly dependant on whether the paralegals are employed within the private profession or the legal aid agencies.

The Australian legal aid sector has historically had a commitment to improving access to the legal system for the community. The attempts to provide accessible offices and services and its activities in the area of community legal education and law reform is a testimony to this aim. Paralegals are employed by a number of state legal aid commissions and community legal centres and have been used as interviewing officers (intake workers), assistants in criminal matters, general legal assistants, community educators and advice workers.

The South Australian Legal Services Commission commenced operation in 1979 with a commitment to the use of paralegals. They are used in the Legal Advice Section and in the Assignments Section. Of the 18 staff employed in these sections only seven are qualified legal practitioners (Regan 1988).

In 1987 the Legal Aid Commission of Victoria employed 26 law clerks (paralegals) who are involved in the following areas: assignments, duty solicitor, legal advice, case work and community legal education (Legal Aid Commission of Victoria 1987). The Aboriginal Legal Services employ field officers who act in a paralegal role (Lyons 1984). The staff at many community legal centres also includes community workers. Despite these examples the employment of paralegals is not yet seen as an essential component of the work of legal aid agencies in improving the community's access to the legal system but there is much scope for development.

In contrast, the legal profession generally has not been greatly concerned about the lack of access to the legal system suffered by sections of the community. Certainly

the widening gap between those that can pay for legal services and those eligible for legal aid has now generated concern. But greater use of paralegals within the private profession for economic reasons and to increase efficiency alone will not necessarily improve the community's access to justice.

The one area where the community may achieve greater access would be through the growth of unsupervised paralegals; those who will provide the same services as lawyers but at a reduced price. However, as discussed above, it is the development of this type of paralegal that will face the most opposition from the profession.

In addition it is possible that the growth of unsupervised paralegals would simply create a subset of the private profession. The issues of accreditation/licensing/regulation suggest that the private profession would have a controlling interest in any such system, like the American Bar Association, and consequently, the pervading philosophy of the private profession would continue.

Although the cost of legal services is a primary factor in accessing the legal system, there are many other barriers, previously mentioned, including geographic factors, institutional limitations, racial, class, and gender biases, and cultural differences. Both the overseas and Australian experience indicates that paralegals are often used in legal aid agencies to address one of these particular barriers. For example Aboriginal Field Officers, Community Legal Workers in Ontario, Canada and Australian Community Legal Centres.

One argument against developing the use of paralegals is that it may divert pressure being applied to improve the training of lawyers. Obviously lawyers should be adequately trained to provide the positive aspects of legal service delivery attributed to paralegals. When lawyers receive training in communication skills and cultural, race, gender and class issues, and provide services that are accessible to those that are geographically and culturally isolated or institutionalised, then the need for paralegals may diminish. But until then paralegals can form an important role in making links between the individual and the legal system.

Cost of Legal Services

One of the most attractive features of paralegals and the reason that paralegals are seen as cost-efficient is that they are cheaper to employ than lawyers. Although there are exceptions when comparing long serving paralegals and newly admitted lawyers, generally paralegals have a much lower status and receive lower remuneration whilst doing substantially the same work as lawyers (Johnstone & Flood 1982, p. 180). This means that in the private profession if paralegals are employed, they should reduce the overheads and consequently the cost to the clients. Similarly in legal aid offices they should enable more services to be provided.

But particularly in legal aid agencies, if paralegals are used as a cost-saving measure by an organisation that is already under resourced, then the poor will only get poor services. Proper training, both initially and ongoing are essential for the maintenance of a good service, as is adequate remuneration. Sound ideas must be fully implemented to be successful (Handler & Trubeck 1985).

As economic rationalism is applied to the Australian legal aid system it is important that paralegals are not used as a cheap alternative for providing services to the poor. They should be used rather as an attempt to answer the specific needs of the poor by seeking to increase their access to justice on all levels.

It must also be remembered that the work of legal aid paralegals is often in areas of the law not normally serviced by the private profession for example social security, tenancy, credit/debt, mental health. These areas of law often have tribunals presiding that discourage legal representation .

Consequently, in some areas of law, the use of paralegals cannot be seen as a cheap alternative to employing lawyers but rather as providing different legal services with an alternative method of service delivery. In these areas the availability of paralegals has increased access to legal system.

The implications of the low remuneration and status of paralegals is an issue of concern for women who form the majority of paralegals. Women paralegals are paid on average substantially less than men (Handler & Trubeck 1985, p. 181). In contrast, some women see their paralegal position as providing access to work within the legal system, previously denied them.

The apparent cost benefits and the utility of paralegals will probably be affected in the future by the greater availability of information technology and computers. A number of the tasks currently performed by legal assistants may be streamlined with the increased use of computer technology but conversely the greater availability and reliability of this technology may also enable paralegals to provide a greater range of services.

Conclusion

In any discussion of improving the community's access to the legal system, the increased use of paralegals must be seen as part of an overall concern for delivering legal services and not simply as a cost-saving exercise. If the aim is not only to provide to all sections of the community, those services available to the rich, but also to address the more specific needs of different sections of the community in gaining access to justice, then the overseas experience would indicate that the involvement of paralegals will assist in that aim.

The advantages of paralegals are that they have an ability to relate well with the client and provide a link to the legal system, can work in a team and will often provide alternate strategies on solutions to a problem, are sometimes specialists and can often perform the task better than available lawyers, as well as being cost-efficient.

It will be in the community's interest if the development and use of paralegals is able to break down some of the barriers to the legal system which currently exist. This is unlikely to occur if the development occurs only within the private profession. The real opportunities for increased access lie with those legal aid agencies already committed to improving the community's access and with the development of new areas of expertise by legal workers.

It will not be in the long term community's interest to encourage the growth of a new profession of paralegals that share the same work practices and approach to legal issues as the private profession. They would simply be a sub-set of the existing legal profession and it would be more in the community's interest to reform the training and qualifications required by the current legal profession rather than encourage these types of paralegals.

Finally, the growth of paralegals can only play a small part in the overall aim of improving the community's access to justice. Complementary approaches to the community's and government's concerns about the lack of access and cost of the legal system must include the development of various methods of alternative dispute resolution, promoting the use of plain English legislation and documentation, improving the administration and accessibility of the courts, provision of legal interpreters, facilitating self-representation when appropriate, rationalisation of legislation and regulations, and appropriate training of personnel at all levels of the legal system to be aware of cultural, gender, race and class differences. The development of paralegals may advance many of these suggestions but equally if some of the above are implemented there will be greater scope for paralegals. It is clear there is no single

solution to the problem of improving the community's access to the legal system but the growth of paralegals could act as an important catalyst.

Endnotes

1. There are several government inquiries currently looking at the legal system and the question of access to justice:

   Senate's Legal and Constitutional Standing Committee Inquiry into the Cost of Justice;

   Victorian Law Reform Commission reference on Access to Justice; and

   National Legal Aid Advisory Committee's review into Funding and Supplying Legal Aid Services.

2. In November 1986 with the assistance of the Victoria Law Foundation, the author undertook a short study tour to England, the province of Ontario in Canada and the east coast of the United States of America. The subject matter of the tour was the use of legal assistants/paralegals/community legal workers in the delivery of legal services and in particular their role in community legal centres and legal aid agencies. The author gathered information on the nature of the work performed by paralegals; the training undertaken and available for paralegals; and the status and role of paralegals within the legal system.

3. In the United States there has been a rapid growth in the number of paralegals over the last 20 years. Although the number of lawyers is increasing the ratio of lawyer to paralegal is dropping. In a study of law offices in New York City, the paralegal to lawyer ratios varied from 1:93 for small firms to 1:35 for large firms. Statistics indicate that the paralegal profession is one of the fastest growing in the United States. In the Federal Government arena, there has been a 65 per cent growth of paralegals since 1976 compared with only a 16 per cent increase of attorneys in the same time period (Johnstone & Weglinsky 1985, p. 4).

   In contrast the number of paralegals employed in the English private profession was observed to be reducing as the numbers of articled clerks and associates listed was increasing. The work performed by the latter is similar to the work of paralegals. In 1976 it was estimated that there were 20,000 legal executives working in solicitors offices - a sharp decline since the mid 1960s. 'Law firms appear to be relying more on assistant solicitors and less on paralegals'. Historically the use of paralegals has been higher in England than the United States, indicated by a greater ratio of paralegals to lawyers (Johnstone & Flood 1982, p. 174).

4. In 1980, Fred Zemans, a Canadian academic outlined three basic and interdependent assumptions which he believed provided

   'the rationale for the existence and growth of non-lawyers working outside the private sector:

   That the measured demand for legal services has substantially exceeded and will continue to exceed the capacity of the system to deliver them.

   That the legal profession's monopoly over the provision of legal services has not led to broadly based access to justice.

   That the admission and training requirements of the legal profession are unnecessarily restrictive, overly lengthy and in many cases entirely inappropriate for providing legal services to the poor' (The Public Sector Paralegal in Ontario: Community Legal Worker, Paper prepared for delivery at 1980 Annual Meeting of Law and Society Association, June 5-8 1980, p. 132).

5. *The Macquarie Dictionary* (1981, p. 1255) definition of paralegal is 'related to the legal profession in a supplementary capacity'.

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A View from the Legal Profession

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The discussion concerning the role and future of paralegal professional workers is an important one for the legal profession. The profound changes which have taken place within the legal profession over the last decade have resulted in a giant stride towards specialisation and economies in the delivery of legal services. These trends have seen areas of expertise and skill in much demand where previously there was little or no such demand at all. The almost complete computerisation of the significant law firms, Land Titles Offices, Corporate Affairs Commissions and other public instrumentalities has seen within the market place an acute shortage of those with significant legal skills able to service these changing requirements. So also has there been a need in libraries, researching and of course litigation support in all its variety.

The result, of course, is that in all of those areas where the shortage has been most acute, salaries and wages of those paralegal professionals, certainly in New South Wales, have been very high indeed and in many cases well in excess of salaries paid to lawyers undertaking ordinary legal work.

Also, because of the high rewards of private practice, the Public Service legal departments, the Public Solicitor, the Director of Public Prosecutions and various departments of government such as the Department of Lands have seen the beginning of a most significant trend, the hiring of paralegal staff to undertake much of the work previously undertaken only by lawyers admitted to practice. This policy of hiring of paralegals to undertake such work has resulted, in part, from a drive to reduce costs. Although it may be a matter for separate debate, there is, real doubt about the likelihood of such an objective being achieved or achievable in the medium or long term. This matter will be discussed later in this paper.

The concern by paralegal professionals to achieve recognition, accreditation, and reward is, in part, an explanation for the holding of this conference. For practising lawyers such a study offers a valuable opportunity to examine and understand the rapidly changing face of our own profession.

The Law Society of New South Wales represents a wide variety of legal practitioners from small and large country practices through to the giants of the city. Within the smaller practices the role of the paralegal is familiar and continuing. Whole sections of practice are often effectively managed by paralegal professionals. Conveyancing has long been the subject of claims that lawyer involvement is minimal and in other areas similar assertions continue to be made. Where such work is effectively discharged by paralegal professionals the rewards are high, sometimes very

high. In the larger firms because of the existence of specialised departments, a wide variety of support functions are uniquely available in the interstices of those vast organisations.

Likely Directions

The description of the variety of work presently being undertaken by paralegal professionals does not take far any critical assessment of the likely directions for paralegal professionals. Some of these will now be dealt with.

Firstly, the future role of paralegal professionals is most clearly on the agenda in discussions about the future of legal aid and the cost of justice. Although this is but one of the many areas of paralegal professional work it is significant because of the public attention given to it. However, the research and opinion has been noticeably disappointing and not very encouraging. The national Legal Aid Advisory Committee Discussion Paper is one example. The proposals in that paper are so vague as to be unhelpful. Other research looks at the provision of services to the poor and speculates upon the quality of those services if provided by paralegal professionals and often concludes without any specific or even helpful findings. In other words much of the limited literature on the subject is descriptive rather than prescriptive often with the warning that paralegals cannot be seen as a cheap alternative to employing lawyers but rather as an alternative method of service delivery.

Secondly, on the legal aid and cost of justice issue, there can be discerned attempts by authors in the area to apply, with the best intention in the world, the view that paralegal professionals will be an important way of continuing to hold up the flag in the provision of legal services to the poor. But the problem is of another kind and it is a problem which was referred to by Param Cumaraswamy, a past president of the Malaysian Bar Council and reported in the Law Institute Journal:

> There is, today, a growing concern over the deterioration of standards in the profession. It is lacking in commitment and is becoming too commercialised. This is a universal problem. If the situation is not arrested and improvements sought, the profession will become the target of further public criticism thus undermining public confidence in lawyers . . . (Cumaraswamy 1989).

A similar observation was widely reported at the beginning of the law term in New South Wales when the Catholic Auxiliary Bishop of Sydney referred to the dangers of the commercialisation of the profession.

We must not allow the discussion of paralegal professionals to cloud the problem which it is the job of the legal profession to accommodate and resolve.

Thirdly, on occasions the view is advanced that paralegal professionals are better able to deal with clients because they have a down-to-earth training (unlike lawyers) and are more sympathetic and less elitist. Fortunately this uninformed view is not now fashionable but its articulation does a lot of harm to sensible discussion with lawyers and is, of course, a view without any substance.

Fourthly, legal training and accreditation of paralegal professionals is much to be encouraged. But that is not quite how it should be put. Increased legal training and accreditation with specific well-focused courses is an inevitability as the demand for legal services increases and becomes more sophisticated. The demands upon lawyers are also being affected with the availability of much more significant work being undertaken by paralegal professionals. The world of legal education, not only for lawyers but for paralegal professionals will be a vastly different one by the end of this decade. The courses being devised at the University of Newcastle and especially at the

University of Wollongong demonstrate the extent of appreciation of these trends by our academics and educators. Some years ago I had the opportunity to teach a course at the Workers' Education Association, and I was astonished by the interest in a most general course by those in specialised areas. In Sydney, secretarial courses especially for legal secretaries, computer courses especially for law clerks and lawyers, and training in other areas for paralegal professionals is developing more quickly. Although it is true that the legal profession is proving somewhat slow to recognise the vital role of training and accreditation for paralegal professionals, this slowness will be well behind us in just a few years.

Fifthly, the question of accreditation does deserve attention separately from the consideration of education even though, of course, one is dependent upon the other. In certain areas paralegal professionals require a portable designation, not only for reasons of economic opportunity, but also for job and professional satisfaction. Paralegal professionals are not failed lawyers. Paralegal professionals are not generally people who are seeking to become lawyers. Paralegal professionals are not people seeking to usurp the standing or contribution to be made by lawyers. Paralegal professionals are people undertaking certain kinds of work vital to the economic well-being of the legal profession and vital to the effective delivery of legal services. The legal profession should therefore take every opportunity to support efforts being made by those on behalf of paralegal professionals who seek to obtain and develop a professional reputation, standing and respect.

Sixthly, there are many considerations applicable to professionalism of trained lawyers that are not considerations pertaining to paralegal professionals. One can refer to those paramount considerations which secure and preserve the independence of the legal profession; the responsibility to decide upon the qualifications of those who enter the profession, the self-regulating function of the profession and its responsibility for self-discipline. The independence of the legal profession is a fundamental part of the rule of law. But considerations applicable to paralegal professionals are of such a different kind that it is worth remembering, despite the intimate relationship between paralegal professionals and lawyers, the important differences between these professional groups.

Seventhly, in speaking of reduced costs when referring to the introduction of paralegal professionals, where previously lawyers were undertaking work, we may merely be recognising the fact that there is much 'work' which should not be undertaken by trained lawyers from the point of view of cost. It is muddled thinking to assert that paralegal professionals should be undertaking legal work which requires the skill, training, background and value judgments to be made only by lawyers admitted to practise. Such assertions do not aid the argument advanced in support of enhancing the professionalism of paralegal professionals and place the interests of the long-term good of paralegal professionals and the legal profession in an unnatural and misconceived collision course.

Finally, the role of paralegal professionals in attendance upon certain court hearings should continue to be significantly expanded. One of the great problems we have in New South Wales with a divided profession is the tendency of very able solicitors to give barristers much of the court advocacy and advice work. This is caused in part by pressure of practice where there is, given the chance, a preference to undertake a less demanding task such as attending a listing hearing, or call over, or attend upon a simple plea. An expanding role for paralegal professionals in the area of court attendances would provide the means by which a more commercial and efficient service could be provided to the consumer.

Conclusion

We are in an exciting area in the provision of legal services to the public. The changes we are experiencing, some dare to call revolutionary. Whether that description is, or is not, accurate the future of paralegal professionals in the provision of a wide variety of legal services is daily becoming more complex, challenging and rewarding. A conference of this kind where those who have given thought to the future directions of paralegal professional work, in all its variety, is much to be valued.

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Appearing in Court

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The term 'work practices' has recently become commonplace in the industrial arena. Wage and salary increases are being awarded in return for the elimination or modification of certain 'work practices'. The purpose of these 'trade-offs' is to increase efficiency so as to keep costs and hence prices lower and eventually to help make Australia more competitive in the world economy.

It is a feature of human nature to think that the need to review, and if necessary modify, work practices always applies to industries or areas of work other than our own.

Everyone must realise that there are no 'sacred cows' where work practices are concerned. In fact, if we practised genuine self-appraisal, as we should, many work practices would have been eliminated or modified years ago.

The legal system comprises a number of components including the judiciary, the legal profession, Crown Law Department, Attorney-General's Department, Police Department and others - each and every one of them has 'work practices'. Each and every one of them has an obligation to review and modify those work practices which inhibit an efficient system of justice.

The 'work practices' of the courts, the factors which impact on them and what should be done about them could just as easily be discussed; however, the topic at hand is the future of paralegal professionals (that is, persons who do not have the requisite academic qualifications but are nevertheless accepted or ought to be accepted, due to their status and extent of experience or expertise) and their ability to practise in certain limited areas of the law, for example the present law clerks and police prosecutors.

When I was more involved in community work it became most obvious that in several spheres, for example the teaching of ethnic languages, and in social work, many persons without diplomas or degrees were better at this work than those with them. They were better because they had the best teacher of all - experience of life. It is an indictment on our community that experience has had to take second place to theoretical achievement in the same way as overseas qualifications (often with experience) have received such shabby treatment for so many years. It was amazing that all those so-called insurmountable difficulties of evaluation and so on suddenly became surmountable for 'foreign' pilots in the recent airline pilots' dispute. Necessity of course produces marvels.

From my early years as a lawyer I became aware of secretaries, retired accountants, land brokers and book-keepers who were involved in the preparation of legal documents including summonses, leases, succession and estate duty statements, wills, bills of costs for taxation, and so on.

Of course, the solicitor was responsible for the standard of the work and the fees charged were full solicitors' fees. It is also true that the solicitor provided a supervisory role but of course as the paralegals became more experienced, the more the solicitor's supervisory role became superficial.

In other words, paralegal professions have been with us for a long time. However, the profession or legal system has not wanted this aspect to be publicised.

What of paralegal persons appearing before the courts? In the main these persons fall into three categories:

- litigants who represent themselves;
- police prosecutors; and
- law clerks (of one kind or another).

(The parameters of this paper preclude a discussion of paralegal persons sitting on the bench, for example, Justices of the Peace, or of certain fields of the law being hived off to be presided over by non-legal personnel.)

There are three categories of paralegal persons appearing before our courts:

- The overwhelming majority of litigants appearing in court for themselves seldom have any legal training. No-one would seriously deny anybody the right to appear for oneself however much (particularly in a contested matter) it is preferred that they did not. At least a litigant has personal knowledge of the facts about his own case.

  Generally speaking, legislation provides that a person who wishes to provide legal representation for another for a fee must first of all have a practising certificate. This is a necessary prerequisite - a form of 'consumer protection'. It is by no means perfect because there is a significant degree of incompetence mainly, but not only, due to inexperience in representation before the courts.

- Police officers have prosecuted matters both contested and uncontested in summary courts from their inception - in fact, the summary courts were not all that long ago referred to as 'police courts'.

  Over the years the suggestion has been made that police prosecutors be replaced by lawyers from the Crown Law Department. There are good arguments both for and against this suggestion. If the state could afford it, that is 'afford' in the sense of employing experienced and competent lawyers and being able to retain them, then the suggestion is acceptable. However, simply removing police prosecutors and replacing them with baby practitioners is not the answer. It is far better to have practitioners prosecuting. As imperfect as police prosecutors have been, they are more capable and more stable (in spite of their turnover rate) than inexperienced practitioners. All too often, once the inexperienced practitioners start to gain experience they leave for greener pastures unless they are also incompetent in which case you are stuck with them. There is no doubt that it would take many more legal practitioners than there are presently police prosecutors to do the same amount of work. That, and the problem of inexperience and competence, leads me to the conclusion that (with all the present shortcomings) we are far better off with police officer prosecutors than any likely cosmetic alternative.

- Law clerks (of one kind or another) These are persons with some legal experience or qualification but who fall short of sufficient qualification to obtain a practising certificate. Most of these persons appear on applications for adjournment, bail, and uninvolved guilty pleas.

We are all aware of the very high costs involved in obtaining legal representation. We are also aware that many court appearances do not involve complex issues of fact or law. Consequently, there is capacity for providing for paralegal professionals to be engaged in such matters.

Changes should not be made simply for the sake of change. On the other hand, changes should not be opposed for the sake of opposition to change. Controlled and reviewable change is a practical alternative to either no change at all or a wholesale inflexible change.

A prospective litigant in a criminal matter should receive thorough legal advice from a qualified and competent legal practitioner as to whether the plea should be guilty or not guilty. If 'not guilty' then either the litigant should represent him or herself or engage a qualified legal practitioner. However, in the event of a straightforward guilty plea (that is one not likely to involve sensitive or intricate legal submission) there is no reason at all why these should not be done by paralegal professional persons employed by legal firms, the Legal Services Commission, or the Aboriginal Legal Rights Movement.

The term 'paralegal persons' should be extended to include certain persons who are not employed by any of the above but who have been sufficiently trained and are employed by social welfare or religious, neighbourhood or community groups provided that they have, as part of their own resources, a solicitor to whom they are responsible and can refer should a new circumstance come to light which may result in a change of plea or a plea which requires some particular expertise.

It is irresponsible to argue that guilty pleas are a training ground for young lawyers and therefore should be retained for them and not be handed over to paralegal persons. Firstly, it is unjust to expect a defendant pleading guilty through a young solicitor to be used as a 'guinea pig' for somebody else to gain experience. Secondly, the fee is unjustifiable in simple pleas. Thirdly, one of the legal system's greatest flaws or Achilles' heels has been and still is, that very few have any idea of the art of cross-examination. In my view, nobody should be allowed to practise in court as a lawyer unless they have demonstrated the ability to:

- prepare a case thoroughly;
- present it properly through examination-in-chief; and
- cross-examine effectively.

These matters are mentioned not only because they are glaring flaws in the system but they are related to the necessity for certain prerequisites for paralegal persons.

They must have a proper understanding of legal ethics, a full appreciation of what matters are relevant on a plea of guilty, and the ability to present them efficiently. In other words they need to be trained but not at the expense of defendant 'guinea pigs'. Furthermore, as previously stated, every paralegal person must be responsible to a solicitor - that solicitor is responsible to the court for the paralegal person. This helps to maintain standards of ethics, quality and accountability.

Paralegal persons appearing for defendants should play a role or more significant role, as the case may be, in bail applications, applications for adjournment or rehearing, reduction in demerit points and straightforward declaration committals.

Summary courts should be given even wider powers to enable reviews and/or rehearings of guilty pleas where the justice of the case requires it. This would enable those guilty pleas which do go amiss to be rectified without formality and certainly without the necessity of an appeal to the Supreme Court.

Conclusion

Paralegal professionals have a place in the legal system within certain confines.

Paralegals in Law Firms

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The description 'paralegal' is a term of American origin. It has not been a term generally adopted by the Institute of Legal Executives but it does appear to be a term adopted to embrace legal personnel not admitted to practise as a barrister or solicitor.

There has always been a role for the legal assistant by whatever name he or she goes under. However, that role is becoming more evident in these times by the expansion of law, new fields of law, increasing legislation and the availability of the law to a much wider public. In consequence, of course, the good legal assistant is sought after and the need for greater training is obvious. The Institute of Legal Executives in Victoria would like to see similar Institutes established in many other places, and certainly in every state of Australia, with good liaison and communication and mutual respect between such Institutes and the respective bodies representing the admitted branches of the profession.

Background

Although many of those participating in this Conference will already have a good knowledge of the background so far as it relates to paralegals, it is appropriate to cover briefly the historical background.

The description 'legal executive' from the point of view of the Institute and other Institutes of a similar name, is an alternative term to that formerly called 'managing law clerk'. In the past, the managing law clerk employed in a legal office was a person able, albeit by having acquired skill and knowledge by practical experience rather than by formal study, to perform the work of a solicitor, and did so. Stroud's *Judicial Dictionary* thus describes a managing clerk as 'A person able to conduct the practice of his principal in his absence'.

A managing clerk, to be considered qualified as such and to be admitted to membership of the Managing Clerks' Association in the United Kingdom, had to have a minimum of 10 years' experience in the control and handling of legal actions or matters and to be of a minimum age of 35 years. Employer solicitors invariably encouraged and desired their managing clerks to belong to the Managing Clerks Association. The United Kingdom Managing Clerks' Association ran a series of formal courses leading to examinations to enhance the career of a law clerk. In London lectures were held in the Lord Chief Justice's Court with his approval and blessing.

A similar situation also existed in Victoria. We are unable to say whether any similar situation existed in other parts of Australia but it is to be presumed something similar did exist, for managing clerks were certainly recognised in other states.

In 1977 the Institute made a submission to an inquiry into the legal profession being conducted at that time in New South Wales. This submission traversed the position of paralegals with a view to enhancing recognition. Also in 1976 the author presented a background paper to the National Conference on Legal Education held by the Law Council of Australia. During the conference there were various papers on the subject of paralegals and their role in the profession.

It was clearly always of great benefit to the practising solicitor to engage competent managing clerks since they were able to conduct files on behalf of the solicitor whilst he or she was obligated merely to pay a salary, without having to enter into profit-sharing arrangements or being badgered for a partnership. Most law clerks at any level were underpaid. Those remunerated equitably were in the minority, notwithstanding, for example, that in Victoria many of the cost scales include items which refer to the attendance of 'solicitor or managing clerk' the particular fee being the same. Also, in Victoria the Rules of the Council of Legal Education (the Rules governing the admission of persons to practise as a barrister and solicitor) have a specific division - division 4 - for entry to the law course as a managing clerk. For the purpose of those rules a certificate must be obtained from the Law Institute of Victoria stating that the applicant is a managing clerk. Before granting such a certificate the applicant must satisfy the Council of the Law Institute that he or she has:

> (a) completed in the office of any barrister and solicitor practising in Victoria a period of clerkship of not less than seven years; and
>
> (b) during the last five years of that clerkship had, as a clerk to and under the immediate direction and supervision of a barrister and solicitors so practising:
>
> > (i) undertaken full responsibility in the handling and control of conveyancing or common law matters (or partly one and partly the other);
> >
> > (ii) devoted substantially all his/her time and attention to such handling and control; and
> >
> > (iii) had general experience during the said period of five years in handling transactions in other kinds of matters usually handled by solicitors and has attained a degree of professional competence and skill that a candidate taking the course for articled clerks would be expected to attain on the completion of the period of clerkship for such candidate.

The irony of those provisions has been very evident to members of the Institute for a number of years. The Institute of Legal Executives in various places throughout the world, and indeed the former Managing Clerks Associations, have demonstrated by their actions their belief in the value of formal education. It is true that those rules only require a period of five years' experience but the standards set by managing clerks themselves is far higher and for a much longer period of service.

The hard work involved for the unadmitted clerk to learn and become competent in the 12 areas of law described in those rules is considerable. Such knowledge is gained by private study into the small hours after undertaking heady responsibilities during the working day. No provision is made for such a clerk to obtain any credits in

the law course, even by setting a suitable test for such a purpose. The degree of responsibility and control referred to in the rules is unlikely to be achieved by the managing clerk, particularly as the managing clerk will most certainly in fact have completed many earlier years of 'apprenticeship' to comply with those rules and to obtain the appropriate support from his employer.

As some evidence of recognition of the value of managing clerks is the English case of *Vimbos v. Meadowcroft* (*Law Journal* (1901) p. 550), where it was held that managing clerks, though not solicitors, can represent their principals before a judge in Chambers and also upon an examination of witnesses before an examiner. In practice, by obvious extension, managing clerks regularly appeared before Masters and Registrars.

During the post World War Two period in England there was a demand for managing clerks, the training of which had declined during the war years. Whereas pre-war managing clerks were almost exclusively male, in fact the war years saw females emerging in that role. After a few years, in view of the improving opportunities for persons from less affluent backgrounds to qualify as solicitors, the question arose as to whether managing clerks were still needed in the profession. Extensive discussions and negotiations took place between the English Law Society and the Managing Clerks' Association and surveys were conducted as to such need. It was positively established that there remained a substantial and valuable role for managing clerks within the profession. At that time, it was decided to substitute the title 'legal executive' for the former title of managing clerk and the Institute of Legal Executives was incorporated in the United Kingdom in 1963. All existing members of the previous Managing Clerks' Association became Fellows. A course of education more advanced than previously was established, and a formal liaison was set up between the Law Society and the Institute of Legal Executives.

The standard of education leading to Fellowship of the United Kingdom Institute is now extremely high and qualifies for certain credits in the Law Society's examinations for admission as a solicitor. The United Kingdom Institute currently has some 19,500 members. The occupation of legal executive itself is now recognised, as is readily demonstrated by the job advertisements.

Institute of Legal Executives in Victoria

With that background, and for very similar reasons, the Institute of Legal Executives was incorporated in Victoria in 1966. A Liaison Committee was set up between the Institutes and the Law Institute of Victoria, although the effectiveness of that Committee has varied over the years proportionately to the interest of the members appointed by the Law Institute to represent it. It took much longer than the United Kingdom Institute for the Victorian Institute to establish an effective course of education, since, in the initial years, it received no support whatsoever from any body or person until it was able to gain the interest of the then Department of Education which ran a series of subjects under a general stream called 'Business Studies'. In fact, law was an innovation for that stream, since it was the first professional course introduced. Pilot syllabi were established and a joint committee formed. That course has continued to develop, though the bodies responsible have varied.

The support and backing of the Royal Melbourne Institute of Technology (RMIT) has been tremendous throughout. At first a Certificate course was established. That rapidly became far more than a Certificate course in fact, notwithstanding the name it had to bear within the system. A new course has now been developed for which RMIT obtained accreditation from the TAFE Accreditation Board. It is called the Associate Diploma of Business in Legal Practice, and is at tertiary level. Again, the course is forced to bear a title which belies the value of its content, teaching and

examination standard. Other schools and colleges may apply for accreditation to teach that course, if they so desire, which no doubt will be influenced by student demand.

To obtain the Associate Diploma of Business in Legal Practice a student must pass all of 10 compulsory units and 12 of the chosen elective units, and at least 8 legal and 2 non-legal electives. The subjects are listed in Appendix 1.

The Institute of Legal Executives also has a continuing education program. In 1989 for example, the Institute ran a short course for a few weeks in criminal law for which students received a Certificate of Completion, subject to submitting satisfactory assignments. This was a fairly in-depth introduction. In 1990 the Institute will run further courses, one of which will be Workcare or Workers' Compensation.

It is important to make the point that the aim of the Institute of Legal Executives is to produce and encourage proficient legal executives and, in the process, good competent law clerks at a less senior level. The Institute does not aim to produce pseudo solicitors. Neither does it aim especially to provide a separate career path to become a solicitor. There is a role for well trained law clerks at various levels within the profession. We wish to see such people properly recognised and valued as a distinct branch of the profession. In all equality, we consider that the standard and training of legal executives is such that anyone who wishes to go on to qualify as a solicitor should have that standard and training properly recognised towards such qualifications.

Legal Executives outside Victoria

So far we have referred principally to the Institutes of Legal Executives in Victoria and in the United Kingdom. However, it is of interest to note that the following organisations have existed in Australia at various times: The Institute of Legal Executives (WA) was very active with a good course of education in place. That institution produced a Journal called 'ILEX'. However, that Institute has become less active lately, due to its difficulty in finding enthusiastic Executives prepared to give the time and effort which is so difficult on an honorary basis. There is still an Institute of Legal Executives in New Zealand which, to the best of our knowledge, was, or is, operated by the Law Society there. They also have an educational program. In, or about, 1975 an Institute of Legal Executives was incorporated in South Australia. However, its membership was extremely small, and, based on contacts which we had at that time, it did not have much support from the admitted branch of the profession. Also about the same time a steering committee was established in Queensland where a similar institute was being formed. We do not know to what extent it got off the ground but we have heard nothing of the organisation for some years. There is an institute of Law Clerks of Ontario in Canada from whom we used to receive a regular copy of their magazine, though we have not now heard from them for some time. In the United States of America some years ago there was a national association of legal secretaries with whom we had cordial relations and corresponded fairly regularly. Discussions were taking place with a view to the possibility of an affiliation between our respective bodies. However, we were hesitant until we could properly identify our respective roles. For our part, legal executives, as described above, were quite distinct from legal secretaries. However, increasingly the senior legal secretary in Victoria has tended to become the legal assistant or law clerk and these days many legal executives were originally legal secretaries. We never did affiliate, basically because for some reason our mutual correspondence waned and we did not hear further from them.

The role of legal assistant in the United States of America has become more developed and they also have a formal course of training.

Legal Executives in Victoria

Membership of the Institute of Legal Executives (Victoria) is divided into a number of categories: Fellow (legal executive), Associate and Student. The Institute aims to encourage all unadmitted staff in legal offices or law departments of government or private organisations to join the Institute in one of these categories as may be appropriate and to advance to Fellowship. There is also a category of Accountancy Fellow for those specialising in solicitors' accountancy and trust accounts, though not in the practice of law. Aspirants to membership must be in qualifying employment, which means being employed within the legal office or departments previously mentioned. Experience remains a very vital and relevant ingredient to membership of the Institute so that whilst to become a Fellow a person must have completed and obtained the Associate Diploma of Business in Legal Practice, a minimum age and length of experience as a managing clerk is still required.

Most legal executives in Victoria specialise in a particular branch or area of the law such as conveyancing, common law and so on, but the Institute's training program is designed to ensure that all students receive basic knowledge and training in all the principle aspects, so that everyone does understand, for example, the meaning of and what constitutes a contract, or a tort and understands the make up of the courts, the types of actions and such like. Thus the legal executive generally turns towards a particular specialisation later.

In Victoria there are a number of legal executives - about 150 or so - employed as such, and running their own files, actions, matters and departments depending upon their degree of seniority and the firms or organisations they are employed with.

At the same time, those enrolled as Associates are pursuing their studies on a part-time basis and, similarly, there are students who hope to go through the necessary stages to become legal executives. Many of those studying the course do so by correspondence through the (RMIT) External Studies Division. That is particularly important for those in country areas outside Melbourne who may not be able to obtain all the subjects at a local college. Some local colleges do present certain subjects but, at this stage, the whole course is only taught internally at RMIT in Melbourne. RMIT has been running first year full-time day courses suitable for school leavers wishing to take their first school leaving year that way. By these means, those students who are able to, pass some of the subjects before continuing part-time, whilst in employment.

The Victorian Institute is concerned that students or intending students obtain employment as juniors as soon as possible. It is a fact of life that it is not always easy for a school leaver to obtain a first job in a law office and we would not wish to encourage them to waste too many of those early years before seeking their first job because, as they become older with no experience, it will become more difficult for them.

A law office is a business and the employer basically wants value for money, that is productivity. The Institute places considerable value on experience which is traditionally what it has always been about and the syllabus of the course in its design is best learnt and understood in the light of hands-on day-to-day practices. One thing that will help, as the college is able to accommodate it and the employers can be persuaded to co-operate, is to have day-release classes. Speaking from personal experience the undertaking of evening classes several nights a week at the end of a busy working day is onerous indeed.

Conveyancing

The subject of conveyancing has come to be a special and separate one in the operation of the profession. In many places in the practice of law, and certainly both in Victoria

as in the United Kingdom, conveyancing was regarded as legal work on which the profession had a monopoly. Indeed a very substantial part of the income of a solicitor's practice was from conveyancing. For several years now moves have been afoot to break that monopoly. In 1978 the Dawson Inquiry (Victoria 1980) into the legal profession took place and the Victorian Institute of Legal Executives made a submission to that Inquiry basically supporting the role of the solicitor in retaining the monopoly (particularly as our members were all employed by solicitors) but submitting that, if in its wisdom, the Committee undertaking the Inquiry considered that there would be separate conveyancers outside that profession, then legal executives were the most qualified to be permitted and its Institute suitable as a registrant board. The conveyancing arguments relevant to the Institute's submission are outside the scope of this paper on paralegals, so only that part of the submission which was relevant to the Committee's deliberations on whether or not conveyancing outside the legal profession should be permitted is included:

> It is clear that there are a number of people and organisations within Victoria (apart from the legal professional) at the present time engaging in some form of conveyancing services. The Institute of Legal Executives is not, as might be supposed, endeavouring to break the existing monopoly held by the legal profession, its members being in fact a part of the legal profession itself. However, the Institute of Legal Executives submits that if some conveyancing services outside the legal profession comes about, then a controlled form of right to conveyancing along the following lines would provide a safeguard to maintain conveyancing within the profession as a bulwark against the undesirable practices which are tending to develop.
>
> If the committee decides that persons other than solicitors should be registered as conveyancers, it is submitted that Fellowship members of the Institute of Legal Executives (Victoria) are the appropriate people to register. If registered, the members should be:
>
> (a) Approved or licensed by the Institute of Legal Executives (Victoria) with annual licences.
>
> (b) Registered with the Law Institute of Victoria with registration renewed annually.
>
> (c) Required to meet the same requirements regarding trust accounts, professional indemnity and professional conduct as are members of the Law Institute.
>
> (d) Allowed to enter into partnership with only one Fellowship member of the Institute of Legal Executives (Victoria), to employ as operative or interviewing staff only associate or student members of the Institute of Legal Executives (Victoria) and not employ more than two associate or student members to each Fellowship member. This should help to keep overhead costs to a minimum, and so hold professional costs to an acceptably reasonable level. It has been the experience of some conveyancing managing clerks that overhead costs in a small practice are proportionately lower than in a large practice when highly paid senior staff are required for administration purposes.
>
> (e) If the committee decides that Fellows in the Institute of Legal Executives are the appropriate people to register as conveyancers, then the Institute of Legal Executives should have some representatives on the Law Institute Sub-committee which would control conveyancing.

(f) The same scale of costs should apply to solicitors and registered conveyancers.

(g) A registered conveyancer should have no association as partner or otherwise with any Estate Agent, Mortgage Company, etc.

(h) A registered conveyancer employed by a solicitor should be allowed to enter into profit-sharing arrangements.

(i) A registered conveyancer should have his scope restricted to conveyancing, that is land transfers and conveyances, mortgages, leases, partitions and like transactions (for example sale of business).

(j) Consideration be given to restricting solicitors and registered conveyancers to acting for only one party in a transaction.

It is hoped that the above proposals will be of assistance to the committee.

Over the last few years it has been legislated in England that conveyancers can be established outside the legal profession. Solicitors and legal executives are persons authorised to act as conveyancers but otherwise there is a course of training which a person wishing to be registered as a conveyancer must undertake. In Victoria the Dawson Committee (Victoria 1980) referred to above decided in 1978, having considered all the submissions, to continue the practice that only solicitors be permitted to undertake conveyancing work. It was our view, which has been proven by events that that decision was short-sighted. Various people started to undertake conveyancing work and the Law Institute took various actions by way of injunctions and proceedings under the *Legal Profession Practice Act 1958* (Vic) to stop this and some of these actions were temporarily successful. However, in the long term the fact now is that there are conveyancing companies all over Victoria.

Theoretically all conveyancing companies must, by law, have a solicitor in some way associated with them to undertake the actual legal work (for example drawing up documents) which is involved. No doubt these companies do pay lip service to this requirement. Indeed, it is a fact that when the practice came into being a number of solicitors themselves registered as many names as they could think of and some of them started conveyancing companies on the side, using law clerks to do the work. However, many other conveyancing companies do exist and indeed a number of legal executives have started in this business. These are all people highly skilled in this work and they can hardly be blamed for setting up in practice for themselves.

The Institute of Legal Executives has a firm practice that it will recognise only those conveyancing companies of which the proprietor(s) are legal executives. In our view, the Law Institute should adopt the same attitude but instead it apparently objects to all such companies or at least many of its members do.

It is our view also that had our suggestion (the broader view) been adopted in the first place, conveyancing would remain within the legal profession, by accepting legal executives as part of the profession. Those legal executives wanting to go into practice on their own would, in many cases, have to do so in conjunction with solicitors. As it is now, various entrepreneurs quite outside the profession buy or start up conveyancing companies, no doubt using employees to do the work who may not be legal executives, but may be fairly junior law clerks who have just learned enough to get through.

Future Developments

Much of what has been said so far is indicative of the legal executive or managing law clerk acting for most purposes in substitution for a solicitor. In the process of training and using paralegal personnel or legal assistants, it is inevitable that, as such persons become more experienced and mature, they will, by natural progression, become capable of more advanced work and greater responsibility. It is clear, however, that the demand within the profession for more legal assistants with training capacity to undertake advanced tasks in law and procedure which are more than just routine is increasing. Legal secretaries, for example, once they become experienced, frequently become the most competent legal assistants. In the conveyancing field many such secretaries handle the files very competently, conducting the necessary searches, drafting letters and documents, co-ordinating with other parties' legal advisers and generally preparing material for their principal to approve and sign. Such legal secretaries usually carry out all the necessary work leading to settlement and invariably attend and conduct the settlement and prepare the final statement of account.

In court matters, experienced legal secretaries frequently handle simple files such as debt collecting, taking them to a point where, if they became defended, they can then refer to their principal, often prepare a number of the relevant documents in draft, attend calling over of cases in the list for fixture and generally act as very capable assistants able to take responsibility and know when referral to their principal is required. Examples similar to this exist in most areas of legal practice. The work of the lawyer meantime is becoming increasingly complex and demanding with new fields of law opening up and the need to keep abreast of change and new legislation. Indeed so much so that the need to specialise is increasing rapidly. Thus a specialist lawyer with a suitably skilled assistant makes an excellent team.

It must be stressed that the system needs to recognise that in many cases the skilled legal assistant will, at the same time, be studying and training to improve his or her skills and knowledge. Some are content to remain an assistant and have no desire or ambition to advance beyond that, but it is inevitable that many, with increasing competence and knowledge will not be satisfied to remain in the strictly assistant role. Thus such persons aspire to become legal executives (save for those very few who feel able to study part-time for the longer period and manage to gain entry to university to study for full admission).

The Institutes of Legal Executives are designed to provide a career path making the job of legal executive a career within itself and also providing legal assistants for the profession from those aspiring to become legal executives, or even those content to remain assistants who can then remain in the Institute as Associate members. Thus the unadmitted legal operators and assistants are a recognisable branch of the profession, a recognition which has not really existed in the past.

Some may deny this, but the fact is that for the most part the profession has consisted of those admitted as barristers and solicitors, other personnel simply being useful when needed but generally unacknowledged and disregarded.

However, recently an indication of the increasing recognition of paralegals and the role they play in the profession was contained in an article by Carol Bartlett, Director of the Law Institute of Victoria Research and Information Department (1989). In the article Bartlett makes a case for accreditation of paralegals and points out that, whereas a monopoly previously existed within the profession:

> The egalitarian society of today demands, as a right, access to justice and professional assistance at every level of public and private life. Governments here and around the world are now asking the question - is it still necessary for the protection of public interest, to restrict the practice of law to the same extent that was found necessary in the past? (Bartlett 1989)

Those observations bring to mind the competence and knowledge of law which have occasionally been displayed by a litigant conducting his or her own case in person. It is worth quoting another section from Bartlett's article:

> It would seem therefore that paralegals are capable of providing quasi-legal services - cheaply and efficiently - within a cross section of the legal profession, ranging from the megafirms to legal aid centres. Taking into account federal and state government sympathy for the use of paralegals in certain circumstances, it is clear that their numbers will not diminish and future planning should take account of these developments. Decisions must be made by the legal profession which recognise realities and build upon the possibilities (Bartlett 1989).

In almost every other area of professional activity, particularly health services, efforts are being made to address issues of accreditation for professional assistance. The circumstances which have brought about these trends relate to the degree of specialisation required in a highly technical society and the need for efficient matching of training and skills.

A significant way in which the monopoly has been applied is in relation to the provisions generally in the legal profession practice legislation and the interpretation given to such provisions, prohibiting anyone from charging fees other than a person admitted to practice as a barrister or solicitor. Now one hastens to say that no-one would expect that a person should be authorised to perform a service for fee either in a professional area or, for that matter, a skilled trade, unless properly qualified to do so. However the legal profession generally has refused to permit the use of legal assistants or paralegals other than on a salary basis. It seems that there could be no harm to the concept intended by such provisions if, for example, a solicitor were to engage a legal executive on a consultancy basis, allowing that person to work in a self-employed capacity, provided that such person performed any such services under the direction and instruction of a solicitor. Indeed, one might envisage a person working in such a self-employed capacity for more than one solicitor, provided that proper ethical standards were observed, such as not accepting any work from another solicitor involved in the same matter. Many people like the idea of working for themselves, selecting their own work times and perhaps working from home. Oddly enough, the profession seems always to have been quite content to engage non-admitted persons as cost consultants on a fee for service basis and that practice has occurred for many years. Most solicitors have little knowledge of the cost scales and are not interested in that task.

The frustrations which many managing clerks or legal executives have is that are not permitted to work on a self-employed basis. Quite often, incidentally, a large part of the practice operated by such people is from personal clients and contacts brought to the firm and there is a spin-off from that which goes to other departments in the practice.

An area which is vital to the recognition and development of the paralegal as a recognisable professional is the establishment and recognition of its representative body. The position regarding Institutes in Australia and elsewhere representing paralegal personnel has already been outlined above. Such bodies need to be more recognised and accepted. For my Institute to have the opportunity to have a representative attend and make an address at a conference such as this, is a most significant and vital recognition of the Institute and similar law institutes and societies.

However, it is still a fact that when it comes to substantive areas of law reform or the structures of the profession itself, Institutes of Legal Executives are generally ignored or overlooked. Currently in the United Kingdom the Institute is concerned with the Courts and Legal Services Bill which is being debated, that there has been no

mention of the Institute of Legal Executives at all, notwithstanding that it represents a significant proportion of the skilled workforce within the profession. Why is that so? Surely in all equity they have a right to present views and to be heard in a matter which is likely to affect them considerably.

The record of the profession in relation to its skilled employees, albeit not admitted to practice in their own right, is really appalling for a body which itself is designed to uphold equity and justice. It may well be that the input which can be made and the views of those whose training has been different and also includes much practical experience, might be most novel and enlightening against those with a more academic than practical background.

Conclusion

As this conference is under the auspices of the Australian Institute of Criminology, it seems appropriate to examine in conclusion the role of the legal assistant in that area of practice. In the author's earlier days in the profession, there was a role for the legal assistant in the area of criminal law. I worked as a junior law clerk for a law firm in London which had two managing clerks managing between them all the normal civil practice of law, litigation, conveyancing and probate whilst the only solicitor was the criminal lawyer who did nothing but that. I was frequently required to appear on behalf of my principal to instruct counsel in court whilst he was away. Taking statements from witnesses was a task frequently assigned to me which sometimes meant attending a witness (client) in prison for that purpose. Anyone here will know that there is a skill required to take a statement for any legal purpose. Obviously as a junior I had much to learn and in my early years have no doubt that after I had taken the broad story, counsel for example, would have gone into the case with far greater detail. My point, however, is that as such a clerk becomes more skilled, he or she becomes more useful and can contribute much to advance the preparation of a case. There are some legal executives in Victoria operating in the criminal jurisdiction in private practice. I have personally had to conduct many such matters, including those involving more serious crimes such as murder or arson. I know others are similarly involved in this field.

Also, there are the procedural points which need to be addressed, ensuring that all necessary forms and documents are attended to, filed and served, issuing and serving subpoenas and ensuring the attendance of vital witnesses to the court.

Overall the indications are that there is a vital need and a great future for the paralegal in private practice in Victoria.

References

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Appendix 1

Course Structure:

Compulsory:
- Business Law 1
- Business Law 2
- Legal Method
- Law of Contract
- Law of Tort
- Property Law
- Land Contracts 1
- Communication Skills 1
- Communication Skills 2
- Business Economics

Elective Group A:
(At least eight subjects from the following):

- Economics 2
- Legal Persons 1
- Legal Persons 2
- Trade Practices
- Consumer Law
- Land Contracts 2
- Land Contracts 3
- Deceased Estates
- Evidence
- Litigation
- Family Law
- Administrative Law

Elective Group B:
(At least two subjects from the following):

- Administrative Procedures 1
- Introduction to Business
- Service Organisations
- Middle Management Practices 1
- Middle Management Practices 2
- Introduction to Accounting
- Trust Accounting for Legal Executives
- Introduction to Business Computer Concepts
- Business Computer Applications
- Typing Production 1
- Typing Production 2

Law Clerks and the Government Sector

Kym Kelly
Chief Executive Officer
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Law clerks have played a significant role in the South Australian Attorney-General's Department for a long period of time, predominantly in the criminal prosecutions area, where clerks have provided vital services in areas of the listing of criminal cases, liaising with courts and solicitors, and in assisting generally with trial preparation (for example contacts with police and witnesses). As the workload of the criminal courts has risen, the number of clerks has increased and so too has the complexity of the specialised tasks of the clerks.

Additionally, in the last 10 years, there has been a substantial growth in the numbers of law clerks working alongside, or supervised by, lawyers in areas of civil litigation, workers, compensation, criminal injuries compensation, and summary jurisdiction matters.

For a considerable time, the Department has also had a Conveyancing Section, comprising qualified landbrokers, who handle a very substantial proportion of the Government's property transaction matters.

Officers in this section hold specialised classifications as conveyancing officers, and have never been regarded as law clerks: the traditions, origins and work of landbrokers in South Australia is perhaps unique and distinct from experience in other states. One can make mention of the fact that if conveyancing officers were for the purposes of the argument to be regarded as paralegal professionals, then our experience with the Conveyancing Section has been most successful.

The Impetus for More Law Clerks

The Attorney-General's Department is actively seeking to identify further areas of operation where law clerks could be used, and in doing so, is receiving encouragement from Treasury and other central agencies. The single most important factor behind this drive is not the question of job enrichment for clerks or relieving lawyers of onerous work (though these issues are important) but the cost to the Government of employing lawyers. We have been informed that in the Attorney-General's Department the net average wage per person is about $44,000 - without taking into account on-costs. Accordingly, any steps that can be taken through the employment of law clerks to reduce the cost to Government in the provision of legal services are of the highest priority.

Present Departmental Structure for Law Clerks

Criminal Prosecutions Section

The Criminal Prosecutions Section, in the name of the Attorney-General, conducts all criminal matters for trial or sentence in the Supreme Court and District Criminal Court in Adelaide and for the circuit sittings at Port Augusta and Mount Gambier. The section is also responsible for the conduct of criminal appeals in the Court of Criminal Appeal and the High Court of Australia. In addition, it undertakes the conduct of some proceedings at the committal stage, usually all charges of murder, as well as the more important Magistrates' Court or Children's Court matters.

There are six law clerks in this section to cover the Supreme, District and circuit courts. Their duties cover the receipt of all files committed for trial and sentence, the compiling of Crown and court files, the filing of informations, the listing procedures and the subsequent disposition of those files. They perform important functions in estreatment proceedings, preparing informations, summonses and affidavits in their own name. They have no right of appearance in any of the superior courts in which the section prosecutes and their court attendances are limited to callovers and listing conferences. It is difficult to imagine paralegals performing any greater function in those courts.

Administrative and Summary Section

The section's primary function is that of prosecution and law enforcement. Section officers handle most non-police government prosecutions in the courts of summary jurisdiction, and the section provides counsel to appear in the Supreme Court, on almost every appeal from the lower courts. Section officers appear before many different boards and tribunals on administrative law matters, and advise government departments in this complex field.

Duties of Administrative and Summary Clerks The Senior Clerk is responsible for Justices Appeals. Appeals have been running at a steady rate of approximately 300 per year. Of these appeals the Crown is the respondent in about 80 per cent, while about 20 per cent are instituted by the Crown. Where the appeal is a Crown appeal the clerk drafts the Notice, containing grounds which have been drafted by a solicitor. The clerk then files the Notice and arranges for its service. The clerk also drafts, and arranges the swearing of, and filing of, all necessary affidavits. These will include affidavits of service and affidavits containing the police prosecutors submissions in the Magistrates Court. Special affidavits supporting applications to be made at the hearing (for example leave to proceed out of time) are prepared by solicitors, but the clerk will also arrange filing and service of those affidavits. After the hearing has been completed the appeal file is returned to the clerk who drafts and files the orders and arranges for payment or recovery of any orders for costs which may have been made. The clerk is also responsible for keeping detailed statistics of numbers and results and Justices Appeals throughout the year.

The clerks are generally responsible for the summary prosecution work. Approximately 350 summary prosecution dockets came to the clerks in the last financial year. The law clerks, with the advice from solicitors as necessary, identify the charges to be laid and check to ensure that there is evidence to prove each element of those charges. Where necessary the clerks will request further information from, or investigation by, the client department. The clerks then draft the complaint, which is

settled by a solicitor, and arrange for filing and service. If the defendant pleads guilty the clerk then handles the matter from beginning to end. If the defendant pleads not guilty the matter is given to a solicitor to conduct the trial.

Another clerk conducts debt recovery matters for client departments. The clerk takes all necessary instructions, prepares the summons and necessary pleadings, and arranges its issue and service out of the local court. If the matter is defended the docket is returned to the client department in the case of small claims, in which the plaintiff must conduct his case personally, or to the Civil Section in the case of larger claims. If the matter is not defended the clerk will sign judgment in default of appearance. The clerk undertakes all actions necessary to recover moneys owing after judgment. The clerk will file the necessary praecipes, arrange the issue of warrants and attend the court on unsatisfied judgment summons hearings. Approximately 300 such debt collection matters were completed in the last financial year.

Civil Section

The Civil Section advises and represents the state of South Australia on a wide range of civil, litigation - including personal injury matters, workers' compensation, coroner's inquests, Royal Commissions and criminal injuries compensation.

Duties of Civil Section Clerks Until recently only one CO-2 clerk was attached to this section. That clerk's duties were to assist solicitors in such pretrial matters as arranging discovery and answering interrogatories. The clerk also made up briefs for trial and helped to co-ordinate the chamber list. The Department has very recently decided to place three clerks with the section under the general supervision of a CO-3 clerk. In addition to the duties mentioned above these clerks have taken on the substantial task of doing all work involved in the Criminal Injuries Compensation cases except for the trial itself, which is handled by a solicitor. In brief this work involves taking instructions from police and civilians involved in the incident giving rise to the claim, making an initial assessment of the merits of the matter and filing a Notice of Intention to defend where appropriate. While at the moment the callover work is still done by solicitors it is hoped that clerks will soon be able to perform these duties also. This work is quite clearly work which was previously performed by solicitors. There has not yet been time fully to evaluate this new paralegal service, but initial indications are very encouraging.

Part-time Employment of Law Students

There are two part-time CO-1 clerks working in the Administrative and Summary Section who are law students at various stages in their degree course. The part-time employment of students has proved to be a very worthwhile initiative. The three clerks, employed in this manner over the past two years, have all produced work of a high standard. Their legal training has enabled them to become proficient in the work very quickly and they have generally shown a greater initial confidence in performing their courtroom duties. Their legal training has also meant that they have been able to carry out legal research for solicitors and draft simple opinions. The practice of employing law students over a period of a year or more also enables the office to build up a good relationship with them, with a view to possible future recruitment.

No great problems in relation to court attendance have arisen form their part-time status. Usually they have been able to have their matters listed to suit their times, and when this has not been possible the hearing has been covered by another clerk.

Proposed Expansion of Paralegal Services

Civil Section and Administrative and Summary Section

The following extension of clerks duties are proposed for 1990:

Conducting trials in courts of summary jurisdiction There is considerable enthusiasm amongst the law clerks for the idea that they begin conducting simple trials. It is anticipated that the clerks would conduct trials in relation to offences which attract only a lower penalty (for example taxi-cab prosecutions) and where the defendant was unrepresented. This interest has been generated by the part-time law students who for some time have been asking for permission to conduct trials. The law clerks appear in the Magistrates Court by leave, and this has been arranged by the Chief Magistrate. At present the arrangement is limited to the conduct of guilty pleas.

Consideration will be given to extending the law clerks duties in the civil area generally All areas of the Civil Section's work involve considerable pretrial procedure. New court rules have meant that this area of work is more and more court driven and the need to comply with time limits at various stages of the procedure is vital. There is obviously potential for clerks to involve themselves in such matters as obtaining medical reports, coordination of chamber appointments and preparation of standard pretrial documents.

Research Law clerks have demonstrated that they are able to research the law in areas in which they are familiar. This is particularly true in respect of cases involving statutory interpretation of the special acts that they deal with. During 1990 law clerks will be given research tasks from time to time. Whilst the part-time law students will receive the bulk of these assignments, it is also intended that the permanent clerical officers undertake this work.

Computerisation

Both the Administrative and Summary Section and the Civil Section will be moving towards increased computerisation in 1990. Much of the initial work is time consuming and laborious in nature. It has proven difficult to interest busy solicitors in helping to set up the necessary regimes. It is believed that law clerks have a useful role to play in this area. This will include such matters as:

- precedents for complaints;
- standard forms for civil proceedings;
- grounds of appeal;
- lists of authorities for topics which are commonly the subject of appeal; and
- an increase in wordprocessing for standard letters, authorities and forms.

Some work in this area has already commenced through the operation of the summer clerks (*see* below).

Criminal Prosecutions Section

It is difficult to envisage whether unqualified or unadmitted paralegals will be able to play any role by way of appearances in the superior courts in relation to criminal trials.

However, the scope for paralegals in the criminal area clearly lies in the Magistrates Court, both in summary prosecutions and committals. As far as appearing

as counsel is concerned, that is the function largely performed by police prosecutors from the Police Department's Prosecution Services Branch. If the police prosecuting function were to come under the control of the Crown Prosecutor, then paralegals will become an integral part of the section. There is no reason why the entire prosecuting function in the lower courts could not be performed by paralegals. In a sense, this is the present situation with police prosecutors, with what some may see as the undesirable connection between prosecutor and investigator. It is understood that Hong Kong operates such a system of paralegals.

Reclassification

One of the primary difficulties the office faces in relation to paralegal services is to arrive at an appropriate regime of classification of officers. There are clearly difficulties in this area. Traditionally law clerks have had comparatively low classifications, the belief being that a junior solicitor would ultimately be more valuable to the office than an experienced law clerk. Time has shown that this is not necessarily true. Although the office is going through a period of stability in respect of professional officers, past history has demonstrated that government law offices can expect to have a fairly high turnover of solicitor staff. When this occurs, it is important to have a base of officers still unfamiliar with the service. Law clerks are one way of meeting this demand. This, however, can only be achieved if law clerks themselves can be retained. An informal examination of law clerks classification across State and Commonwealth Departments demonstrates that law clerks in the Crown Solicitor's Office are under-classified. This situation needs to be rectified for a number of reasons:

- to retain paralegal staff;
- to provide an appropriate career path for officers; and
- to establish and retain the necessary knowledge base in paralegal work.

Failure to produce an appropriate reclassification will ultimately mean that this office does no more than train officers for other departments or the private profession.

At the present time, there are no formal tertiary educational requirements for law clerks, and this leads to an examination of the role that education and training may play in relation to law clerks.

Education for Clerks

The topic of education of law clerks is one of the most difficult areas to come to terms with in a conceptual way. Obviously, too great a requirement for education or qualifications is counterproductive. The office might just as well employ more solicitors at the same cost as it could employ degree qualified law clerks. One of the real values of solicitors is their generalist knowledge and their ability to think laterally in other areas. This is not a requirement for paralegal officers. Rather their value is in their sound knowledge in their particular narrow area. Nonetheless, it is clear that paralegal officers will need education in:

- management skills;
- office efficiency and systems;
- some legal skills and knowledge or relevant legal procedures and process;
- drafting documents; and

- general communication skills (for example, interviewing, negotiating, telephone, and advocacy).

In a large office like the Crown Solicitor's Office a number of these skills can be learned through exposure and following the example of others. However, this is not enough. While we should not be trying to turn law clerks into mini solicitors, there can be little doubt that formal training in fundamental areas of their work is important. Training allows paralegal officers to approach their tasks with more self-esteem and confidence and can supply them with a credibility which is important when dealing with client departments, with other solicitors and the public: a training or educational qualification will also assist in the framing of appropriate classification positions, from an industrial point of view.

In 1988 some clerks attended a private course on legal procedure, however there is no course generally available which is particularly suitable for paralegal officers. Courts Department officers seeking to be promoted to Clerk of Court, attend the Associate Diploma of Judicial Administration at the Institute of Technology. This course, while not totally irrelevant to Crown Solicitor's Office clerks, has little practical application to their day-to-day tasks. Some clerks have already completed a short course of legal research, conducted by the Law School of the University of Adelaide, and there are other 'internal' courses conducted by the Legal Services Commission, Police Department and Correctional Services Department.

It is very encouraging that Flinders University (South Australia) is considering the introduction of a legal studies course which would provide a tertiary degree course for paralegals. Speaking in my own capacity, and not in any way on behalf of the Government, I believe such a course will do much to shape the practice of law in South Australia for the future.

Summer Clerks

In recent times, the Department has taken a number of steps to test the extent to which law clerks could be utilised throughout the Department. Following a visit by the Chief Executive Officer to the Adelaide University Law School, the Department took on 18 law students to work as 'summer clerks' for 2 months over the summer university vacation (December 1989 - January 1990). The students worked on a voluntary basis for one month, and were paid for the other month. The students were placed in sections throughout the Department - including the Criminal Prosecutions section, Parliamentary Counsel's Office, and the Administrative and Summary Section. The purpose of the project was to:

- expose law students to Crown Law practice in an interesting and educative way;

- allow the various participating sections and divisions to assess the value of law clerks for future use in their area of operation; and

- obtain appropriate work value from the clerks commensurate with their salaries.

From all accounts, the experiment was a success: the students were asked, after a period of training and under careful supervision to undertake real tasks - and not merely to be the recipients of simulated or emulated lessons - and responded enthusiastically. The goal was not only to give the students 'work' experience, but also to test the extent to which the students could assist lawyers in their everyday work. The

experiment was well worthwhile: although the lawyers needed to spend time setting up jobs and explaining procedures, the overall impression was that the students very quickly adapted to the Department's procedures and work practices, and performed quasi-legal tasks without difficulty.

There are, of course, disadvantages in the use of vacational students in this manner: there is a fair amount of administrative effort spent in selecting and training students for what is a very short cycle of work. Some students may return for a further rotation - and others may seek employment with the Crown or be recruited: but there will be a continuing need to provide intensive training and supervision for such students.

Conclusion

The demands to make proper use of paralegals are driven, at least at one level, by cost and economics: however, properly trained and educated law clerks (or paralegals) will be able to provide enhanced and effective legal services to the Crown's client departments and agencies.

Over the next 12 months, the Department faces the following challenges:

- to define the parameters of the role of law clerks. It must be ensured that we do not try to turn them into second-class solicitors, but rather to seek to establish their integrity as law clerks with their own specialist area of operations;

- to use law clerks to assist the office to maximise the benefits of technology available;

- to take steps to provide a proper career structure for law clerks. This is a new area in public service terms and the challenge is a considerable one; and

- to decide upon the most beneficial and effective avenues of education for clerks.

Legal Casework and the Private Profession: Current Use in Private Practice

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The efficient and effective management of a law practice, which ultimately relates to the cost of justice and therefore access to it, is not a new issue. Over the last decade or so in Australia there have been substantial changes in the expectations of clients requiring legal services and in the way the profession has had to respond. It is certainly within memory when lawyers, as professionals, were not questioned; they remained in their offices which the client visited and dispensed legal advice in accordance with their own priorities.

The client relied on the expertise of the lawyer, often did not seek to know about the way the case was handled and accepted that there might be substantial costs. Firms could also expect client loyalty.

Those days are gone. These days clients often expect the lawyer to meet on their premises, they will question the advice provided and they will certainly question the cost. Degrees to which this happens varies according to the type of advice being sought and the type of client.

Frankly, with some major transactions in banking and finance or with mergers and acquisitions a client wants to see a partner handling all aspects of a matter and the real management issue here is time management for the particular senior principal. An issue other than cost which is causing the move towards the use of paralegals or legal assistants - that is, that lawyers are overtrained for a number of tasks that are performed in a legal office - may also not be a major factor in work such as this because of its complexity.

Just as there is considerable variation in the services sought and the capacity of the client to meet the costs of such services, so there must be different approaches to the way the client's needs are met by the firm. This already affects organisational arrangements and job design and we must continue to respond to the economic imperative necessitating increasing efficiency and cost-effectiveness.

Paralegals within Finlaysons

The use of paralegals at Finlaysons has, to a large extent, been evolutionary. In some areas such as landbroking, the career aspirations of secretarial staff combined with the

economic imperative, has resulted in the firm assisting in the development of paralegal professionals.

For example we now have on staff a landbroker who commenced prerequisite studies in 1985 and who completed her course last year. Two other ex-secretaries are undertaking this course. Experience gained in the financial services sector, in maritime and personal insurance and in assessing have been found to be relevant to other practice areas and staff from these fields have joined the firm in a paralegal capacity.

Our future use of paralegals will be strategy driven. This has been one of the issues which has been identified through the planning process leading to Finlaysons' Business Plan as having potential to reduce the cost of legal services overall.

Before describing in more detail how Finlaysons has sought to use paralegals, it is important to clarify our understanding of this term and the benefits that we see in moving towards greater use of this employment group.

The Chief Justice of the United States Supreme Court in 1980 provided the following definition:

> a paralegal is a person with legal skills who works under the supervision of a lawyer or who is otherwise authorised by law to use these skills (Statsky 1971).

At the moment we are working in accordance with the first part of that definition, that is 'a paralegal is a person with legal skills who works under the supervision of a lawyer . . .', as all matters at Finlaysons are settled by a partner. While the second part of the definition may come into force with paralegals having total authority over particular matters, at this stage it is considered that clients receive added value through the involvement of a senior legal professional while the process is handled by a paralegal.

The charge out rate of a paralegal professional in the property department is around 50 per cent of a partner's fees. Partners' fees do of course vary significantly depending on the type of work and the client, and in other areas the ratio varies from 25 per cent to 60 per cent.

'Paralegalism'

The historical perspective of paralegals in the United States indicates the following reasons for the emergence over the last two decades of what they refer to as 'paralegalism':

- the pressure of economics;
- the call for efficiency and delegation;
- promotion by the Bar Associations;
- the growth of paralegal skills;
- the organisation of paralegals; and
- the restructuring of professions generally (Statsky 1974, p. 9).

Pressures on law firms in Australia and on Finlaysons, in particular, would seem to relate to the first two reasons at present.

As indicated above, we have felt those pressures and we intend to be pro-active rather than reactive in meeting the challenges of the future. Property law, private client matters such as those relating to family law, wills and probate already have considerable input from paralegals. In the estates and wills area Finlaysons has engaged paralegals who interview clients, draft requisite documents, handle trust accounts and liaise with financial planning and investment agencies.

Paralegals are also proving organisationally effective in the statutory insurance and workers' compensation fields. We employ assessors who collect factual information about the scene of an accident, or the site of an event leading to a claim and who interview witnesses. Personal injuries and compulsory third party insurance matters require adherence to standard legal processes, some of which are common to both the large institutions providing the insurance cover and to the law firms which represent them should a case prove litigious. By the deployment of staff with experience in insurance processes we can provide initial input to such a case at the same rate as clerical workers generally.

Discovery of documents, case status lists, initial liaison to obtain medical reports and many of the associated letters and documents lend themselves to the involvement of a paralegal.

While we are ever-conscious of the continuing need for economy and efficiency, an emerging issue which law firms in Australia must consider, and which was part of the impetus to the development of this employment category in the United States, is the restructuring of the professions generally. There is a need for greater sophistication in the distinction between work that can be classified as legal, as secretarial and that which is true paralegal work. In a lot of commercial and sole practitioner firms work value/organisation is not a well-established discipline and the value of particular functions, the training required to undertake them, and their delegation and control aspects are not clear.

Secretaries are often the repository of a lot of information which is critical to the running of a matter. We need to clarify the point at which these functions cross the boundary into paralegal work. Significant tasks such as drafting letters of advice and documents, briefing counsel, organising computerised court diary systems and taking statements from witnesses obviously fall into a higher work value bracket. Support staff who have joined Finlaysons from other legal offices have often previously undertaken some of the latter work but have been classified/remunerated and presumably billed to the client as secretaries. Reclassification of staff assisting in this way could have the potential to increase costs to the client although this would depend on how their services were being billed out in the first place. It is likely that within the profession generally a lot more functions that lawyers are overtrained to do could be devolved to appropriately trained personnel, including paralegal professionals.

The restructuring of the whole workforce has highlighted the need to address this issue in more depth. The move in the community is towards multiskilling and technological advancement and every firm such as ours must re-examine the impact of these changes on the way they do business.

Finlaysons has made significant advances by way of utilising technology to improve our effectiveness. We have just completed an upgrade of our whole computer facility and the aim is to have all staff linked into this system when we move to new premises later in the year. These premises have been designed for a legal firm with all the latest technological advances purpose built. We utilise a computerised diary system which is managed by support staff to prevent unnecessary delays or adjournments due to missed court appearances, pre-trial conferences and meetings. Another support staff appointment has recently been made in this area which specifically relates to data management of large litigious matters. We also have links to an Australia-wide accounting management system as well as library search facilities which cover a wide range of data bases, both Australia-wide and with international links.

These computing facilities enable the creation of a comprehensive precedents system which enhances our ability to deal more rapidly with a matter with obvious benefits to the client.

All of these developments reduce the input on a file by a legal professional and are relevant to any consideration of the cost of justice and the development of a paralegal professional.

Management Issues

The concept of the lawyer as manager is as yet not reflected in most professional legal courses. Yet the benefits flowing from work force restructuring and technological advances are issues for management and will not be attained easily. Finlaysons has recognised the need for staff with special training in relevant disciplines. For example organisational design and support staff development are my responsibilities as Human Resources Manager. A Director of Legal Education and Training is another recent appointment and the responsibilities of this position cover legal education and skills development but also personal development, so as to best meet the needs of clients by providing timely, commercial advice.

Over the last year we have made significant changes to some work and to other personal and skills development opportunities. We need to change attitudes to current hierarchical arrangements in both lawyers and existing support staff, however, before we see further changes in the delegation of meaningful work. Legal practice courses or providers of continuing legal education could assist by including management components in their course structures, as instruction on issues such as how to work with teams and delegate work are fundamental to the efficiency of an organisation. Support staff also need to be involved in external and internal training initiatives to assist them in moving to undertake work that has traditionally been within the province of legal professionals.

Finlaysons has in the past utilised a number of part-time staff who are undertaking their degree courses at university. Students have been engaged as law clerks to undertake legal research and they perform a range of the routine and processing tasks. Firms such as ours must weigh up the benefits of providing such students with training that is relevant to their long-term career aspirations, and therefore to the firm if they subsequently join us as staff solicitors, and whether these benefits are outweighed by the continuity provided by career paralegals.

We must also not close off the career opportunities for secretaries within the firm. Just ask a new lawyer in a litigation department where to turn for help in relation to the processes involved and there will be no hesitation - they will say they rely heavily on a secretary.

One of the difficulties in parcelling up work that could be delegated to a paralegal results from the tendency to think only of processing functions rather than the possibility of utilising or developing the intellectual capacity of support staff. At Finlaysons training for the latter has increased substantially last year. A number of secretaries, who have been, for example, to the Legal Services Commission courses, are now looking for relevant certificate or diploma level courses to develop their knowledge in areas such as business law and contracts as well as to develop their drafting and letter writing skills.

At the moment, the ratio between qualified practitioners to support staff at Finlaysons is 1 to 1.2. This reflects the fact that we have already devolved a lot of the administrative and routine work, either to secretaries or paralegals and that paralegals now undertake specific functions in the relevant work areas that are appropriate both to their level of education and to their employment background. More specifically, the ratio of paralegals (and this includes a group designated legal assistants who are at the lower end of the paralegal work value scale) to legal professionals is 1 to 4.6. With the inclusion of staff who are undertaking their law degree courses at university, the ratio of staff undertaking legal work is 1 'paralegal' to 3.3 professional staff.

The Future

It is hoped that the other factors that led to the development of þaralegalism' in the United States referred to above - 'the growth of skills', 'the organisation of paralegals' - will not lead the development of the paralegal professions in Australia. Rather, educational institutions ought to be provided with a clear idea of what is relevant to the profession as a whole so that they can tailor courses accordingly. That is happening with the Adelaide TAFE which has been approached regarding the needs of a number of public service organisations. Courses such as that provided by the the University of Canberra, which enable Bachelor of Arts students to major in law, are also responding to the needs of the public sector in the main. Graduates from such courses are suitable for and are now seeking to join private law firms.

In other words the development of paralegal professional courses is strategy driven but perhaps there is a need for a more concerted effort by commercial firms to focus on additional ways in which paralegal input can reduce the cost of their services. Without this information relevant courses cannot be provided. The development of job descriptions and job design are current tasks for this sector of the legal environment.

Conclusion

While the subject of this paper has been the current use of paralegals in a commercial firm it has also attempted to highlight areas which need attention if relevant courses are to be developed. There has been quite a lot written particularly in American literature such as that produced by the American Bar Association about the use of paralegals and this has detailed the type of functions which 'lawyers are overtrained to do'. The relevance of this material and existing subjects in certificate level studies such as business law and contracts needs to be examined in the context of expanding the use of paralegals and developing the paralegal professional in Australia.

Finlaysons has responded to a number of the pressures outlined previously that have led in the United States in particular to the career stream paralegals. We would like now to be more proactive in our approach to this issue and are examining the organisation and structure of work to ensure that we can maximise our effectiveness while also enhancing the job satisfaction of both professional staff and support staff.

A program has commenced which first of all ensures secretaries are familiar with the context in which they are working. We are giving them the opportunity to attend the Law for Non-Lawyers sessions run by the Legal Services Commission and we are running internal courses which teach them about court history, the different court systems in Australia and about process. There is a need to address the more substantive legal education needs for the experienced members of our support staff and at this stage in South Australia this is only a developing area . The value that we have already from paralegals we feel can be built on. Finlaysons would like to see the educational and training needs addressed by the educational fraternity in conjunction with a better identification by commercial legal firms of their needs for legal and paralegal education.

The development of this career stream and its attendant reduction in the cost to the community of legal services is certainly to be encouraged.

Endnotes

1. Finlaysons is a leading Adelaide law firm and is a member of the Australian Legal Group, a federation of law firms, comprising Allen Allen and Hemsley in Sydney, Arthur Robinson and Hedderwicks in Melbourne, Feez Ruthning in Brisbane, Parker and Parker in Perth, MacPhillamy Cummins and Gibson in Canberra and group offices overseas. The Australian Legal Group's principal areas of practice are in the commercial and corporate area. Finlaysons' practice falls predominantly into these categories - litigious and non-litigious corporate and commercial work, but they also practise in other areas such as family and estate law, and deal with criminal matters at the behest of an established client.

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Paralegals - What is their Use?

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When I started working in the legal system over a decade ago, I understood the system to be one which lawyers dominated, and which only they, with their special rules, language and training could understand and use. The mystique which surrounds the law, together with the restrictive practices of lawyers, has ensured the continuation of their dominance in the legal system.

In the past many thought it was natural or 'inborn' talents that made people good lawyers, good doctors or whatever. While there are some who would adhere to the view that professionals are born, not made, and that professional training and qualifications are icing on the cake, there are many more people who believe that the skills required by a good professional are learnt. They are learned in two ways: firstly, by training and secondly, by experience. The entry requirements for a practising lawyer in South Australia are a four-year law degree plus a course, of one-year's duration, called a Graduate Diploma in Legal Practice or, in special circumstances, articles with a legal firm.

Subjects taught at law schools are theoretical, and aim to teach students the historical background of the legal system, how laws are formulated, and the principles of common law. Subjects include Roman Law, Constitutional Law, the Law of Evidence and Torts. One function of a law degree is to give lawyers general training, in order to equip them to tackle any area of the law.

However, one can argue that there are many areas in which people seek advice that do not need this type of training. Paralegals, who have received appropriate training, can and do undertake a variety of tasks which have traditionally been regarded as the exclusive province of lawyers. However, paralegals will always need to have links with lawyers. Lawyers are necessary to check advice and offer opinions about legal options. In the author's experience they are rarely opposed to the type of work done by paralegals.

This paper draws on the author's experiences as a paralegal over the past 10 years and will explain how paralegals can make worthwhile contributions in a number of areas.

The case for paralegals can be put forward in several ways. Firstly, the type of legal information and advice sought by most people is usually not complicated, although for a variety of reasons the actual circumstances of individual cases can be complex.

Secondly, many people are reluctant to go to lawyers, fearing that they are too expensive.

Thirdly, clients may fear that lawyers will not understand them or be able to explain what they need to know in terms that they can understand. In some cases this is

justified. I can remember a number of instances when I have acted as an unofficial 'interpreter' when lawyers have been giving advice. Paralegals can also explain what lawyers do, their fee scales, legal aid availability and whether it is worthwhile consulting a lawyer. For example, if someone who is uninsured has been involved in a car accident with another person who is also uninsured and poor, it is often reasonable to tell them that consulting a lawyer is a waste of time.

Fourthly, the cost of legal services is increasingly outside the reach of many people, with only the poor qualifying for legal aid and the rich being able to pay for litigation. This leaves many people out on a limb when they need assistance. Paralegals can help them to solve their own problems, without having to engage a lawyer. One good example is the provision of do-your-own-divorce classes, which in South Australia are usually conducted by paralegals.

Finally, in an increasingly regulated society, and one in which ignorance of the law is no excuse for transgression, it is likely that the number of people seeking help in negotiating the legal system will continue to increase. Yet lawyers admit that they have difficulty in keeping abreast of ever-changing laws, one of the reasons for the rise of specialisation in legal practice. For all of these reasons, there is a case for paralegals to play an increasing role in provision of information and assistance with the legal process.

Paralegal Work with Single Mothers

In 1979, I worked for the Council for the Single Mother and Her Child, an organisation which provided advocacy, information and services for single parents. At that time supporting mothers were paid benefits by the State Government Department for Community Welfare for the first six months after separation. This served as a qualifying period prior to payment of a Supporting Parents Benefit by the Federal Department of Social Security. In order to be eligible for state benefits the single mother had to take maintenance action against the father of the child. (This requirement is currently in force for custodial parents who apply for a Supporting Parent Benefit from the Department of Social Security.) Of course, these requirements apply to both sexes, in that a male supporting parent would need to take maintenance action against the mother of the child. However it needs to be stated that in 1979 most supporting parents were women. This has not changed and December 1989 Australian Bureau of Statistics figures show that almost 90 per cent of Australia's 330,600 sole parents were women.

A number of single mothers sought advice about these requirements as they did not wish to disclose the name, or whereabouts, of the father of their child, or to seek maintenance from him. Their reasons varied. Some feared violence to themselves, and/or their children. Others reported threats that they would not see the child again if maintenance action were taken. In many of these cases there was no relationship between the parents, and the men were not interested in assuming any parenting responsibilities. Hence they were resentful about any maintenance proceedings. In order to avoid the necessity of taking maintenance action women had to attend an interview at the Department for Community Welfare to explain their position. Some were very frightened about this interview, and I often went with them to give support. However, when they burst into tears as soon as they got into the room, or were unable to speak much about their circumstances, I soon found that I had to become an advocate on their behalf. This meant taking time to talk to them prior to the interview to learn about their situation. Inevitably clients asked questions about other aspects of their single parenthood. A pattern of questions soon emerged, many of which were of a legal nature. They included questions like:

Do I have to put the father's name on the birth certificate? and What happens if I do? or I don't?

Do I have to let him take the child away if his name is on the birth certificate?

Can I get a court order if he threatens to take the baby?

Do I need to go to court?

There were questions about protection against violence and about property (usually household property as not many women who came for advice owned real property).

It rapidly became clear that a much better service to these women could be provided if one knew the answers to their questions, and where to send them for further help. At that time it was very difficult to find such assistance.

Another area of concern at that time was the checking by the Department of Social Security on supporting mothers to determine whether or not they were cohabiting with a man, and hence not eligible for the Supporting Parent Benefit. The benefit would be cancelled if it was determined that they were living in what was termed a 'bona fide domestic relationship'. The Department had a number of guidelines or indicators to determine whether a marriage-like relationship existed. Unfortunately, they did not inform the Council of how many of these indicators were needed to determine whether such a relationship existed, or what weight was to be given to each indicator. I began to advocate on behalf of the women seeking help in this area, and in other aspects of social security eligibility. Initially the case was discussed with a review officer within the Department of Social Security. When that was unsuccessful I acted as an advocate at the Social Security Appeals Tribunal (SSAT). This Tribunal had the power to review decisions of the Department of Social Security, but not to alter the decision. If the Tribunal's recommendations were not accepted by the Department, then an appeal had to be taken to the Administrative Appeals Tribunal, which did have the power to alter the Department's ruling.

One such case was as follows. Jenny was on a Supporting Parent Benefit and had two young children, one of whom was severely physically and intellectually disabled. This boy required constant care and attention which she willingly gave him. The father of the children had left her about a year prior to the investigation, but he visited her to see the boys, and stayed over at her house a few nights per week. He did sleep with her on such occasions, and on others looked after the children while she went out and got a well deserved break. The relationship was fraught with difficulties and Jenny felt she could not have him live with her for a number of reasons. Needless to say she had problems getting people to look after her disabled son, and certainly did not have the money to pay for his care. Nor could she supplement her pension with paid work because of her childcare responsibilities.

We went to the Social Security Appeals Tribunal, after information had been gathered from friends and relatives about the state of this relationship and the domestic circumstances. I examined the Departmental guidelines and believed that we had a good case, and that the sadness of her predicament would ensure that she got a favourable response. How naive this was. We lost the case and I had to argue furiously with the Department not to stop her pension whilst an appeal went to the Administrative Appeals Tribunal. I also advised her to make sure that her former partner went nowhere near the house. It was neighbours who had reported that his car was outside her house all night.

This experience taught me that I needed to know much more about the legal basis for such decisions and how to present cases. Jenny may have lost anyway, but I

was not comforted by that thought. I needed to be better equipped in order to represent the clients in the most effective way.

Paralegal Work in Legal Aid

In 1980 I was able to learn more about the legal system when I was employed by the Legal Services Commission of South Australia to do 'assignments work'. This involved assessment of applications for legal aid, and monitoring the terms and conditions when grants of aid were given. The Director at that time, Ms Susan Armstrong, knew of my interest in social security advocacy, and encouraged me to continue representing people at the SSAT. I worked at the Commission for five years, and learnt a great deal. I read cases, law books and any legal material that I could lay my hands on. I also continually harassed lawyers at the Commission to explain how the system worked, and to explain many of the things I did not understand. They were unfailingly helpful. I learnt about the rules of evidence, what constituted good statements and affidavits, and how to draft them. My best friends at that time needed to be lawyers, as my preferred topics of conversation (inevitably legal) would have been very boring to other people.

In 1985 I became the co-ordinator of the Parks Legal Service, a community legal service in the western suburbs of Adelaide. This is an area with a high percentage of people on pensions and benefits, and a high rate of public housing. It is also an area with a large percentage of Indo-Chinese people, many of whom were refugees from Vietnam. Between 1985 and 1988 approximately 35-40 per cent of the clients were of Indo-Chinese origin. Soon after I started at Parks, a staff member of the Vietnamese Association asked me if I would visit each week to provide a legal service to members of their community. They made this request because of the fear many Vietnamese people had about the law, which made them reluctant to come to our offices, or to use other legal services. Many Vietnamese associated the law with the police and the state, which for them meant repression and human rights abuses. I agreed, and the Department of Immigration (later called the Department of Immigration, Local Government and Ethnic Affairs) provided an interpreter. He was employed as an information officer by the Department and was resourceful and knowledgeable. We assisted many people, seeing six to nine people each week, with many others being referred directly to the service when the word got around that there was nothing to fear. The interpreter often gave the advice before I arrived, having learnt what needed to be done. Advice was sought about consumer credit, motor vehicle accidents, workers' compensation, social security, criminal and family law. In fact, these categories were the same as those sought by other groups in the Parks area, except that the Indo-Chinese people often needed additional support because of their lack of English language skills and their difficulty in understanding the cultural norms and legal system in Australia.

The services of paralegals are often invaluable to such groups, whose background may well make them suspicious and fearful of authority. It would be of benefit to train people with bilingual and multicultural skills to do this work. Interpreters have also suggested this to me, as their role is limited to that of interpreting what is being said, not giving advice or additional support.

It also became apparent that some clients appreciated getting advice from someone outside their community as they had fears about the confidentiality of services provided by those within their own community. This is in no way meant to impugn the excellent work done by volunteers and paid staff within such communities, including interpreters. But it only needs a few bad apples to sour the whole crop. A choice should be available, but most people would choose to talk to people within their community.

An increasing number of Vietnamese people who spoke English sought my services because they were concerned about confidentiality. This was not necessarily because they were frightened of their query being made public, but because the nature of their query made them reluctant to seek advice from within their community.

Family breakdown and family violence was one example. Marriage breakdown is not culturally acceptable and pressure would inevitably be put on the person seeking to leave a spouse that they should not do so, irrespective of the reasons for separation. One young woman charged with shoplifting begged me to arrange legal representation for her without letting anyone in the community know because apparently the knowledge of a criminal act could sour her future marriage prospects.

I also gave more general assistance to the staff at the Vietnamese Association. This included help to draft letters to papers rebutting racist claims, submission writing for funding and general support to ensure that they had the information they needed to assist with resettlement in Australia.

I would also like to mention two examples of projects undertaken while at Parks which attempted to give people legal assistance without having to consult a lawyer. The first was the production of a Motor Vehicle Accident Kit, which showed people how they could make their own claim for damages following an accident, when they were not insured, or could not afford the excess. It included sample letters of demand, an explanation of how to calculate liability, insurance details, a sample of a summons and the court process. We also offered further support and assistance if the user got into difficulty. I obtained a grant to translate and print the kit in Vietnamese.

The second project was undertaken with another community legal centre to start a Neighbourhood Dispute Service. This service offered mediation and conciliation in neighbour disputes with the aim of resolution without court proceedings. We knew that court proceedings were an unsatisfactory way of resolving such disputes, firstly because they are too costly, and secondly because the legal process is not conducive to resolution of such disputes. We developed inventive ways of dealing with the disputes, many of which had been a source of continuing misery for the participants. On one occasion we were successful when the problem seemed to be incapable of resolution. We received a call from a couple who said their next door neighbour was continually threatening and harassing them as she believed that they had planted listening devices in her unit and were recording all her telephone conversations. A staff member of the service went to visit both parties. He talked to the woman who thought she was being spied on and offered to 'debug' the place for her. Graham had been a security guard and told her he knew many tricks of the trade. He went to his car, got a few gadgets, clambered onto a ladder and proceeded to look for the listening devices. He then pronounced the place was 'debugged' and that she need have no fear. We all had a great laugh, but it actually worked. The neighbours were able to withdraw their restraint order and live in peace.

What is their Use?

There are not many lawyers who would be displeased that such a service existed. They know that these matters are not conducive to resolution by traditional legal means. However, I have heard their criticisms of paralegals being involved in a number of areas of the law, which they believe are best left to qualified lawyers. One fear is of course financial: the possibility of incomes being eroded. However, the other more frequent criticism is that clients are disadvantaged by not having the benefit of 'proper' legal advice. I dispute both of these.

As far as the fear about reduced income in concerned, it is not the role of legal aid or community services to ensure that lawyers' incomes are maintained. Concerning the claim about unsatisfactory advice, that can be countered with the assertion that a competent paralegal would know when to refer to a lawyer. Further, many people seeking legal assistance would not be able to afford a lawyer (hence lawyers would not get the business anyway) and fall outside the guidelines for legal aid. This may be

because their claim is too small to warrant a grant of legal aid, or their case may be considered insufficiently urgent or pressing to fund.

A good example of where competent paralegals can assist is in the area of family law. This area of the law is likely to affect nearly everyone in our society, given the rate of marriage breakdown. It is a rare person who will not come into contact with another who has had a marriage or relationship breakdown, or has not had one themselves. We need look no further than our own experiences to understand the devastation that marriage breakdown can cause to some people. However, most recover and remarry. Although it has been said that second marriages are a triumph of hope over experience.

Paralegals can assist in a number of ways when people seek assistance after a marriage breakdown. It is appropriate for a paralegal to explain the legal situation in relation to custody, assess the need for a court order in light of information given by the client, explain legal aid guidelines and refer to a lawyer if an application to the Family Court is required. A good paralegal would always refer to a lawyer if there was any doubt about the merits or circumstances of the case. This approach is analogous to a general practitioner seeking a specialist opinion on a medical problem. If paralegals keep in mind at all times what is best for the client, there should not be many problems. There will of course be some mistakes, but lawyers make them too. Surely it is preferable for people to get some advice, providing it is correct, than none at all, which would be the case if they could not obtain the services of a lawyer.

The criticism that paralegals may not know enough about the law to ensure that all areas and avenues of redress can be covered has also been made. This is probably true, but it is equally likely that the client could not afford to pursue all the legal remedies available in any case. Further there is always the question of costs being awarded against the unsuccessful party. There are many who cannot afford to take this chance even though there may be much merit in the case.

These considerations also apply to the question of whether legal aid is granted. Legal aid organisations cannot afford to chase every legal rabbit to its burrow. As further support for this point, both the Commonwealth and State governments have made it very clear they are not going to continue increasing funds for legal aid.

Since 1988 I have been employed as the co-ordinator of the Women's Information Switchboard. This government agency, part of the Women's Adviser's Office is located with the South Australian Department of Premier and Cabinet. The organisation has a direct service function, and has approximately 25,000 contacts with women each year. Approximately 75 per cent of these are by telephone, and 25 per cent of clients come into the service. We have six information officers, who include an Italian worker, a Greek worker, an Indo-Chinese worker and Aboriginal worker. Volunteers also assist with service provision. Part of our brief is to let the Women's Adviser to the Premier, currently Ms Carol Treloar, know of any issues affecting women which may require policy change or initiatives to assist women.

Since taking up this position I have found, not to my surprise, that many of the calls are about legal matters, predominantly relating to marriage breakdown. Between June 1988 and June 1989 we received 5,478 requests for legal advice, information and referral. One of the most common questions asked is 'I'm thinking about leaving my husband . . . what do I have to do?' They also ask about domestic violence, de facto relationships, children, maintenance and property. They want to know whether they will lose property entitlements if they leave the home, what property they can take, if they can be made to leave by their husband, if they can get him out and so on. They often report bluffs by their husbands. For example, we regularly get callers who say 'He says I can leave but not with the children', or 'If I leave he says that he will tell the court that I'm an unfit mother - I don't think I am but what can I say when he says this?'

They ask about access and how much is reasonable and when the children can decide about access and so on. Many of these callers have not made the decision to separate, and we are pleased that they call before the decision is made. Referrals can

be made to counselling and other agencies. Many of these callers do not need to see a lawyer, and information can be given on basic legal matters. We conduct regular training for our paid staff and volunteers on legal issues.

Conclusion

There is widespread ignorance in the community about legal matters which at times causes much distress. Despite this ignorance there is not a great deal to be gained from only knowing about the law in abstract terms, and not putting that knowledge to practical use. There is a need for the knowledge in particular contexts. This need exists in the community, and paralegals are one way in which the need can be addressed. It is my opinion that a large proportion, possibly in the order of between 80-90 per cent of legal queries can be answered by a trained paralegal.

Another advantage of using paralegals is that they bring a different approach to legal problems, which is often more conducive to less traumatic (or more simple) resolution than the formal legal process. I have given the example of alternative approaches to resolution of neighbour disputes, but there are many others. Employment of paralegals in a number of community services could enhance the ability of people to access the type of legal information they often require. Of course there are problems, such as access to lawyers for support and adequate supervision, which would need to be considered and resolved.

Special consideration should be given to the needs of disadvantaged groups, usually women and migrants. Women have particular problems because of their numerous social disadvantages. These may include being a supporting parent, which usually means a lower income (either because they are on social security benefits or get paid less in the workforce), disproportionate responsibilities for child care (which often restricts their ability to work full time), and lack of their own income if they are married but not engaged in paid work. Women also constitute a high proportion of domestic violence victims. Migrants have extra problems, due to their poor English language skills and lack of understanding about what is available to them, and cultural barriers to utilise what is available.

In conclusion I raise the issue of training and accreditation. There has been a great lack of training available, and it is heartening that the Legal Services Commission of South Australia started paralegal training courses last year. If people are to be trained, then there is a need to examine accreditation issues, how and if it is practicable and feasible. Training and accreditation will not necessarily make good paralegals, any more than a law degree with a practising certificate necessarily ensures provision of good lawyers. But training and accreditation does provide some measurement of standards, and a reference point for common aims and objectives. These aims and objectives for paralegal training should include emphasis on resolution of legal problems without litigation wherever possible, provided there is equity in the resolution. Decisions made after conciliation, negotiation and agreement by both parties, without a court battle, are infinitely preferable to a decision in a court battle. Sadly, this is not always possible, and there will always be a need for the courts to be final arbiters when agreement is not possible.

I would like to finish with a 'quote' from the will of a French lawyer which stated 'I give 10,000 francs to the local madhouse. I obtained this money out of those who pass their lives in litigation; in bequeathing it for the use of lunatics I only make restitution'.

Financial Counsellors and the Legal System

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History of Financial Counselling (Victoria)

The Department of Community Services Victoria commenced funding financial counselling services about 15 years ago, and now funds approximately 75 services statewide. The first services were very different to what we see today. As a response to 'at risk' families with financial problems, budgetting assistance was provided. Lower payments for bills and debts were sometimes negotiated, but the legal aspect of the client's problems was rarely considered. A guide printed for financial counsellors at that time advised that it was rarely possible to negotiate with a financier who held a Bill of Sale (mortgage) over household goods. If the financier did not agree to accept lower payments, the goods would be seized. While this was in line with current legal advice, this paper will show how this issue was confronted some years later.

Budgetting was useful in only a limited number of cases. The use of consumer credit was increasing. More and more clients came to financial counsellors for help when faced with legal action for debts. Few lawyers were prepared, or able, to give advice to the clients or the financial counsellors. Negotiation with creditors and debt collectors was common. Even when contracts or tactics seemed unfair, there was little that financial counsellors could do.

These were the days when the court sheriff could, and would, seize all but bedding. Debtors, including pensioners, could be imprisoned for non-payment of a debt. Repossessions were carried out whether the lender had a legal claim or not.

Non-Adversarial Services

But not all financial counsellors regarded the law as important. There has, over the years, been a range of philosophies on which services have been based. A small number of services have acted almost in the capacity of debt collectors. The debts were considered a moral obligation, and the financial counsellor negotiated reduced payments on a pro-rata basis without regard to the consumer's legal rights, but the majority of financial counsellors have adopted an advocacy role.

Adversarial Services

Most financial counselling services emphasise the importance of giving the client all information, and helping the client to choose what action to take. Most financial counsellors accept that part of their role is to check contracts to identify breaches of legislation, and any basis for legal action or defence. Options may include non-payment, bankruptcy, negotiation of lower payments, or action in a Tribunal. The effectiveness of this approach was fairly limited unless specialised legal advice and assistance was available to these workers.

A need for such a service was identified by many financial counsellors and by the few lawyers who tried to help them. In 1982 a small meeting of financial counsellors and lawyers discussed establishing a legal service to specialise in the areas of debt and credit. This was the beginning of the Consumer Credit Legal Service (CCLS).

With the development of the legal service, financial counsellors and the lawyers involved developed an understanding of the laws relevant to consumers in debt. The Financial Counsellor's Association of Victoria (FCAV), of which all financial counsellors are members, developed a code of ethics which establishes the financial counsellor in the role of advocate. In practice, the majority of financial counsellors' cases involve debt and credit, but they also assist clients with a range of problems including income entitlements, utility bills, fines and banking disputes.

The Code of Professional Conduct and Minimum Practice Standards (Casework) of the FCAV indicate the way that financial counselling is now practised in Victoria (*Financial Counsellor's Casework Manual*, Victoria 1987).

Financial Counsellors as Advocates

By the early 1980s, the FCAV was committed to an adversarial approach to financial counselling. To understand the reasons why financial counsellors acquired paralegal skills, it is necessary to examine the situation of low income borrowers within the legal system at that time.

Information

Whilst legal aid services in Victoria had greatly expanded after the election of the Cain Government, the bulk of the increased resources were directed towards the needs of people in the criminal and family law jurisdictions. Legal aid clients were offered little or no assistance, and importantly, no specialisation in unprofitable areas of civil and administrative law.

Thus low income earners seeking advice about credit, debt, social security and tenancy were likely to be fobbed off with general advice from solicitors who did not practise in those areas. Financial counsellors found themselves constantly confronted by clients with little or no understanding of the contractual relationships they had entered into, or the consequences of litigation for non-payment. In addition, financial counsellors found that even with a greater knowledge of the legal system and contractual documentation it was nearly impossible to obtain quick accurate information on behalf of clients.

Litigation

In circumstances where defences or statutory rights which might be enforced in courts or tribunals were identified, financial counsellors found great difficulty in locating solicitors inside or outside the legal aid system willing to undertake such litigation.

Moreover, the financial institutions were able to rely on the reputation and resources of well-known commercial law firms to ensure that most litigation was quietly and efficiently resolved in their favour.

Law Reform

The laws governing debt and the judicial system had been unchanged for 30 years and had never been the subject of consumer input. In seeking to reform either the law or its administration, financial counsellors again found the need for specific expert legal advice. In all of these situations, financial counsellors found little solace in the legal profession.

Consumer Credit Legal Service

It was for this reason that a number of members of the FCAV instigated the establishment of the Consumer Credit Legal Service (CCLS).

By 1985 the legal service was comprised of a caseworker, a policy worker and a secretary and an enthusiastic group of volunteers, lawyers and financial counsellors. The management committee which contained several financial counsellors identified three tasks to be undertaken by its solicitors:

- individual casework;
- test case and multi-client casework; and
- policy and law reform.

With only two lawyers, the legal service could not pretend to meet the needs of all the consumers in Victoria. But both FCAV and CCLS realised that the most effective and efficient use of its resources was to act as a resource to the financial counselling network.

This is consistent with the findings in the study by Mary Anne Noone that paralegals use lawyers as a resource when required. However, in a significant departure from the findings in her study, financial counsellors are not subject to the supervision of lawyers and have quite limited access to legal advice (Noone 1987).

Whilst FCAV and the CCLS have recently begun a casework advice service to assist financial counsellors, the legal service provides advice not supervision.

In this context, the relationship between the financial counsellors and the lawyers have developed without a professional bias and in fact, the lawyers encourage financial counsellors to 'have a go' by maintaining the conduct of cases for as long as they feel comfortable.

Casework

The CCLS and financial counsellors have now adopted an integrated approach to casework which allows clients to have maximum access to effective services.

After nearly 10 years, the financial counsellors' network is so effective that CCLS, the Ministry of Consumer Affairs and the Legal Aid Commission of Victoria all refer finance or debt related consumer enquiries to a financial counsellor rather than a

referral to a solicitor. It is generally acknowledged that financial counsellors have a better grasp of consumer law than most solicitors in Victoria.

The CCLS solicitors provide advice to financial counsellors and other lawyers assisting consumers. This involves giving telephone and written advice on cases, and can extend to assisting with interviews and hearings without formally taking conduct of the case.

Between January and June 1989, the legal service received over 1400 calls for advice. Nearly one third of these calls were from advisers, the vast majority being financial counsellors. This clearly represents a great saving of litigation time for lawyers at the service as well as an immense transfer of knowledge into the financial counselling network.

An indication of the success of this strategy may be seen from the guarantor case studies forwarded to the Standing Committee of Consumer Affairs Ministers in 1989 which showed that financial counsellors had obtained a release for more than 30 guarantors without the need for recourse to litigation.

The majority of solicitors simply would not have known sufficient law to assist these clients, nor would they have had sufficient bargaining strength to achieve such a result without lengthy and costly litigation in either the Credit Tribunal or the Supreme or Federal Court.

Multi-Client Actions

Where financial counsellors and the legal service identify numerous clients with a similar problem it is a priority to find a solution.

Two examples will illustrate the effectiveness of the working relationship between financial counsellors and lawyers.

Bill of Sale As mentioned earlier a number of financial institutions had developed the practice of taking security of the goods of low income people prior to the *Credit Act 1984* (Vic).

Initial advice from lawyers was that as the practice was legal there was little that could be done for the client. However constant prodding from financial counsellors eventually led to the conclusion that the secured goods were often worthless, and the security (Bill of Sale) was held for no other reason than emotional blackmail.

This realisation led to the now famous 'Avco dump' a public protest which returned the secured goods of a large number of debtors to the front office of a financier. The industry body, the Australian Finance Conference announced an end to the use of Bills of Sale two days later. (This tactic and a number of similar instances are described in Nelthorpe & Roberts 1985).

This practice would not have changed without the involvement of financial counsellors.

Licensing After the passage of the *Credit (Administration) Act 1984* (Vic), FACV and CCLS turned their attention to the practices of the large financial institutions.

Licensing objections are a means by which consumer advocates may seek to restrict the operations or practices of the holder of a credit provider's licence.

Under the Act in order to lodge an objection objectors must collect sufficient cases to expose practices which are not legal, or 'fair, honest and efficient'. The members of FCAV can work together with the CCLS to identify practices from within their own casework, and then seek the co-operation of the client to make an affidavit and if necessary appear at a hearing.

This task is beyond the capacity of the lawyers at CCLS without the co-operation of financial counsellors. Yet the recent refusal of a licence to HFC Financial

Services Limited (Unreported Decision Credit Licensing Authority Victoria, 12 September 1989) is proof that licensing is a cost-efficient means of achieving redress for thousands of consumers.

Law Reform

Whilst some legal representation may assist an individual client, the impetus for law reform will depend upon the political clout of the reformers. FCAV and sympathetic lawyers recognised from the outset that the arguments for reform would be enhanced by joint submissions.

An early example of effective co-operation was the campaign to reform the debt collection laws in Victoria. The client contact of financial counsellors was an integral part of the campaign to reform the laws. The co-operative basis of the campaign may be seen from the article 'Victorian Debt Law - Go Directly to Gaol' in the *Legal Services Bulletin* jointly written by members from both organisations.

Interestingly one measure of the success of the new law, the *Judgment Debt Recovery Act 1984* (Vic), has been the capacity of financial counsellors to use the provisions with little or no assistance from lawyers.

Job Satisfaction

There has been a steady increase in funding for financial counselling over the past 10 years. However financial counsellors are usually funded for one position per service with support being dependent on the nature of the work performed by other employees in the agency. As stated earlier, files are not supervised by a lawyer and only rarely by any other person within the employing agency.

There are some indicators that members have not been satisfied with the funding and administration of the financial counselling program. In particular the high turnover of membership of the Association indicates that financial counsellors are not satisfied with their long-term career prospects.

Some reasons for this dissatisfaction include relatively low wages for experienced workers, lack of continuing training programs, lack of employer support, lack of time to develop complementary policy and community development skills, and lack of long-term career prospects.

The Ministry of Consumer Affairs has resolved some of these problems by funding a credit advocacy program which allows workers to concentrate on education and policy rather than casework. After a number of years many experienced financial counsellors have transferred to this program to take advantage of the opportunity to develop new skills and seek structured change for their clients.

However the two government departments have not integrated their programs to ensure that agencies have a mix of positions and funding. This has created additional problems for agencies and workers where there is no casework base for the creditor advocate.

Some of these problems will only be resolved when government administrators recognise the skills and knowledge of the paralegals in the financial counselling movement. At present, too many workers are simply leaving the Association and taking their knowledge with them.

Training and Resources

The Association has a fully-funded training officer, has produced a comprehensive casework manual and conducts short training courses for practising financial counsellors. However, the dilemma faced by the Association is whether to pursue internal training courses or establish an accredited course with a tertiary college or

institution. One fear is that such a tertiary course may lead employers to prefer inexperienced applicants with a degree or diploma over experienced applicants with relevant qualifications but no tertiary accreditation.

It is in this context that the Association and lawyers at CCLS have searched for methods of information dissemination which are user-friendly to financial counsellors.

In addition to manuals and training courses, a casework advice service has been established to encourage case discussion with lawyers whilst enabling financial counselling to continue with the conduct of the file. As this service is just beginning it is too early to judge its effectiveness.

A second method which has been successful has been a series of 'How-To Manuals' which aim to assist non-lawyers to resolve legal problems. One such manual was 'How to Get Out of a Guarantee' (Consumer Credit Legal Service 1988) which dealt with a number of defences available to guarantors. As mentioned earlier, a submission to the Standing Committee of Consumer Affairs Ministers contained more than 30 instances where guarantors had been released from their obligations without the need for litigation.

Whilst the FCAV has been negotiating with a tertiary institution to establish a course the Association has not yet decided the scope of, or the effect of, accreditation for the course.

Conclusion

For those involved, the growth and development of the financial counselling network has been an exciting process over the past decade.

Financial counsellors provide a competent, cost-effective advice and casework service to their clients. It is arguable that in their dealing with financial institutions, financial counsellors are recognised to be more capable as advisers than members of the legal profession.

Administrators in government agencies and departments in other states considering the means by which advice might best be delivered to financially disadvantaged consumers would do well to consider this financial counselling network as an alternative to service delivery through Departments of Community Services or Consumer Affairs, or Legal Aid agencies.

However, a financial counselling network will not provide an effective service if funded on the cheap. A successful network is dependent upon the provision of an adequate, accessible support system.

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Consumer Credit Legal Service 1988, 'How to Get Out of a Guarantee'.

Appendix 1

Code of Professional Conduct

The definition of a financial counsellor, as per the constitution of the Financial Counsellor's Association of Victoria, is as follows:

A financial counsellor advocates and/or negotiates on behalf of consumers and debtors.

A financial counsellor must be involved in one or more of the following relating to the above general function: direct casework, group or class advocacy, community development and education, social action and reform.

A financial counsellor must carry out the above activities free of any conflict of interest.

Financial counsellors are not, and should never be, regarded as general welfare assessment workers. This should be undertaken by either an agency intake worker or by the referring worker.

A member of the Financial Counsellors Association of Victoria is bound to do the following:

1. Maintain a high standard of personal conduct in the capacity of financial counsellor.
2. Respect the image and protect the integrity of the occupation.
3. Endeavour to become and remain proficient in the practice of the occupation, with reference to the Financial Counsellor's Association of Victoria's Minimum Practice Standards policy.
4. Relate to the employing/auspice organisation, primarily as a financial counsellor.
5. Ensure that the client understands the role of the financial counsellor as an independent adviser.
6. Respond to the client in a non-judgmental manner.
7. Maintain client confidentiality.
8. Have no conflict of interest, or refer the client to another service if such a conflict arises.
9. Offer the client all relevant information regarding the financial situation and ensure that the information is accurate and current.
10. Ensure that regular and thorough instructions are taken and act only on clients' instructions.
11. Use file details solely for the purpose of financial counselling.
12. Act in an advocacy role and negotiate on behalf of the client, rather than as a mediator between creditor and client.
13. Keep the client informed of the progress of ongoing matters.
14. Encourage empowerment and maximum self-determination of the client.
15. Support social change which promotes the general welfare and self-determination of families and individuals at financial risk.

Minimum Practice Standards (Casework)

Interpersonal Skills

1. Ability to communicate effectively with client.
2. Ability to identify the type and extent of assistance requested by the client and assistance which may be more appropriately provided by other agencies.

3. Ability to identify financial difficulties and recognise social problems and their link with financial problems.
4. Ability to evaluate the financial situation and identify possible options.
5. Ability to communicate financial options to client in a non-judgmental manner.
6. Ability to transfer knowledge and skills to client.
7. Ability to transfer power and help client develop self-determination.

File Management and Advocacy

1. Ability to take accurate instructions.
2. Ability to keep accurate file records.
3. Ability to compose letters and reports which are appropriate to each situation.
4. Awareness of the legal responsibility and consequences of action taken on behalf of clients.
5. An understanding of the difference between an advocate, mediator and conciliator. Ability to act as an advocate and negotiate on behalf of the client.
6. Knowledge of policies and practices of major creditors and ability to negotiate with them, to the benefit of the client.

Legal Knowledge and Usage

1. Ability to identify type of debt and legislation which applies to the debt.
2. Knowledge of legal steps involved in recovery of an unsecured debt and the likely outcome of legal action in specific situations.
3. Knowledge of different types of securities and the process of enforcement for each.
4. Awareness of unfair/illegal debt collection procedures and ability to identify same.

Paralegals in Legal Aid

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Functions of Legal Aid

The Acts establishing legal aid bodies in Australia provide for two essential functions, broadly speaking. Most Commissions have a responsibility to promote legal understanding and spread legal information within the community, and to contribute to law reform or the development of policy about the legal system. These could be described as community services, since they are directed towards the betterment of the society as a whole. Legal aid bodies also have a responsibility to provide legal services to those people who cannot afford to purchase them privately. These services are provided to individuals, usually on a means-tested basis.

The provision of legal services to individuals involves two further functions. First, eligibility must be determined and then the services are provided. Most legal aid organisations provide at least some services through their own staff lawyers. Staff lawyers who represent clients are acting in the same way as lawyers in private practice. If they use paralegals to assist them, the tasks performed by these paralegals are likely to be very similar to those of paralegals employed in private practice. Since this role is being discussed elsewhere as part of this conference, this paper will concentrate on the role played by paralegals in the other aspects of legal aid.

Leaving aside traditional forms of legal representation, then, the functions of legal aid are:

- legal education;
- law reform activities;
- determination of eligibility for legal services; and
- certain limited types of legal service, particularly advice, duty lawyer and representation in tribunals where advocates do not need to be admitted practitioners.

It is the involvement of paralegals in these functions which is the concern of this paper.

Legal Education

Possession of knowledge and understanding is no guarantee of being able to impart it to others. If the fish is the last to discover water, as the proverb has it, then the lawyer may also be the last person to be able to see the law as it appears to outsiders. Involving non-lawyers in the design and delivery of community education programs is likely to be essential to their success.

The non-lawyer responsible for community legal education is able to select the legal knowledge people see as most relevant, and then package it in a way that is comprehensible. The result should be material or programs that are well-targeted and effective. Lawyers need to be involved in this process, but their role can be restricted to ensuring accuracy.

This model has been used very effectively in a variety of settings. The *Law Handbook* produced by the Legal Services Commission of South Australia was edited by non-lawyers, although the first drafts were supplied by lawyers. All other pamphlets and publications are produced by a non-legally qualified Education Officer, although several lawyers are usually involved in commenting on drafts.

Inevitably, this process throws up several examples of conflict between strict legal accuracy and clear communication. In many cases, however, the lawyers will disagree among themselves about the weight to be given to a distinction or an exception. A non-lawyer is usually in a better position to find a general statement that is an acceptable compromise for everybody involved.

The limitations on the provision of community legal education programs by non-lawyers become more significant when they are delivered face-to-face. In part this is as much a matter of perception as reality, as people are likely to react more favourably to a talk from someone who is seen to be an expert in the field. A recognised lawyer, particularly one with special experience or credentials in a particular area, will start off with an audience inclined in his or her favour. A further problem for the paralegal may be that his or her knowledge is more limited, making it difficult to respond to questions from the audience. It can damage a speaker's credibility not to be able to answer off-the-cuff queries. A lawyer with some experience of the area is likely to handle impromptu questions better, and for this reason may be preferable to a non-lawyer whose strength lies in playing the 'honest broker' role - researching a particular area of law and then structuring it and presenting it in a way non-lawyers can understand. This is not to say that many paralegals with certain backgrounds could not be just as competent speakers as qualified lawyers, particularly compared with a lawyer who has not specialised in the area concerned. In general, however, lectures and talks where considerable detail about the law is expected by the audience are often better provided by lawyers.

The role of lectures and talks in community legal education, however, is often overrated. A talk is a one-off event, delivered to a finite audience, who in many cases (school groups, for example) have not chosen to be present. Effective community education should reach a wide audience of people who are motivated to learn. If motivation is low, frequent repetition of a message is likely to be crucial to success in achieving the educational objectives.

The Legal Services Commission uses the lecture format for its 'Law Handbook Live' and 'Law for Non-Lawyers' courses. A non-lawyer plans and organises these courses, but the sessions are delivered by lawyers selected for their expertise and ability to speak entertainingly. The audience is self-selected and is made up of people who have demonstrated their motivation by signing up for a series of talks and paying a commercial price for them.

With other types of audiences, different techniques are necessary. The Commission sponsored a law-related education activity for upper primary and lower secondary school students by commissioning the writing of a play about the legal

system. The playwright, a non-lawyer, spent some time talking to lawyers and reading about the legal system and then produced her own dramatic interpretation of its operation. The Education Officer prepared a set of background notes, so that teachers could reinforce and further develop the concepts behind the play, once they were back in the classroom.

The role of the paralegal in community legal education, then, can be summarised as 'honest broker', bringing together people and what they need to know about the law. The tasks involved can vary from the market research, promotion and organisation involved in planning a series of courses, through to the editing of detailed publications such as the *Law Handbook*. Some background understanding of the legal system is obviously necessary, and for some tasks it may need to be quite detailed. In general however, an educator who is closely involved in the legal system will often prove less effective. The role of a non-lawyer in selecting, interpreting and packaging the legal information people need usually enhances the process of communication.

Law Reform Activities

The fact that non-lawyers are outside the legal system can lead to their being more innovative in their suggestions for change. Not being fish, they are less likely to see the water as eternal and immutable. Ideally the paralegal should be an amphibian animal, who has enough familiarity with the water to move through it easily, at least in the shallows, and a land base which brings it into frequent contact with those creatures who never venture into the sea.

One example of a law reform campaign which has grown up in this way is the promotion of Compulsory Third Party Property Damage Insurance. Experience in advising our clients shows that they have many problems with the current system, either through an inability to recover money from the other party or difficulty in meeting a claim against them. Bodies such as community legal centres and the Legal Services Commission have identified compulsory insurance as the best solution to these problems. Many of those arguing for the change are in fact lawyers, but they are the most amphibian type of lawyers - those who specialise in poverty law, and work closely with non-lawyers in trying to improve the lot of their clients as a group as well as individuals. The campaign is about a way of avoiding many disputes, rather than how to solve them, which is the focus of most lawyers.

There are many other such campaigns, most of which focus on more accessible forms of dispute resolution. Clients who throw themselves into the water of the legal system seem to drown as often as they swim. As a result, many choose to sit on the shore, and do not even try to obtain the rights or benefits that only the sea can give them. The amphibians are arguing for a middle-ground solution, such as diversionary schemes for first-offence shoplifters and cheaper and quicker forums for minor disputes. These may involve clients in getting their feet wet, but at least they will not have to go in over their heads to pursue their rights.

The paralegal's fresh perspective and ability to consider clients as a group as well as individuals makes a valuable contribution to law reform. When he was Chairman of the Australian Law Reform Commission, Justice Michael Kirby frequently made the point that law is too important to be left to lawyers. The paralegal, as an informed lay person, has a particularly important role to play in promoting the development of a legal system that meets the needs of the people it is meant to serve.

Determination of Eligibility

Deciding who gets legal aid and who does not would seem to be essentially a bureaucratic function rather than a legal one. Nevertheless, a tradition has grown up in most legal aid bodies of having the function performed by legal practitioners. The rising cost of lawyers compared to non-lawyers, and increasing pressure on legal aid to justify its expenditure, has led to a re-examination of this task.

Most legal aid providers adopt three tests in assessing eligibility - guidelines, means and merit. Applying the means test is clearly a non-legal function. In general, testing the application against the guidelines is also a non-legal function. Typically, guidelines specify the types of matters for which legal aid is *not* available, such as defamation or small claims.

Exceptions can be made in exceptional circumstances, and occasionally some understanding of the law may be necessary to decide whether particular circumstances are exceptional or not, but with this small qualification, it can be said that applying the guidelines is essentially a non-legal task.

The argument for legal training for those people who manage legal aid applications, then, largely comes down to the application of the merit test. Legal aid providers generally require to be satisfied that a legal action is worth pursuing before they fund it (although the New South Wales Legal Aid Commission does not apply this requirement to criminal trials). The officer who manages these files needs some understanding of the law to estimate the success of a particular line of argument. Is it possible for paralegals to make this judgment?

In the experience of the South Australian Legal Services Commission, the answer is yes. In criminal law, for example, the subject of over half the applications, over 80 per cent are guilty pleas which only require funding for arguments in mitigation of sentence. No merit questions are involved. In other matters, as a matter of policy, the merits test is applied with care, as criminal culpability is not an issue to be pre-judged lightly. Allowing a paralegal to make this decision is rather like having a jury to assess the issue. Appeals may involve more complex legal issues, but on this small proportion of cases legal advice can be taken. In the South Australia Commission only one per cent of criminal applications are rejected on merits grounds.

In family law, seven per cent of rejections involve merits. Familiarity with the court's basic approach in property, custody and access matters allows a paralegal to pick out those applications which have no chance of success. In civil law, merits are involved in eight per cent of rejections. Because of the complexity and breadth of civil law, these decisions are usually made by legally trained officers in the South Australian Commission. As only nine per cent of legal aid applications involve civil law, this still leaves paralegals making most of the decisions.

It could be argued that lawyers would find a higher rate of unmeritorious applications. This would save money for legal aid, but it may also lead to more borderline cases not being funded, and reduced access to justice. After ten years' experience with paralegals in this role, the Commission is committed to their employment.

Training for paralegal assignments officers is not so well developed. Until now, training has been entirely on-the-job, and through the recruitment of people whose past employment has given them some understanding of the legal system. As the Commission has expanded, training has needed more attention, both pre-service and in-service. An Assignments Manual has been produced, and a new training course for staff has begun, aimed at assignments as well as advice. This course is discussed in more detail below.

Limited Legal Services

The roles considered so far are outside the normal brief for lawyers. It is the involvement of paralegals in the delivery of traditional legal services which is most innovative, and most subject to criticism. In this section the South Australian experience of using paralegals for legal advice and legal representation in certain contexts will be considered.

In the early days of the Commission, intending applicants were seen by 'Interviewing Officers' who weeded out the applications that could not succeed and referred them to a private lawyer or some other appropriate agency. Over the years this role has grown, and the former interviewers are now known as advisers, to reflect the change in the way they are seen both within and outside the organisation.

To a large extent, the nature of the job has inevitably led to this development. It is very difficult to sit across a desk from someone who has come to seek your help, and not try to meet their needs. In many cases, the legal system does not meet those needs well, or the price of the necessary services is too high. The interviewers would try to fill in the gaps, until, inevitably, they became advisers.

What does a paralegal adviser do? Just about everything which it is too expensive to get a private lawyer to do, relative to the amount at stake. The advisers advocate for clients in common contractual disputes or with debt problems, advising on legal rights, and contacting the other side, either by letter or telephone, to try to reach a resolution; they guide clients through self-conducted litigation, such as small claims, unsatisfied judgment summons or defending traffic matters, explaining what to expect and how to present a case; they draft simple documents, such as a routine Power of Attorney or an Application for Dissolution of Marriage; they advise clients about family separations, where understanding of the law's approach in custody, access, maintenance and property settlement can help couples to work out their own solutions; they contact police prosecutors on behalf of people who have been charged with shoplifting in unusual circumstances; they deal with government departments such as Social Security when clients cannot understand or disagree with an administrative decision. About half of their work relates to the various aspects of civil law, usually in cases where the amount at stake is too small to make it worth the client's while to pay a private lawyer. Family matters represent nearly a third of the total, especially custody, access and property. Crime is less significant, as, in matters for which imprisonment is a possibility, legal aid is usually available to those who qualify on means. This leaves the advisers mainly dealing with minor matters, particularly traffic offences and special applications to retain a licence lost on points.

In most of these cases, there is no practicable alternative to the service the advisers offer. Private lawyers have priced themselves out of this market, and yet people need help if the justice system that exists in theory is to be truly accessible to people in practice. The theme of this conference links the employment of paralegals to improving access to justice; the Advice service in South Australia is a prime example of how this can be done.

The advantages of paralegals are twofold: quality of communication and cost. The communication is also a function of the motivation of the people who work as advisers; their primary goal is to help people, and they approach each client in terms of the best outcome for that person, rather than trying to fit the individual into the legal system. Where self-help, non-legal tactics or even giving up are likely to produce a better benefit-to-cost ratio for the client, the adviser will explain these options as well. Too often, lawyers seem to embroil people in the legal system without considering the costs, both financial and less tangible. The advisers are also able to couch their explanations in language more understandable to their clients, since there is less of a disparity between their educations and backgrounds and those of their client, generally speaking. However, they are expected to provide advice at the same level of accuracy,

and to honour the ethical obligations of confidentiality and avoiding conflict, just as a lawyer would.

Cost becomes an issue over time. A beginning adviser is only about $5,000 a year cheaper than a beginning lawyer, on the rates paid by the Legal Services Commission. The rate of salary increase for the lawyer is much higher, however, so that within 10 years the difference is $17,000. The comparison, then, should be made between an experienced paralegal and a first-year-out lawyer, who both cost about $27,000 per annum. The paralegal's knowledge of forms, practices and common problems for this client group is likely to make that person a much more valuable employee. The young lawyer may acquire this knowledge in a year or two, but by that time has become more expensive, and in any case, is likely to be looking for new career challenges. The paralegal on the other hand, usually comes from a secretarial or clerical role and regards their work as a satisfying culmination to a career. For cost and return on training expenditure over the long term, the paralegal is a more attractive employee for this kind of work.

The other initiatives in using paralegals to deliver legal aid services come from two other agencies, the Aboriginal Legal Rights Movement and the Department for Community Welfare Maintenance Branch. Both have involved paralegals in representing people in court, among other duties. Aboriginal Field Officers apply for bail and adjournments on behalf of clients. Maintenance Officers conduct maintenance applications when these are not settled by negotiation. On the non-legal aid side, there are creditors' clerks who conduct unsatisfied judgment summons cases and, a familiar example, police prosecutors. The ability of paralegals to conduct simple proceedings in certain forums has already been well-established, and the next issue should be to identify other opportunities for their use.

The main pre-condition for employing a paralegal to deliver legal services instead of a lawyer should be that there is a discrete body of knowledge and skills to be applied. Admission as a lawyer signifies an ability as a general practitioner; the legal qualification is supposed to equip a person to begin practising in any area of law. The paralegal does not have this broad background, and could not develop it without a training as extensive as that of the lawyer. The paralegal's forte must be to become extremely proficient in one small area, such as arguing for bail or applying for maintenance. The broadly-based work of the Legal Services Commission advisers probably represents the limit on the width of expertise a paralegal can be expected to acquire.

Discussion of the appropriate tasks for a paralegal raises the question of training. At the Legal Services Commission, advisers have been trained on the job, usually learning under an apprenticeship system while holding a position such as receptionist, which gives a good exposure to the clients and their problems. This has some drawbacks, particularly as many new opportunities have been identified to employ paralegals and improve efficiency. The Commission now runs a two-year training course, which it is expected will be certificated as part of a TAFE Certificate in Justice Studies. Several members of staff attend, with the objective of acquiring background knowledge of an adviser's or an assignment officer's work.

It is not expected that the course will completely replace on-the-job training, but it should cover the basic legal information in a more systematic way. The other students at present come from a range of community organisations, which have been given the opportunity to have a worker trained to give basic legal advice. In time, other students will come from the Department of Court Services, under an agreement between the two agencies to open up training and promotion opportunities to all staff.

In-service training and support is another crucial aspect to the efficiency and accuracy of paralegal advisers. Regular meetings are arranged to hear from other agencies or staff lawyers about changes relevant to their work. There is also an

Adviser's Manual, covering precedents for various documents, common penalties and a wealth of other information. An exciting possibility for the future is the use of computer technology, as in the Social Security package now being trialled. There is an allowance of time for reading and research in each day. Since advisers are not in the courts each day, as practising lawyers are, they need to be particularly conscious of seeking out new information and keeping themselves up-to-date.

Conclusion

The delivery of more legal services through paralegals is going to be essential to maintaining access to justice in these cost-conscious times, let alone improving it. The judiciary, the legal profession and ultimately the legislature must be persuaded to reduce some of the restrictions on their use, so that they can appear for clients in matters such as adjournments, bail applications and pleas in mitigation in minor cases. Enhanced paralegal advice services would also make it possible to open up more represent-yourself courts and tribunals, since the support and advice would allow most people to make use of such forums at minimal cost. Other paralegal functions, such as the conduct of community legal education programs, also have a role to play here.

On the cautionary side, the following conditions for effective paralegal service delivery are suggested:

- Carefully define the task to be performed, and be sure that the paralegals are aware of the limits and do not try to step outside them;
- Provide adequate pre-service training and frequent continuing legal education;
- Ensure that there are enough support services, such as manuals, a good library, and appropriate computer packages;
- Involve qualified legal practitioners, so that they support the service, believe in its value, and make themselves available when the paralegals need their assistance.

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The Paralegal Police Prosecutor - For How Long?

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Recently a police prosecutor made his way to court to prosecute a defended case of 'Keep and Manage a Brothel'. That he only had a short time to prepare himself was not unusual. Like all police prosecutors he would rely mainly on his experience to carry him through. The appearance of Queen's Counsel with instructing solicitor did not daunt him either as it is not uncommon for senior counsel to defend 'simple' offences.

What proved to be difficult (and it would have been for any practising barrister or solicitor without notice) was the extent of legal argument which was introduced before the trial commenced. In succession, the prosecutor was required to respond to the arguments that:

- the defendant could plead autrefois acquit;
- there had been an abuse of process (and that the summary court had no jurisdiction to hear that application);
- the proceedings should be stayed;
- a notice of discovery had relevance in a criminal trial;
- the prosecutor is obliged to give an opening address; and
- a writ of mandamus should be served on the Magistrate.

The end result is not important, but the scenario at least begs the questions of: how skilled and effective are police officers; and pertinent to the issue before this conference, should police prosecutors continue in this paralegal role?

The Police Prosecutor

In effect, there is no distinction between the legal duties performed by a police prosecutor and a legally qualified practitioner. It is true the more 'serious' cases are committed to courts of higher jurisdiction but the technical skills and knowledge are still required for the summary jurisdiction. Some argue that there is *more* technical argument in the lower jurisdiction because of the absence of the jury.

* The comments in this paper reflect the writer's point of view only and are not meant to represent policy for the South Australian Police Department or any other police department in Australia.

Quite frankly, the training for police prosecutors is inadequate. In each state it comprises a mere few weeks (or in some states, months) to be taught the fundamentals, and thereafter like the carpenter and plane, the real work is learned on-the-job. In a typical prosecutors' course, a half day's instruction will deal with a full academic year's work in an equivalent topic in an undergraduate law degree. The entire course is really set up to provide the basic working tools, the rest to be learned through experience. As a consequence, the new prosecutor needs to be introduced to the courts gradually, which in some departments is done under an organised tutor system (*see* 'The NSW Police Prosecutor' by Ken Drew in this volume).

History has shown that some police prosecutors develop a proficiency equal to the most experienced barristers. This is in spite of a lack of higher education. It really reflects a personal sense of dedication, intelligence and aptitude together with the fact that the area of law in which they deal is quite definitive and narrow. At the same time there are some prosecutors who should not really front the bar table as they are simply not good enough - the same of course, can be said of lawyers.

Is there a Need for Change?

Over recent years, the police prosecution branch has become a less attractive posting, probably for the following reasons:

- the assessment and aptitude testing for initial police recruits is based on suitability as a patrol officer - interest or aptitude for court work is not considered at that stage. Instead, there is an expectation that given the large pool of police available, some will develop an interest in this type of work;

- prosecution is a 'day job' and does not attract shift penalties - a colleague on shift could earn up to $4,000 per annum more; and

- relatively speaking, prosecuting is the most difficult job in the Department, seen simply as too hard, and therefore an unattractive career option.

Of the tens of thousands of briefs taken to court each year and ultimately decided in the summary jurisdiction, most (around 90 per cent) result in a plea of guilty. Of the cases which proceed to trial, police prosecutors are successful (in my experience in South Australia) more than 90 per cent of the time. This tends to demonstrate an appropriate level of success: to have a higher rate would indicate over-caution, while a lower rate might tend to indicate investigatory or prosecutorial ineptness.

If police are apparently doing it right, why then should the present system be changed? One of the reasons put forward to support an independent office of prosecutors, suggests that law should be left to the lawyers and policing to the police.

The prosecutorial function carries with it duties of fairness, consistency and candour. Critics suggest that police by being involved in the interrogation of suspects, interviewing witnesses, and gathering and selecting evidence, should be 'detached' from the conduct of the prosecution. Otherwise, where police decide to proceed against a suspect they can be tempted to ignore evidence which may doubt the suspect's guilt. Where police discretion lies solely with investigators, the criticism tends to be valid. It appears to be a natural consequence that police involved in an arrest tend to look to the judicial process for punishment.

Once a dedicated group is set up to carry out the prosecutorial function (albeit within a police department) these propensities tend to be removed. The 'killer' instinct is not ascribed solely to the police prosecutor - many crown prosecutors, especially

those dealing constantly with serious criminal cases, have been given the same label. The police prosecutor in fact, tends to leave behind the investigative mentality and through time adopts the role of 'officer' of the court. The court requires it. To the police investigator, the police prosecutor is sometimes seen as being too conciliatory and sympathetic to the defence, when in fact the prosecutor is simply adhering to the principle of being frank and fair.

One could be convinced that for the sake of appearance, the current police prosecutorial role should be taken away from police and taken on by some body *seen* to be independent. This invites at least the following questions:

- Will it be staffed by legally qualified practitioners or paralegals?
- If it is staffed by lawyers will they take on the same volume per head and put up with the limited preparation currently suffered by police prosecutors?
- If it is staffed by paralegals, where do they come from and what training will they receive?
- Overall, how cost-effective will changes to the present system be?

It is not unusual for a prosecutor to take over a 100 briefs to court on a 'general list'. If, as it sometimes happens, the list is taken from him or her to another court to be replaced by a defended trial, that prosecutor may be required to take the case on without notice. The effect of such 'musical chairs' is that when the music stops the prosecutor may be left with a complex case, and the first sighting of his witnesses being when they shuffle into his court and sit expectantly behind him. Lawyers would simply not put up with these conditions.

The management of a police department (rightly or wrongly) is based on a quasi-military format which requires that employees will do as instructed. A prosecutor can be directed to take on a high volume workload or to conduct a trial with minimal (or without any) preparation. Lawyers, under their professional work ethic, would hear of no such thing. The state would be regarded as their client and the client would be seen to deserve adequate and proper preparation, which would as a consequence, require a dramatic increase in staffing.

Presently, police prosecutors undertake the task with the barest resources and minimal preparation. The composite functions of a prosecutorial body being taken away from the police and given to lawyers would require in the author's estimation an increase of staff in the order of 4:1. This is based mainly on the huge increases in time lawyers would require for the preparation of briefs and also to consult witnesses.

From the author's reading and experience lawyers would tackle the job with considerably more caution. When Director of Public Prosecutions (DPP) lawyers were given a guided tour of the Adelaide Police Prosecution Office they were understandably shocked at the physical conditions under which police prosecutors worked, especially the lack of space and privacy. What surprised them most was the limited information upon which charges were laid. In many of the random sample briefs they examined, they said they would be reluctant to prosecute because of the limited information available and the defences which could be anticipated. The extra additional information required would not only call for extra resources within the prosecution unit, but also require much more time and effort from the investigators who prepare the briefs.

Another factor which must be taken into account is the quality of the service an independent office of lawyers would provide. DPP Offices tend to attract inexperienced and transitory lawyers who use the job to accelerate experience, in

effect, packing 10 years' experience into three. This can lower the esteem of the office and its relationship with the police investigators who require the service**.**

What about the Alternatives?

If the job is to become independent of police and served by paralegals, where do these paralegals come from? The most obvious answer is from existing police prosecutors under the management of a separate legal head. One cannot find much argument with that, certainly not in the short term where police prosecutors are probably the only viable supply. Ultimately, with greater lead-time, paralegals could be recruited (and trained) from other areas. Both in the short and long term, some real issues must be addressed, if this move is contemplated.

In other countries, paralegals adopt the lower levels of work skills in the office, with the difficult matters being handled by lawyers. Here, police prosecutors are currently conducting complex and intellectually challenging cases. If under some change, the role (former) police prosecutors adopt is along the lines of taking *only* the mundane and simple cases, there would be few of them willing to take on the job. Currently with prosecutors there is a strong sense of dedication to the role and a great sense of pride attached in doing a difficult job well. Many police prosecutors are undertaking undergraduate courses, some with the aim of gaining admission to law school. Secondment of police prosecutors to an independent paralegal system should take this into account and must maintain their level of intellectual stimulation and where appropriate encourage or foster higher education towards a law degree.

This may not suit the head of paralegals under any new structure as some stability in staffing is necessarily required. If the tasks are mundane it may be best to ignore police prosecutors or to second only those who are content with the more mechanical aspects of the legal process rather than pursuing higher ambitions. To second a bright prosecutor especially where this person has intentions of doing a law degree, might be counterproductive.

Training of Paralegals

Specific training is required for paralegals. Present police prosecution units have high absenteeism, and a disproportionately high level of induced stress illness. Some of that can be put down to square pegs in round holes, high work-load, and poor conditions, but another significant factor is the level of training they receive. Full and adequate training is an essential prerequisite. Seconded police prosecutors could get away with refresher courses but paralegals coming from outside the system would need much more. The TAFE Certificate Course in South Australia for Field Officers for the Aboriginal Legal Rights Movement, for example, is a full-time course over two years. Paralegal training for prosecutors should be at least equal to that.

Conclusion

Ultimately, all police departments will lose their prosecutorial function. The police should not fight too hard to retain it. On a purely demarcation argument the function fits better in the hands of lawyers. Over the years police prosecutors have been constantly complimented by the magistracy and the legal profession on their competence. In recent years, however, the level of intellectual and technical expertise demanded of the police prosecutor has increased dramatically. The so-called courts of

summary jurisdiction are no longer uncomplicated forums for simply deciding fact. Complex legal argument is now common. While there are exceptional individuals who have kept abreast of the change and are even stimulated by it, for many police prosecutors, there is a growing gap between the court's demands and their actual performance.

If lawyers take over the role now assumed by police prosecutors, they should recognise a place for paralegals in the summary courts. Where such a transition involves recruiting police prosecutors their skills and abilities should be appreciated and used. Accordingly, they should be encouraged to participate in the more challenging aspects of the job and not just left with the simple clerical functions.

The New South Wales Police Prosecutor

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The New South Wales Police prosecution service had its genesis in 1941. While its scope and responsibilities have been chameleon-like and its very existence constantly under threat, it remains a major component of the local court justice system in New South Wales[1].

In 1981 Mr Justice Lusher recommended, inter alia, that the 'Prosecutor's branch be phased out as soon as possible and within five years its personnel cease to act as prosecutors . . .'. Three years later the New South Wales Chief Justice, Mr Justice Street (1983) addressed the role of police prosecutors in Magistrates' courts and cited with approval the recommendation of Lusher (1981).

Subsequent to the Humphrey's Royal Commission in 1983 The Hon. N. K. Wran, Premier of NSW, requested an assessment by the NSW Public Service Board of the transfer of police prosecutions to the Attorney General (NSW Office of Public Management Report, unpublished). The assessment identified an increased cost of $5.9m in the first year and $4.4m in each subsequent year[2]. Bishop (1989) observes 'in political terms, this must be regarded as a significant obstacle to the abolition of police advocacy'.

But is it simply monetary expediency which sees the retention of this essential service? Bishop (1989) observes that Lusher conducted the most detailed examination of police advocacy in NSW and he:

> apparently did not find incompetence or inefficiency nor did he refer to complaints of incompetence or inefficiency. Indeed, there is no indication that the performance of the police prosecutors is regarded as inadequate by those who practise regularly in the local courts (Bishop 1989, p. 60).

Despite concessions that:

> there is some force in the arguments that the professional expertise of the police prosecutors is sufficient for all purposes' (Bishop 1989, p. 59).

Bishop joins the proponents for change when he concludes that:

> the only substantial arguments based on principle for the retention of the police prosecutors - their professional expertise in sufficient for all purposes - cannot be sustained at the present time (Bishop 1989, p. 62).

Against this historical background there has been a gradual movement of prosecution responsibilities away from police prosecutors. In 1984 by agreement between the police administration and the office of the solicitor for public prosecutions the conduct of criminal proceedings against police officers passed to the latter organisation. In a similar agreed move in 1986 responsibility for the conduct of prosecutions in child sexual assault cases passed to a special unit of the Attorney-General's Department. Ultimately the *Director of Public Prosecutions Act 1986* (NSW) enabled the Director to take over matters 'instituted by a person other than the Director' (s.9).

The reports of Coopers and Lybrand W.D. Scott, consultants, and the New South Wales Attorney-General are of significance in the police prosecutor paralegal debate, for while they do not address the large percentage of local court prosecutions they do draw attention to a significant problem in this paralegal debate, namely the indefensible system of having two prosecutors handle the same case through the two levels of the criminal justice system. We have agreed that there is no justification for these matters remaining in the hands of police prosecutors. Pilot programs are in train as precursors to the shift of committals to the Director should the abolition process mooted by the Attorney-General not eventuate.

As has already been noted the Committal issue is relevant to the paralegal debate, as even in the face of this recent shift of responsibility, the Committal matters only represent some 20 - 25 per cent of the criminal proceedings in the local court jurisdiction. Consequently either of the proposed changes will still leave 75 - 80 per cent of all prosecutions in the hands of the same police paralegals whose role was recommended for abolition as far back as 1981.

So it seems the almost 50-year reign of police prosecutor paralegals is to continue in New South Wales and while there may be erosions to their role, even that is illusory in terms of the extent of their involvement.

The summary jurisdiction of the local courts continues to expand with amendment of the *Crimes Act 1900* (NSW)[3] and with the avowed intention of the Attorney-General to expand the summary jurisdiction as a measure to reduce delays in criminal trials (letter from the Attorney General to the Hon. N.F. Greiner, MP, Premier. 27.11.1989 (unpublished) 'It is one of my stated aims that more matters are disposed of summarily . . .').

There seems to be enormous confusion about the role of prosecutors. On the one hand there is movement against police advocacy which reaches as far back as the 1962 Royal Commission on Police in Great Britain which reported:

> in general, we think it undesirable that police officers should appear as prosecutors except in minor cases. In particular we deplore the regular employment of the same police officers as advocates for the prosecution (Great Britain 1962, p. 114, para. 381).

Without canvassing the United Kingdom experience in this paper it can be safely said that the crown prosecution service has not been as economical or as efficient as was originally anticipated. Criticisms have included questions of accountability, independence and the cost of the service (*see* Tildesley 1989; Bennion 1986; Sanders 1986; Timmons 1986).

On the other hand, the New South Wales Police Prosecution Service remains without public controversy and without suggestion of any lack of competency. It remains without any real threat to its existence despite several changes in government and despite the continual recommendations for its abolition by a variety of inquiries and commissions.

The reasons for its success are manifold, however some may be summarised as:

- an adherence to discipline within the organisation in addition to a code of conduct for legal services officers;
- an anti-corruption plan developed with strategies to identify inappropriate behaviour;
- an extensive training package with seven months face-to-face education in conjunction with two years practical training before an officer can act without supervision;
- a statistical database of applications for withdrawal and the results of those applications;
- a statistical database of work rates;
- the maintenance of a prosecutors' digest of case law available state-wide on computers access; and
- the maintenance of a digest of indictments available state-wide on computer access.

Endnotes

1. Prior to 1984 all defended actions in local courts were conducted by police advocates. With the suggested movement of committal cases to the Director of Public Prosecutions; police advocates will still handle in excess of 75 per cent of all cases (New South Wales Office of Public Management 1989).

2. Reserve Bank of NSW devalues 1984 $1 at $1.50 (approx) in 1989. Cost of transition today would therefore estimate at $8.85m and $6.6m (approx).

3. 16/7/89 Introduction of offences involving false instruments and computer related frauds dealt with summarily under section 476.

   19/2/89 Offences of riot and affray made statutory offences. Dealt with summarily under section 476.

   12/1/89 Introduction of child prostitution and pornography offences. Dealt with summarily under section 476.

   13/1/88 Value of matters able to be dealt with under section 476 increased from $10,000 to $15,000.
   Value for section 501 (now section 496) likewise increased from $2,000 to $5,000.

   1988 Increase in the number of offences able to be dealt with without the consent of the accused under section 501 (now section 496). Some of the offences are: Larceny as a clerk or servant, embezzlement, fraudulent misapproriation, obtain money by deception, obtain money by false/misleading statement, receiving goods stolen outside state.

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Legal Training for Non-Lawyers

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Although the title of the conference is 'The Future of Paralegal Professionals', the term 'paralegal' has not been used in this paper because it implies someone who supports or complements lawyers in their work and assumes lawyers to be the professionals with all the knowledge and expertise, who may find a place for someone less qualified to assist them. The areas in which lawyers commonly seek unqualified assistance are conveyancing, probate and debt; never litigation or commercial work. There are limited career opportunities for those trained to assist unless they be in small business management for which legal training is only of peripheral importance. Those who assist lawyers in private practice are not the central concern of this paper nor are they the primary targets of the programs being developed at Wollongong University, although a little is said of their needs later. The term preferred in this paper is 'legally qualified non-lawyer', a clumsy term but descriptive of a different attitude to legal training for purposes other than legal practice.

Legally qualified Non-Lawyers

The paucity of legal knowledge in the community is apparent. The need for legally qualified non-lawyers has long been apparent in Australia. The fundamentals of our legal system are not popularly known in Australia and while they remain a mystery to most of the population the law cannot be said to be serving its proper function in the community. There is therefore a need for legal education at the most general level. This is probably best provided at school, but may be made available on a less formal basis to the community as well.

A legal education entails knowledge of such fundamental topics as the structure of the Australian system of government, federal and state, an understanding of the division of constitutional powers and of the exercise of executive power as well as some understanding of the structure and function of the courts. These matters should be assumed knowledge amongst the voting public but they cannot be taken for granted in Australia since civics does not form a substantial part of any school curriculum. The deficiency is currently being addressed in secondary schools. Legal studies courses are being introduced although generally only for later-year students. Until those courses have general application the task of instructing in civics will continue to fall on tertiary institutions and community groups.

Tertiary Institutions and Community Groups

Currently there are two main markets in legal studies. One is served by the tertiary institutions, the universities and colleges of TAFE. The students studying at these institutions include legal studies in their courses to fulfil the requirements of professional bodies such as the institutes of chartered accountants, social welfare agencies, departments of education and nursing registration boards. Students complete 'service courses' and are provided with the information about the law thought appropriate for their intended careers. A wider legal education is not encouraged for these students because of difficulties involved in combining it with the subject requirements of the primary discipline.

The other market of increasing importance for legal education is served by community groups such as legal centres, citizens' advice bureaux, community centres and Workers' Education Association courses. These services have grown up in response to community demand, particularly from disadvantaged groups. Often the demand is from those who wish to understand the processes of law and government in order to lobby for their causes more effectively. Members of Aboriginal communities and those interested in environmental issues figure prominently amongst these groups. Others have more personal needs. Men and women going through the processes of separation and divorce who need advice on custody, maintenance and social security are clear examples of people with such needs and there are many others in the community who need to understand the law or parts of it in order to pursue their legitimate interests. Many of these people do not have the financial ability to employ a solicitor and even if they do receive advice from a private practitioner or other practising lawyer (for example duty solicitors, chamber magistrates, legal centres, legal aid) they may not feel that their needs are being fully met, for often it is more generalised information they require to allow them to understand the practices and procedures they have encountered. They may also require information about alternatives available outside the legal system as well as within it. Because it is problem or other-career centred, much of the instruction being provided at present is unstructured and leaves enquirers with a confused view of both the legal system and their place in it. Too often after little or very specific advice people go away with a jaundiced view of the legal system, fed perhaps by an unsatisfactory encounter with it.

Although disparate in their concerns and interests, and often in their educational backgrounds, it is becoming increasingly obvious that these two groups have much in common. They require an understanding of the systems of law and government in Australia before they can operate effectively in their areas of interest. They need an appreciation of their place in the legal scheme of things. They need to learn the fundamentals in a structured way to gain a real understanding so that they can go on to learn about and understand the detail of their particular area of concern. Which parts of the law the non-lawyer may wish to study and in what depth will depend upon the individual and the purpose for which the knowledge is required. After the fundamentals have been taught, the learning program can be structured to allow the non-lawyer to gather as much or as little specific information as is required. A non-lawyer may wish for instance to gain some understanding of contract law, consumer credit and company law, but not the detail required by a law graduate. Means should be devised to serve this need.

Too Much Law

The solution for non-lawyers is not to throw them all into LLB courses or indeed into look-alike courses which do not qualify for legal practice. At present only those sufficiently interested to want to practise law are given the opportunity to study the discipline in sufficient depth to provide a real understanding. The only means

available for them to do this is to enrol in an LLB degree course and to become lawyers.

Bachelor of Jurisprudence and Bachelor of Legal Studies degrees which attempt to wean people away from the LLB often fail because they offer generalised legal qualifications to people seeking professional qualifications. La Trobe University seems to have been successful in avoiding this - because it offers very specialised courses in programs which dovetail with other discipline studies.

Wollongong intends to take a path similar to La Trobe, but with perhaps more specific markets in mind.

Two Markets at the Tertiary Level

There are two markets in which Wollongong University is interested; those working in or requiring specialised knowledge in courts policy and administration and graduate/mature age entrants.

One of the programs offered at Wollongong is a Graduate Diploma in Law. Entry qualifications are a degree or equivalent training or significant work experience. It is expected to attract graduates who have not been successful in gaining direct entry to the LLB program as well as those with an interest in one of the specialist areas of the Faculty (industrial law, mining and natural resources law, or courts policy and administration) and so long as the admissions office is not overwhelmed the Diploma course could provide a useful route to the LLB course for some of those who, because of quotas, are unable to enter the LLB program directly. To facilitate this there are plans to teach the foundation undergraduate subjects in two phases, at an introductory level suitable for both non-law students (Graduate Diploma students and those enrolled in Bachelor of Commerce and Bachelor of Arts degrees) and as an introduction to the subject matter for LLB students, followed by an advanced level course for LLB students and those non-lawyers intending to specialise in the area. There are benefits for both the LLB and the non-law students in this structure. By studying alongside LLB students, non-lawyers will be able to evaluate their levels of knowledge and understanding of the subject matter, thus avoiding the worst features of many 'service' courses which leave non-lawyers with misconceptions about their levels of knowledge and, in particular, with misconceptions about the need to update and to research particular problems. Meanwhile the LLB students will be able to learn from the greater practical experience brought to the courses by the mature age non-law students. The Graduate Diploma takes one year of full-time study to complete. At the end of the Diploma, those students who do not perform well enough to transfer to the LLB course will leave the University with both the fundamental introductory knowledge of the legal system described earlier in this paper and a sound understanding of at least one area of specialisation.

The Graduate Diploma in Law (Courts Policy and Administration): Training for a new Career, not just Continuing Education

The Diploma course of interest to this gathering is the Graduate Diploma in Courts Policy and Administration. The Diploma will be a highly structured program designed to produce a person well-equipped for the planning and management of courts systems. The program will be available to LLB students as a specialist series of elective subjects in the undergraduate degree and for graduates who wish to specialise in the area. Those completing the program could therefore leave the University with an LLB degree specialising in the area or with a Diploma which does not qualify them to practise law, but whether they obtain an LLB or not they will graduate with the

necessary foundation training in law and the specialist training in Courts Policy and Administration to equip them to fulfil a responsible management position in the courts administration or courts policy area. After completing the necessary introductory subjects covering the structure of government and the courts, as well as legal reasoning and research techniques, the Courts Policy and Administration students will study communication techniques, with particular emphasis on conflict resolution, negotiation and arbitration. Courses will then be completed on specialist topics such as the exercise of judicial discretion, caseload management, evidence and practice and procedure (the latter with special emphasis on the relationship the substantive law bears to caseload management and the delivery of justice). In addition those students who have not studied law before will complete some substantive law subjects to provide an understanding of legal reasoning in the areas of law of particular concern to them (for example family law, criminal law, torts, contract and consumer protection). To complete the Diploma course these students will then go on to study those aspects of public finance, human resource management and information systems necessary to prepare them for management in the public sector.

We hope this Diploma course will become a recognised qualification within legal circles and support its own 'paralegal' profession of both lawyers and non-lawyers within both courts offices and wider government policy areas.

Other Non-Lawyers

There are others as well who require a legal education, but for whom there is no appropriate means of admission to an LLB course. Many of these people come from disadvantaged groups in the community which require trained advocates to help them reach their full potential. Some of the groups with such special needs are Aborigines, those concerned with environmental issues and professionals having to advise others on matters such as access to government benefits, anti-discrimination and family violence. Others realise later in life that an understanding of law would be useful in their chosen careers. In this category may be listed mature age students (especially those returning to education after early failure or withdrawal) and groups needing to retrain to be able to teach legal principles to others, such as teachers, social workers and members of voluntary community assistance programs, members of the police force, many in the public service and those in middle management in the private sector who find that promotion means much more these days than merely knowing the business.

These people need to know about the law for many different reasons and at many different levels. There are those who must become aware of the structure and processes of government in order to lobby for their cause more effectively. Others need to be able to predict change in patterns of legal control in order to compete in the market effectively. All require an understanding of legislative processes and methods of judicial interpretation.

Whatever the reason, the two key factors in overcoming disadvantage, access to information and the ability to advocate effectively, are well taught in law schools and because training in law enhances both abilities it is important that means be investigated to provide that training for a wide population. Special admission schemes do not meet all the needs in this area. Special education programs to enhance the likelihood of success are also needed if progress is to be made in this field of legal education.

Opportunities for such special education can be made available in three ways. Two have been mentioned so far:

- programs which offer special admission to LLB courses, whether by way of a Graduate Diploma program described above or by direct admission to the

LLB course. To succeed these programs must be accompanied by internal educational assistance programs which enhance the students' chances of success;

- special courses for defined purposes, such as the Graduate Diploma in Courts Policy and Administration;

A third, very different means of providing legal education for non-lawyers is through

- the development of community legal education programs. Wollongong is currently investigating possibilities in this area.

Community Legal Education

Community legal education refers to a type of pyramid selling of legal knowledge. Members from different interest groups are trained to provide both elementary legal assistance to their communities and to train others in their groups to do the same. In Wollongong, the Faculty of Law and the Illawarra Legal Centre are involved in a joint project to investigate the possibilities of using law students to assist in the training of community groups, particularly those groups serving young people in the district and the young people themselves. The aim is not to use the students to give advice or to assist with individual legal problems. Rather, they are to research the area of law in which information is required and to present their knowledge in seminar or workshop form to members of the community making the enquiry. The students will be supervised by members of the Faculty and representatives of the Legal Centre to ensure accuracy and quality.

The research and presentation experiences will be valuable for the students and the information conveyed will be useful to the groups. There are further benefits for both the community groups and the students as well. The group members will have access to someone who is prepared to do the research and find the answers they require without cost, while the students will derive the benefits of having to deal with real people in real situations occurring in the district. But the most important aspect of the project is its potential to train members of community groups to train themselves and their clients, thereby making legal information available to the groups which need it, when they need it, and in a form in which they can use it most profitably.

Conclusion

The conclusion reached in this paper is that there are legitimate demands for legal education which do not necessarily entail provision of a degree in law which qualifies the graduate for practice. These demands do not come only from those who aspire to practice but are prevented from doing so because of failure to gain admission to an LLB program. Nor do they come only from people who aspire to serve lawyers as paralegal professionals.

An attempt has been made to identify those in need of legal training who do not require a degree which admits to practice. Two groups have been identified. The first is the group which requires a different type of legal qualification for a purpose different from practice.

They are already engaged in a career, or have laid plans for an independent career, but require some legal training to pursue that career successfully. The Graduate Diploma in Law (Courts Policy and Administration) to be offered at the University of Wollongong is an example of such demand.

The other group identified is currently served by community education. The paper identifies ways in which community education may be enhanced in order to offer a better service to these groups, the aim being to establish legal knowledge in the general community instead of fulfilling the need for legal information through partly-trained paralegal professionals.

Training Aboriginal Field Workers

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A Night in the Life of a Field Officer

Field Officer Jones, a young Aboriginal of 20 years, is called out late at night to attend a police station. He speaks with his client: Charlie - a nervous, semi-intoxicated fellow facing a barrage of charges for various street offences. Jones ascertains that Charlie wants to exercise his right to remain silent.

The interview begins. Kelly, a wily old sergeant starts the questioning. Jones butts in 'My client has advised me he doesn't wish to answer any questions. That's right, isn't it, Charlie?' Charlie nods. Undaunted, Kelly continues the questioning. Charlie, as happens in the great majority of cases, starts to talk. Jones again cuts in. This cycle keeps repeating itself until the Sergeant finally explodes, 'Look you, this is my interview. If you butt in once more, I'll have you charged with hindering'. What will Jones do now? The answer provides the acid test of what makes a good Field Officer and an effective training course.

Being a Field Officer isn't easy. For Jones to do his job properly he needs a high degree of commitment; good communication skills; confidence, assertiveness and initiative; and a thorough knowledge of particular elements of law and procedure. And all this is required just for this one role. We could go on to look at some of the other roles: community mediator; negotiator, legal educator; and interviewer, to name a few.

The Irony of Aboriginal Legal Education

How does one design a course which will equip field officers with the necessary skills?

Well, it is really quite simple. What you do is hire some lawyers to write a scaled down version of a university law course. Then contract with the Legal Services Commission's top talent to present it. Add the latest teleconferencing facilities to link up with all the remote country students. Bring in some top barristers and a sprinkling of other professionals. Spend lots of money and everyone marvels at this wonderful course . . . except for the students . . . who don't come!

You see, we overlooked a very basic principle. If it's an Aboriginal program, then it's got to be an Aboriginal program. That is, it must be designed and controlled by the Aboriginal community.

This is especially so when the program is a law course. Indeed the two biggest obstacles we face arise from that very fact: first, that we are dealing with the law, and second, with an educational course. For it is in the legal and the education systems that we find two of the major areas of prejudice and discrimination against Aboriginal people.

Look at the different perception of the law. A young law graduate is sent off to court to argue with the Magistrate. It's no big deal. Chances are his daddy was a lawyer (or, failing that, a doctor). He has been rubbing shoulders with Magistrates and the like for years.

If you send a new field officer, on the other hand, it is likely to be a very different story. The only previous contact he may have had with the bench was when he was in the dock under the fiery glare of His Honour.

The second obstacle mentioned, was the education system. Many Aboriginal kids have left school with the impression that they were from a savage primeval race which could never hope to attain the heights of European civilisation. Only a few managed to break through the prejudice and bigotry to prove they could succeed in spite of the obstacles.

It should be obvious, then, from these considerations that a law course has the real potential to further alienate its Aboriginal students. It is only as those students come to see the course as their own that they will learn and grow within it.

'I Hear, I Forget; I See, I Understand; I Do, I Remember'

This Chinese proverb is a helpful standard by which to judge any course, particularly in Aboriginal education. Traditionally, Aboriginal people learn by observation and experience.

'I Know it but I Can't Write it Down'. This cry is all too frequently heard in Aboriginal education. Many Aboriginal people have had little formal education. Consequently, they are immediately at a disadvantage when faced with traditional course entry standards and modes of assessment. This raises a dilemma for course co-ordinators and employers who are trying to ensure a fair go for disadvantaged groups while maintaining high standards.

The problem is real and urgent. Aboriginal imprisonment rates are amongst the highest for any ethnic minority in the world. Lasting change will not occur until Aboriginal people are represented on the other side of the prison gate - as Aboriginal lawyers, magistrates, police and welfare workers.

But this problem is a long way from being solved. One example is police training. The very few Aboriginal people who apply for entry are stumped before they arrive on the crease. They have not matriculated and so have not met the entry standards.

However, this is not an argument for lowering the standards. Rather, the methods of assessment and course delivery need to be broadened. This would enable intelligent and motivated people to demonstrate their understanding of course objectives by other means, without them being handicapped by poor literacy skills.

In designing an effective curriculum, one needs to focus on the desired outcome and work back from there (that is the course must be designed so that it suits the needs of students and employers: **not** the other way around.) It follows that difficult academic tests are not necessarily reliable as a guide for future performance in the work place - even in a profession like the law. For example, the Aboriginal legal services want field officers who can confidently stand up in court and argue the

question of bail with prosecutor and magistrate. It would be possible to have 10 weeks of training in lectures followed by a written exam, but those results may bear little relation to actual performance in real life situations.

It is better to try and re-create that real life situation and make a skills based assessment. Our formula, which we are still working on, is to run workshops which combine theory with practice. We provide some theoretical input on court procedure and the relevant matters which a magistrate can take into account. We combine that with exercises in public speaking and assertiveness training. Finally, we borrow a courtroom with a real magistrate, prosecutor and court orderly, (we have not managed real prisoners yet!), and the students then have to do battle with the prosecutor and magistrate.

This system allows great flexibility. It does not just cater for those who are at tertiary level, nor does it make it too easy for them. Just as importantly, it allows those with little formal education to attain a good working knowledge of relevant law and practice.

Ivory Towers and Shifting Sands

It is not easy building ivory towers in Aboriginal education. If you think your course is important, you can be sure that none of your students will.

If your students do not live up to your expectations, it is easy to criticise them for laziness and lack of commitment. For instance, if there is a funeral in the community, you cancel classes for the day because no-one will turn up. It is not an issue of being lazy, but rather a difference in cultural priorities.

Aboriginal people give much more value to personal friendships and kinship responsibilities than to gaining letters after their names. When you think about it, perhaps it is not such a backward culture as some would have us believe.

Does Use Dictate?

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'But you should say what you mean,' the March Hare went on.

'I do,' Alice hastily replied, 'at least, I mean what I say - that's the same thing you know.' (*Alice in Wonderland* by Lewis Carroll).

'Meaning, however, is no great matter.' (*Lovers and A Reflection* by C.S. Calverley).

These quotations highlight the problem that has been vexing me since becoming involved with the question of paralegals in Australia. It is suggested that everyone in the legal profession knows what a paralegal is and everyone knows if they employ paralegals, what it is that they are employing. Unfortunately, there is no consensus when it comes to analysing what exactly is being held forth by the use of the term 'paralegal'.

For this reason, it is extremely important to come to grips with this problem by undertaking two things. Firstly, the work done by persons presently called paralegals needs to be clarified; secondly, is there a better name than paralegal?

For far too long legal history has focused on the judges and the lawyers. The honest toilers who have supported the system and enabled these persons to gain such prominence have often been overlooked. One of the earliest of these valiant servants of the law in our system was 'the Reeve', a term derived from the Anglo-Saxon. The definition of the Reeve was: 'The official of the Medieval Hundred, sometimes called a Hundred-Reeve or Hundred-Man. He was a bailiff or deputy of the sheriff and held the Hundred Court along with the suitors of that court.'

The next development was that of the bailiff who took over and expanded some of the functions of the Reeve. Unfortunately the term 'bailiff' has become synonymous with the enforcer of the harsh laws against the impoverished. There is no stigma, no such social opprobrium attached to the name of Reeve. The term Reeve has an honest history and in modern terms it has the great merit of being gender neutral. Reeve has no social connotations.

It certainly is not a word that one might have coined were one seeking to create a word from scratch, nevertheless in view of the difficulty that is experienced in trying to find suitable alternatives to the term 'paralegal', 'Reeve' does have some merits. The

other options available are 'law clerk', 'clerk', or the English model of a 'legal executive'.

Unfortunately we have left it too late in Australia to borrow the English expression 'legal executive' for general use, because it has connotations for some members of the community that make it unacceptable.

Nevertheless it could be suggested that it is not merely a whimsical task to try and find an acceptable name, it is a vital necessity if we are then going to define the functions of the person who holds that name. We cannot argue that 'use dictates', because at this stage it is more abuse than use.

An argument is made here for a nationally recognised and harmonised training course, and for a nationally recognised position within legal work with its own career path and its own status. It is important that it is not hampered by an ill-considered choice of name.

Whatever name is chosen, it should have the attributes advanced above for selecting the word 'Reeve', which are:

- it is gender neutral;
- it has no stigma;
- it has no social connotations of an adverse nature; and, ideally,
- it should reflect some part of our legal heritage.

There may well be an appropriate Aboriginal word which fits this bill, and that would also have the merit of having a particularly Australian dimension. Suitable words range from 'kalparrin' (kal *par* in), helping with a load, to 'nyarru' (ny *ar* oo), sympathetic.

For the purposes of the rest of this paper the term 'paralegal' will be used subject to the constraints already outlined.

Training Paralegals

The paralegal will be working in a legal environment. However, such environments are many and varied. It is therefore imperative that this is taken into account when designing the appropriate training programs. There are three clear separate and distinct stages in the training of paralegals.

Stage I

The first period of training should be two years' part-time with appropriate residential or in-service components to satisfy the need for a general education. It is important that this initial training is harmonised on a national level so that this level of attainment is transferable.

The initial training stage will offer to any prospective employer the security that a person who has fulfilled the course requirements is a potentially useful employee. This employee will understand the nature of the law, something about why Australian law is the way it is, what its procedures involve, and a grounding that enables new procedures to be learned readily. It will also allow the holder of the qualification to work at a level that takes into account the skills required of a modern office employee.

For this reason, it is clear to see that the proposed two-year initial course falls naturally into three main areas. They are:

- the theoretical and foundation aspects of a study of the law, including an introduction to the main substantive areas of legal studies;

- the practical area focusing on the skills needed for legal work, as distinct from what can be categorised as the academic part of the course, and an introduction to the practice and procedure commensurate with such work; and

- the third area which is relatively revolutionary in that it focuses on individual development and the training of a person who would in other occupations, be a middle management position. For this reason, it is vital that the person has a knowledge of the fundamentals of communication management, computers, and inter-personal communication.

There are at least 10 areas of law that have to be dealt with in an academic way in order that the paralegal has a basic understanding of the main areas of legal practice. The subjects to be considered are: contracts; torts; criminal law; equity; land law; family law; commercial law; company law; testamentary practice and succession; and consumer law.

This is not an exhaustive list and if any one subject is deemed to be inappropriate it should be replaced by another area of the law. For example, in this part of the course there is no mention of constitutional law. The difference between these and any other of the what can be deemed 'black-letter' law subjects is that these 10 subject areas are spread over the two-year period. The others, such as the constitution, are dealt with very early on so that the paralegal is able to do useful work from a very early period in the course.

The introductory legal topics that need to be considered are: the nature of the law, legal history, the court system, and the constitution. Just as university students need to put the law in appropriate context, so too do paralegals. Therefore, law is looked at in the context of sociology, ethics, philosophy and religion.

Legal history enables the student to see a context and a rationale in some of the situations existing today. It also enables the student to make a value judgment about changes, and to have an understanding of the development processes that have taken place so far. This is a useful area in which to introduce the political nature of the legal process.

A consideration of legal history leads naturally and comfortably to a study of the constitution and its effect on our legal processes. The first three topics also have the added value of enabling students to see things in a national context, a factor which is vital for the transferability of this qualification.

At this level and because of the introductory nature of these studies, it would be better if the court system and court processes were taught in such a way that they cover the local area, but also provide an overview of the differences between the court system in a particular state and the variations expected to be found nationally.

From a consideration of the court system, looking at local and federal courts and how they interact, and the processes that operate in each court, the student is led logically and comfortably into the areas of practical legal work. Practical legal work as a separate subject area covers the practice and procedures in the various courts and in the students' jurisdiction. It is also an introduction to the following topics: research; drafting; advising; briefing; filing and other legal process related tasks.

At this point, it is appropriate to introduce specific tasks and to undertake practical work with summonses and possibly simple briefs. The work commenced here can continue for the rest of the first year as part of an ongoing series of exercises which will form the basis of the assessment of the practical aspects of the course at the end of the first year.

The work of tribunals follows the study of the court system and would be better taught in the second year of the course. The range of tribunals considered in the course would vary, depending upon the state in which it is being taught. Nevertheless, it is important that the range of tribunals operating in each state should be looked at.

Once the student has acquired a very basic understanding of the law, it is important to commence training the student to be a useful employee so work-related skills should commence fairly early in the first year of the course.

The most appropriate skills to which the students should be introduced at an early stage are those of communication. This should be sub-divided into the three areas of oral communication, written communication, and other means of communication such as body language.

Oral communication can be sub-divided into the various spoken tasks that the employee paralegal will be expected to use. Basic voice use should be addressed, leading to correct telephone usage and dictaphone use. Both of these skills should be addressed by giving the individual concerned practical tuition.

The three main oral communications skills follow - interviewing, negotiation, and basic advocacy. Interviewing should be approached on the basis that the paralegal will need to be able to conduct a variety of interviews ranging from general introductory interviews to situations where the paralegal is interviewing for specific purposes. Again, as with the other topics in communications, each person will be given feedback and trained as an individual to make the best use of their own potential.

Negotiation and the other essential areas of dispute resolution will be approached at a rudimentary level, both as an educational process and as a skill training. Clearly the amount of time that can be spent in this area in a two-year part-time course is very limited, nevertheless the student will gain an insight into the underlying processes of the negotiation interaction.

Though advocacy is looked on by some as the province of the solicitor or barrister, realistically one must accept the fact that the paralegal will be speaking on behalf of the firm, either to clients or to other agencies, especially where there is a limited right of audience that enables the paralegal to undertake some of the minor points of traditional advocacy. If this paralegal qualification is recognised, then it must be recognised that it is going to lead to some increase in the rights of audience in some courts and tribunals on selected matters, for example, adjournments, bail applications, and the taking of judgments. It is therefore important, that at this stage, paralegal training encompasses an introduction to better presentation of spoken propositions.

Written communications will cover the topics such as letter writing and other business communications. There will be an introduction to written documents, simple drafting and the correct way of filling in the various forms that a paralegal may be faced with. The trend towards clearer English will be noted at this point highlighting the current state of the art in this area.

Other areas of communications such as body language and other non-vocal and non-spoken communication, which are likely to be focused on with greater intensity as our knowledge of these areas increases, must also be addressed by the paralegal.

The position of the paralegal within the hierarchy of the conventional firm or within the public service, or the other agencies where the paralegal will work is also a topic that must be addressed at this point. Regardless of the conclusion reached, it is in the interests of all prospective employers and also all future paralegals to be made aware of some of the aspects of modern business management. Ideally, some very basic management training should be given.

Wherever possible, computers should be addressed with hands-on learning, and if this cannot be achieved, at the very least all paralegal students must be made aware of modern methods of word processing, data retrieval and computerised accounting.

If a course cannot offer computer training, then it should not be accredited, because the modern office employee needs to be computer literate, at least to some basic level of comprehension of word processing and data retrieval. The argument that

some paralegals will not need this skill must be countered by the argument that if this qualification is to be transferable and recognised nationally, then it must have the elements which enable the course graduate to go and work in any environment where paralegal services are required.

A relatively new dimension of the training will be that of the inter-personal skills area. It will start with client management, which will help the paralegal by analysing various methods of client interaction which may have hidden agendas, and necessary extras such as the use of interpreters. The course can then look briefly at the nature of Australian society and, particularly, the ramifications of its multicultural profile.

Following on from this, it is possible to then consider the conduct and ethical rules which apply to legal practitioners in their interaction with clients, and develop a body of rulings for the interaction between paralegals and clients.

The remaining items that need to be addressed during the rest of the initial two-year course are areas of legislation that relate to employment, equal opportunities legislation and other anti-discrimination provisions. These should be looked at in terms of the paralegal's own position as an employee, and then in terms of the service provided to clients.

The final area is a mixture of the legal and the practical - the area of health and safety at work. There are two areas of study here. Firstly, the legislation that governs the paralegal's workplace and the rights and duties flowing from this and secondly, and perhaps of more value to prospective employees, survival skills. If employees are going to be using keyboards, working in air-conditioned atmospheres, required not to smoke or required to cope with very stressful conditions, then it is important that they know how to function effectively and healthily in the circumstances. A healthy employee is clearly a far better asset to an employer than an unhealthy one.

The foregoing would constitute the syllabus for the first two years of study. As has already been suggested, the student would benefit from a period of full-time interaction with the educators so that there needs to be at least one two-week period during the currency of the course where the students attend full-time. Ideally, this should be a residential course. Such a residential course would provide an opportunity for the students to experience an intensive academic atmosphere and also better present some of the training exercises, such as the advocacy exercises.

Stage II

The second stage of the course should be completely separate and distinct from the first, and be a separate training package leading to a further qualification. The first two years could be a certificate course with the second two years a diploma course enabling participants to choose their own level of qualification. The diploma should be a two-year part-time course with at least one, if not two, residential components of two weeks each.

The contents of this second stage of the course should be dictated by the needs of the paralegal concerned. It is in this area that they will be able to achieve a qualification which demonstrates an expertise in a particular area whether it be litigation, administration, or any of the other varied tasks which can be developed for the paralegal. This will almost certainly develop when it is seen how cost-effective the use of such employees can be compared to the use of a salaried lawyer.

During this second training period there could be two components: one academic and the other a practical component. The academic component could involve the student studying a number of areas of the law, at undergraduate level. These areas should form some common nexus so that for example, a paralegal working in the family law area will have a knowledge of the financial ramifications of the various property

settlements as well as an understanding of property law and the possible commercial transactions that may be associated with the resolution of a family law problem.

As well as looking at the substantive law in these areas, the procedural aspects should be considered in appropriate detail - at a level equivalent to a university undergraduate course in procedure for that particular subject area. It would assist both the paralegal and employers if a multi-disciplinary focus is used in the syllabus. Again, using the family law area, an understanding of elements such as the counselling process, an introduction to sociology and psychology, and alternatives to the ordinary court processes such as conciliation and mediation could be studied at a more advanced level appropriate to the work of the paralegal.

The problem with these areas is that there will, of necessity, be relatively few people available to teach in each specialist area, particularly in states such as South Australia. However it would not be impossible for there to be some national co-operation to ensure that the syllabus, and, where there are difficulties, the assessment of the course structure, is shared. It may even be that it is possible with areas of practice such as family law to provide much of the learning on a distance-education basis. (Distance-education may also be utilised in the first stage of the paralegal course.)

Another area that could be a fruitful area of specialist study for the diploma course is judicial administration for those working in the court system or with such organisations as the Legal Aid Commission. There are really few limits to the duties that a paralegal can perform, subject only to the restrictions found in legislation such as the legal practitioners legislation.

Stage III

Because this training will enable the paralegal to become well-versed in certain areas of the law, it may be that at this point, after the completion of a four-year course, that the paralegal may feel an urge to go further and acquire sufficient legal training to become a lawyer. For this reason there is provision for a third phase in the paralegal's training. This third phase should be very much an orientation and legal education phase where the paralegal is enabled by a part-time course to undertake sufficient academic points to acquire an LLB.

This period should be fixed at a realistic level bearing in mind that the paralegal will have completed four years of full-time law work as well as two training courses. It should also be recognised that whilst doing the 'top-up' course the paralegal will be continuing to work in a legal atmosphere with commensurate benefit to the studies being undertaken. The top-up course would not need to be longer than three years and could even be reduced to two years where a university is sufficiently sympathetic to a paralegal's needs.

There are very strong arguments for this part of the course to be conducted by a university. It is important that anyone who qualifies as a lawyer by this route finishes up with the same quality of exposure to both the theoretical and the practical aspects of the law, and there should be no room for the suggestion that this may be an inferior method of qualification.

To avoid academics viewing this suggestion with horror, it is important that they should be invited to have substantial input into the 'top-up' transition course. They can be reassured during this time by having control over both the delivery of the content and also the assessment of the participants, so that those who are awarded an LLB have acquired it on merit and are of an equal standard to those who have undertaken the LLB through traditional methods.

Other Considerations

The last argument to advance in favour of this proposal is that it is arguably the most cost-effective way of acquiring a skilled work force, a work force that would have motivation to embark upon continuous training, and a system that is socially advantageous in that it will enable many who are at present precluded from a career in the law to enter into the law without being stopped by the often insurmountable barrier of finances.

A further advantage of the proposed course is that it would afford a chance for many of those working in the law who have other qualifications to get a range of legal skills and legal insights without having to undertake a full-time law degree course. There are at present a growing number of persons working in the various legal fields who have graduated in disciplines other than law, and because of their close work with lawyers or the legal system, they would like to improve their qualifications, but have neither the time nor the inclination to do an LLB. One of these groups includes the growing number of human resources workers in the larger legal firms.

Clearly these have not been exhaustive considerations and are merely a series of introductory thoughts on the subject to enable the initial hypothesis of the three-stage training to be considered together with the ramifications of such a course.

There must also be a proper venue for such courses. For historical reasons these courses should now be conducted through the various practical legal training courses throughout Australia - and this is after having considered the courses offered by the TAFE institutions, those offered by Adelaide University and also those offered by commercial organisations now entering this field.

In conclusion, it is clear that the legal practice courses are the logical growth point from which a fully-fledged paralegal training system can emerge.

Paralegals - Issues in Accreditation

Jude Wallace
Law Reform Commissioner
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Accreditation and Regulation: Is there any Difference?

From the viewpoint of the public, there is little difference between accreditation and regulation of a group of service providers. Both systems must define the status, qualifications, and area of work of the members. Either system can involve government recognition and legislation or, at the other end of the spectrum, members organising on behalf of themselves. In either case, there must be some sort of controlling body and a supportable claim that the monopoly over the services provided is in the interest, not of the members of the group, but of the public.

In this paper, the words 'accreditation' and 'regulation' are used interchangeably because the real issues concern the policy of monopolisation of services, not the label or mechanism used. Given the debates in the area, 'regulation' is used much more frequently. Nothing technical is intended by this language - it merely reflects the way people discuss the issues.

A side issue should be acknowledged before the issues of monopolisation of services is raised: in the debates on occupational regulation, there are two extremes or models of regulatory structures. One is self-regulation, or the control of the behaviour or members by the group itself; the other is government regulation, or the legislative recognition of the three components of occupational regulation through legislation. Government regulation is regarded by most groups as the best model for their activities. This assumption is now under scrutiny.

Everyone thinks that there is a distinction between professionals and tradesmen. Professionals service clients, they do not retail things. Professionals jealously guard the difference. Whatever the relative incomes of lawyers and accountants, on the one hand, and plumbers_ and electricians on the other, the major distinction is the articulation by professionals of professional ethics. The ethics include:

- the client's welfare, not profit, is paramount;
- professionals do not compete directly by cutting prices;
- members are loyal to the group and conduct their life and affairs so as not to discredit the profession;
- members do not tout for business or competitively advertise;
- members do not associate in practice with 'unqualified' persons;

- members do not 'steal' business from other members; and
- members must submit to the discipline of their peers (Nieuwenhuysen & Williams-Wynn 1984).

In terms of moral philosophy, these standards are probably not ethics at all and, from the economic perspective, they are more appropriately called restrictive trade practices. These standards are immune from Trade Practices control because, once a profession establishes itself, it seeks and obtains the imprimatur of the State to monopolise the service provided, and exploits the limitations of federal power over restrictive market practices.

Over-Regulation of Occupations in Australia

Occupational regulation needs critical assessment, especially by groups seeking to establish an occupational niche.

Increased occupational differentiation

Occupations have been regulated by government since the early years of the colony. In the last 50 years, however, there has been an explosion of regulatory systems. In Victoria alone, more than 200 occupations are regulated. More than 60 separate bodies are responsible for the administration of these controls (Law Reform Commission of Victoria 1988). The proliferation of regulatory controls is itself a problem.

Increased credentialism

Not only have we increased differentiation among occupations, we have also escalated credentials. This is most apparent in school attendance figures. The number of 15-year-olds staying at school has increased remarkably. One of the major reasons for this increase is the demand of most occupations for the higher school certificate, matriculation, or whatever the Year 12 credential is, before the intending student can begin occupational training. There is now an almost universal requirement for completion of Year 12 for entry into professional, semi-professional, white and blue collar employment. The apprentice-based trades remain aloof from the trend, and so do the minor occupations, such as hairdressing, retail selling and taxi driving. Fewer and fewer opportunities exist for people with an incomplete secondary education.

At the same time, occupational training has tended to expand. A comparison of training courses of two decades ago with existing courses will show that training periods are almost universally longer.

Whether the demands for more and higher levels of entry and training are necessarily in the public interests should be seriously questioned. The specialisation is a substantial and permanent impediment to occupational change. The alliance between educational courses and occupational training is almost one-for-one.

Increased bureaucratic control

There are also serious questions about the kind of regulatory structures that we have created. Not only is there too much regulation, its nature reflects very old fashioned views about how to control and influence human behaviour. Regulation is officious, expensive and intrusive. The model that we have repeated, over and over again, has

the following characteristics, all of them time worn, ad hoc, and highly suspect in terms of the public interest and consumer options:

- approval system for initiates (usually dependent upon obtaining a special and particular credential);
- a discipline system for members of the occupation. Sometimes this is backed up by an inspection system, and regulatory standards that are typically very particular (accounting standards) or very broad 'behave in a professional manner' standards - with the middle ground remaining unspecified;
- a licensing system, rather than the less intrusive certification system;
- a tendency for the regulators to be 'captured' by the regulated;
- legislative definition of a sphere of activity so that only members of the group can undertake that activity in return for a fee, and substantial penalties to discourage unqualified intruders;
- costs of monitoring, administering and running the system are borne by the taxpayer; and
- each system is created ad hoc: there is no overall government or administrative policy that relates regulation of one occupation with others, or which develops and applies articulated and accessible theories of why and how occupations should be regulated.

Regulation systems typically and quickly become anti-competitive. They allow price fixing, restrict advertising, limit substitute services and limit access to the profession of new members. They differentiate services so that no single provider can deliver the totality of services that consumers need. The classic situation is the professional differentiation of solicitors' and barristers' services in New South Wales and Victoria. The regulatory structures are particularly invidious for people with equivalent overseas qualifications who arrive in Australia with the expectation that they can continue in their profession or occupation.

Trends in Patterns of Regulation

There are four trends evident in patterns of regulation. First, there is a trend towards centralisation of administration in regulatory structures. Second, there is the trend towards deregulation. Third, regulation is defended as a means of giving the public information about the quality of services. Fourth, training becomes captured by the training institutions.

Centralised administration

Trends towards centralised registration for occupational groups are evident. In most states, a centralised regulatory umbrella is imposed over providers of services such as selling of cars and real estate, and offering investments for mortgage funds, and the like.

This process of centralisation is driven by efficiency. There is simply no need to replicate registries, boards, and complaints systems throughout the various occupational categories. Generally, professionals have stood clear of this trend, except

in the health industry, where a major discussion paper on occupational regulation in health has suggested that there should be large scale rationalisation of the regulatory structures.

Government efficiency is, however, a growing concern. The idea that occupations would be covered by one department of government is attractive. Its practical implementation will be impeded by the dramatic and embedded occupational distinctions, and their economic significance. The occupational distinctions have matured into work practices that reflect lines of authority, accountability and legal liability for activities. Breaking these practices down is a difficult exercise, and has rarely been successful. This is not to predict that the movement to centralise occupational regulation will continue to fail. If the signs mean anything at all, they indicate that the overriding need to make governments more efficient will couple with the move to deregulate markets in the general economy, so that centralisation will tend to succeed in the future, although it has failed in the past.

Deregulation

An alternative deregulatory model has developed. The typical model of deregulation (that has been employed in the money market, and the insurance industry) is for performance standards, suitability, and accountability of the individual to be determined by the employer. In return for flexibility in employment options, the employer assumes a heavy legal responsibility for quality of services provided by the employee to the consumer. The consumer is given clear rights to sue the employer for negligence, fraud and error by the employee. Defences of 'frolic of her own' are not available.

This model encourages the employer to provide training and day-to-day administrative controls that ensure effective consumer services. It relieves the initiate or entrant into the occupation from the need to be trained in a specific way, and eliminates administrative burdens of licensing.

Regulation in the public interest

In economic theory, consumers seek to maximise their satisfaction or 'utility' when choosing between alternative goods and services. Consumers are always constrained by the amount of information they have about the quality of the good or service that they want to buy. If the services are technical or complex, consumers cannot make informed choices because the costs of obtaining information about the services or goods may be high. In these cases, it can sometimes be appropriate for government to take corrective action.

The problem is that the provider of the information knows what services will be provided, but the buyer does not. This asymmetry of information can lead to market failure: the average quality of services falls below the socially desirable level. In this climate of economic theory, occupational licensing is designed to provide sound information to the public about which individuals can provide the services.

Accreditation separates from professional skills

The accreditation courses become creatures of the accrediting institutions. Universities and Colleges of Adult Education monopolise credentials. Campus funding is provided on the basis that the longer the campus keeps its students, the greater is its income share. The courses have tended to expand. Because there is no means by which a profession or occupation can critically examine course content, then the course tends to reflect the interests of the institution, rather than the employers or the public. Universities, particularly, must not provide merely professional qualifications: after

all, they are about enriching the fund of human knowledge and imparting the heritage of human thought to students, not just about giving students a credential. But this does not mean that professional courses at universities should be unaccountable to either the students or their potential employers: insofar as universities are providing for professional accreditation, there must be a relationship between what is taught and the ability of the student to enter the professional field.

Regulation produces Paraprofessionals

Once professions establish themselves, they attract paraprofessionals at their fringes. Usually the professionals themselves employ staff who do not attract the professional level of income, but who do supervised work on behalf of the service provider. Eventually these groups become a recognised occupational group of paraprofessionals. For example, dentists are followed by dental technicians, doctors by nurses, nurses by nursing aides, and architects by draftsmen.

Lawyers have been very slow to recognise the benefits of having paraprofessionals. The paralegal movement has been forced upon them, in contrast to other professions where the impetus for the paraprofessional has come from the senior professionals themselves. To date, there has been little official recognition of paralegals. While there is no doubt that legal professionals use untrained personnel in the provision of legal services to clients, only one group of employees has received limited registration as paraprofessionals. There is a recognised training scheme for Legal Executives in Victoria, but it is narrowly available and nowhere near as popular as it could be.

Why we need Paralegals

The training of lawyers is long. Though not as extreme as the training requirements of doctors, the training requirements of lawyers are intimidating for the initiate. The tertiary tax will ensure that there is a class distinction or an income distinction among people who can afford to train as lawyers and those that cannot. While it is possible for individuals to support themselves by part-time work during university training, poorer families cannot afford to allow their offspring the opportunity to leave the family income pool. This alone is a compelling social argument for some other and more accessible accreditation.

Paralegals are already providing significant services in court-annexed dispute resolution programs and conveyancing companies. However, what paralegals can do is severely limited. Financial counsellors cannot appear in court for debtors. Debt collectors are not able to file summonses and claims for the debts, or to pursue the actions through the paper mountain until execution. Representatives of insurance companies are not able to make preliminary remarks to the magistrate in an ordinary matter, or to run a case.

The Solution

The rigidity of the *Legal Profession Practice Act 1958* (Vic) is apparent when we compare other professions. The Act allows chosen members of the group to operate as a cartel in supplying services. If the members of the group can limit services, they can increase the price and their own income. The profession can also attract non-monetary benefits, including status, respect and recognition.

Accountants, for instance, have little legislative organisation. Those, and it is most of them, who are members of the Australian Society of Accountants must face the fact that there is no statutory protection of the name 'accountant'. Chartered accountants are protected in their use of that title through a royal charter. There are statutory requirements for registration of certain specialities including company auditors and liquidators (under the National Companies code) and tax agents (under the *Income Tax Act 1936* (Cwlth)). Unlike solicitors, accountants face competition from investment advisers, merchant banks, solicitors, management consultants and other groups which provide financial services.

The solution is to remove restrictions on legal work that reduce choice of service and service provider from the consumer. This can be done without introducing accreditation for the alternative providers.

The substantial answer to accreditation issues is to deregulate lawyers rather than create another professional category. Given the trends in paralegal work, the deregulation most needed is in advocacy services. These services are particularly controlled, and their control is a complex amalgam of legislative restrictions on legal practice, and conventional restrictions on courtroom appearances.

Once this substantive decision is made, minor issues arise. The arguments that are typically used to support the restriction on court appearance work (for a fee) to legally qualified persons include the need for 'deep' consideration of the case - only a person with full legal training can develop the best arguments and appreciate the difficulties for the client. In the routine of crash and bash, liquidated damages, debt recovery and minor criminal work (even in a courtroom), it is doubtful whether the panoply of legal training is really required. It may well be that the court or tribunal itself can decide whether a particular person has the talent and experience to run the matters. It might also be feasible for groups such as advice services, debt collectors, tenants unions, and insurance companies, who have multiple exposures to courts and tribunals, to be given the responsibility to determine who is competent to appear. In other words, the court could turn over the responsibility for vetting competence to the group for whom an individual is working or which instructs the individual to appear on behalf of a client.

Whatever happens, the response of paralegals to accreditation issues needs to be imaginative and fully informed of trends in occupational regulation at large. The price of a paraprofessional group being naive enough to seek regulation in a deregulatory climate may be the unwitting securing of the occupational barriers that protect the entrenched professionals.

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Professions Competing in the Market Place

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The status of paralegals as a profession is today at the crossroads. In one direction lies the development of service-oriented practitioners, driven by the needs of consumers. In the other direction is the establishment of a trade association with a vested interest in raising members' incomes, creating barriers to entry against competition and exercising control over how and by whom services will be offered. Put another way, paralegals have to decide whether to take on forms of the legal profession or to develop in an entirely new way. It is obvious from your program that issues such as access to justice, costs of legal services and public interest questions are in focus. This paper will look at the role of professions from a 'market place' perspective.

Criticism of the professions is coming from many quarters. In Sydney, Bishop Geoffrey Robinson, speaking at a Mass to mark the first law term of the 1990s, challenged lawyers on a number of fronts. He pointed to the apparent links between the legal profession and big business, the cost of litigation and the part the legal profession might be playing in making Australia a litigious society. At another level, the national ABC current affairs program, *The 7.30 Report*, recently devoted a major segment to the cost of legal services.

Economic commentators such as Dr Alan Moran, Head of the Business Regulation Review Unit, have expressed serious reservations about restrictive entry practices. And a consumer advocate, Louise Sylvan has suggested that standards setting by professions, because it does confer privilege, should be done in an open and publicly accountable way.

In the press, almost daily there is some critical comment of one profession or another. One way of dealing with these criticisms is to ignore them. Condemn anyone who raises them as misguided or malicious. A better way is to examine the way in which the profession operates against the yardstick of cost-efficient, speedy and effective service to consumers. The legal profession could perhaps be inward looking and define a role for competition within the profession.

Competition in delivering services is about delivering those services as the market perceives its needs and not about what a profession deems are the market needs. In the medical profession, for example, we have seen a remarkable growth in one stop 24-hour medical surgeries in recent years. In spite of the excesses of some medical entrepreneurs, these services have continued to flourish.

None of us are above change. On the waterfront we would all hope for an end to restrictive work practices; in the airlines there is general acceptance of the need for deregulation. Why should the professions be immune from this process of micro-economic reform?

The services are a major input in the cost to business and general public expenditure on professional services is commanding an increasing slice of the consumer's disposable income. Why should the money spent on professional services be free from proper market scrutiny?

What are the market needs?

When I talked earlier of the market needs I was not talking about the needs of entrepreneurs who have quick and easy access to the court system, but the legal needs of the average person on the Glenelg tram who wants speedy, accessible and affordable justice.

We need to closely analyse the average person's legal wants and see if there is a more cost-effective way of meeting their needs. The main thrust for this will come from competitive forces from both within and outside the professions.

A classic example is right on your doorstep. The legal profession in South Australia lost its monopoly on conveyancing many years ago in favour of paralegal property transfer agents. The result is that transfer to land is cheaper and it has not led to the end of the civilised world as we knew it. In New South Wales with a similar system of land title, conveyancing costs are vastly higher. The main difference is that in New South Wales only legal practitioners may charge for conveyancing.

Increasingly, litigation is being regarded as a poor means of obtaining justice by consumers. Costs, delays and the trauma of adversary proceedings are just a few of the well catalogued reasons.

Alternative dispute settlement is now common in the commercial and family law areas and is a classic example where an innovation has met a market need, that is a cheaper and quicker way of resolving disputes. There is a dual role here for those who are interested in providing affordable justice for the average person: firstly, one can encourage policy initiatives for new alternative dispute resolution (ADR) mechanisms in consumer and related areas of the law and, secondly, one can become part of the process.

To become part of the process one needs to develop skills in communication, negotiation, conciliation, mediation and arbitration. law schools and other institutions need to make provision for training in these skills.

Again the large numbers of tribunals and related networks can form the basis of affordable justice. Why? Tribunals are separate from the courts in that:

- they provide remedies to meet needs which courts do not because court remedies are often inaccessible or impracticable;
- courts are, in the main, formal, cumbersome, slow and expensive; and
- courts are in the business of arbitrating on disputes whereas tribunals are about resolving disputes by building on common ground.

Those working in tribunals and with community groups should seek out new opportunities for the development of low cost, informal, complaint-solving forums to see where they might be a cost-effective alternative to the court system. At the same time, care must be taken to ensure existing tribunals do not become bogged down with justice-denying delays or choked with bureaucratic procedures.

'**Preventive medicine**'

Credit counselling, consumer advice and pre-contract consultations are in short supply. It would be nice to see advertising of credit counselling and other consumer services before people get into trouble rather than trying to unscramble the egg later. There is a real market need for pre-transaction advice.

Similarly, in the tenancy area a lot of people could avoid tenancy pitfalls if they were offered affordable advice on tenancy before the problems go too far.

In this context, it would arguably be healthy if advertising curbs on people such as lawyers, doctors and accountants were relaxed. Let them bid for business.

Advertising

Advertising would enable consumers to get more information, the more information they get the better their ability to determine the service best suited to their needs. Professions need to be able to advertise specialties and rates and compete so that people can at least be made aware of the service offered and shop around for something which best suits their needs and which they can afford.

In handling consumer complaints many lawyers proceed along the adversarial line which can end in litigation or a large bill for lawyers' fees even when a matter is settled outside the court's doors.

If emphasis were given by the legal profession to complaint mediation or conciliation many of these matters could be settled at a much lower cost. Allied to this is the recent development of industry associations and companies setting up complaint handling/customer services systems. Using these systems will be much more cost-effective for clients. Such systems often have specially trained people to handle complaints so it is important that one first checks to see if the industry association or company has some complaint handling mechanism before firing off an aggressive letter to the firm.

What has been discussed so far refers to a need to identify creative and innovative means to address, in a cost-efficient way, the consumer needs of the average person. In so doing, this could provide a welcome competitive 'nudge' to the established legal profession.

Restrictive Practices

This paper will discuss now some ways in which the legal profession may become more competitive from within and may be better able (at the same time) to respond to their clients' needs by removing or, at the least, ameliorating some of the profession's existing restrictive practices.

At a recent speech to the Western Australian Law Summer School, the Chairman of the Trade Practices Commission (TPC), Professor Bob Baxt (1990), identified and discussed some of the origins of restrictive practices which apply to the legal professions. Bob Baxt's paper has a lot to say to this audience as well, and the remainder of this paper will discuss parts of his paper to the Summer School.

In earlier times, in a less sophisticated world when information (and education) was not as readily available as it is now, there may have been stronger reasons for erecting walls around different professions based on entry requirements. Indeed many of these rules may still be relevant. But as the crossing of traditional professional

boundaries becomes more commonplace, and as it becomes clear that particular professional groups are able to deal competently with work previously performed exclusively by other groups, we risk maintaining artificial barriers which do little to serve the interests of the professions or consumers. In other words, there should be justifiable reasons for barriers to entry.

The community should not tolerate one profession maintaining a monopoly position through the creation of artificial barriers without assessing the justification for maintaining that monopoly in a changing environment. It is unrealistic to continue in the belief that trends and philosophies that were created and accepted in the past should continue in today's society without examining those trends and philosophies in the context of the needs of today's society. If the particular restrictions, sustainable some time ago are to be maintained, they should be justified by public debate.

There are sound reasons for imposing appropriate entry qualifications as a criteria for admittance to professions. One cannot support the position of some economists that we should totally deregulate the professions and let the market sort out those who are competent and those who are not. For example, we would not support moves to permit any person to offer advice on legal questions without the appropriate degree and initial training or experience. The TPC would not support a position similar to that existing in New Zealand where (theoretically at least) anyone may set themselves up to practise dentistry. On the other hand, geographic restrictions are detrimental to the practice of law in Australia today, and we support the recent High Court decision which upheld the right of interstate legal practitioners to practise in Queensland.

The elements of fairness and uniformity arise in other issues. Recently, in Victoria lawyers agreed to ban fee advertising. The rationale for that decision is presented as permitting clients to select their solicitor on the basis of the level and quality of service, the professionalism of the practitioner or, if you will, any factor other than price. Critics of that decision say it has very little to do with the desires of clients. Economic theory propounds the community's sacrosanct need for relevant information upon which to base decisions and the importance of price is an element in the selection process between competing goods or services. In any other sector, such a decision based on what could be seen as self-interest would not only be criticised but overturned. The TPC has written to the Commonwealth Attorney-General seeking his intervention. At present, the Commonwealth Attorney is awaiting the Victorian Government's response to his representation requesting his counterpart to revoke the Victorian Law Institute's rule. In the circumstances of the general move towards improving competitiveness within the professions, this retrograde decision is out of step with developments in other professions and, indeed, out of step with the position of lawyers in other states.

The TPC will be undertaking a study of the professions, including the legal profession in the near future. While the Commission's involvement with the professions is not new, it is only recently that the TPC has directly focused on the professions. We will provide continuing guidance to professional groups to foster competition and help them comply with the Act, and we are pleased to have the co-operation of the Australian Council of Professions in this area. In 1989, the TPC announced its intention to conduct a study of the professions in Australia to find ways of enhancing competition while maintaining ethical standards and appropriate community acceptance. The results of the study will be published by the TPC in the form of background papers and finally a guideline. This role was envisaged for the Commission in 1977 and more recently supported by the Economic Planning Advisory Council.

In outlining the TPC's experience in this ongoing debate it is important not to misunderstand the true nature of the debate or the TPC's position. The Commission did not initiate the calls for reform of the professions, rather we are reacting to widespread concerns articulated by persons from all sectors of society. The TPC is not thrusting

change on the professions; there is now more community awareness of the role of the professions and of the need to re-examine that role. The TPC study is a reaction to that demand, as well as our own initiative arising from the recognition that the professions are increasingly falling within the jurisdiction of the Act.

As Australia enters this decade changes are occurring in all sectors of our social and economic framework. Sectors such as the waterfront, transport, the unions (through productivity trade-offs), and the public service are being constantly reminded to be more amenable to changes in the interests of efficiency and the subsequent benefits that will accrue to society in general. The TPC is involved to a greater or lesser extent in assisting in the micro-economic reform of many of those areas. It is a climate in which the professions should not remain an island ignoring the trend both here and overseas. Indeed, the professions cannot ignore it; the demands for change are too great and overseas experience demonstrates the futility of that approach.

Commonwealth and state governments have taken deregulatory initiatives that reflect a general concern that regulation be cost-effective, efficient, and free from unnecessary restrictions. There are moves to restructure certain sectors of the economy and deregulate others. The TPC is involved in reforms in telecommunications, air transport, shipping, grain handling facilities, and some rural industries, so that these industries may respond more readily to community needs.

Some professional persons, including some in the legal profession, have expressed concern about the scope of the TPC study. We have discussed these concerns in some detail with the Australian Council of Professions, as well as with individual professions such as the Law Council of Australia. We have been anxious to assure groups such as lawyers that we are not going to conduct a separate study of their profession or indeed any other. We believe that our reasons for undertaking the study are widely accepted now. Our aim is to produce guidelines to assist all professions to understand more fully their obligations and rights under the *Trade Practices Act 1974* (Cwlth). There are substantial ramifications for professionals who refuse to inform themselves about the Act and their obligations under it. But whilst there are obligations there are also benefits. The Act provides a series of remedies that many professionals are using for both their own and their clients' benefit.

In the course of the study we intend to consult with the relevant professional associations, government bodies charged with overseeing relevant legislation, consumer and other interest groups. We also intend to survey professional associations by way of a questionnaire. The results of the study will be published to provide a factual base to promote community debate and to assist in developing the TPC guidelines. Hopefully the issues referred to previously (advertising restrictions, pricing, limitations concerning entry, and so on), together with specific restrictions pertinent to individual professions will be aired during the course of such discussions. The study will go beyond rhetoric to provide the first inter- and intra-profession comparison of the state of competition in Australia.

The professions believe they are best qualified to judge what is right and what is wrong in their own group or profession. That may be so, but the community debate will not be silenced by non co-operation. The TPC hopes to determine which issues need wider examination and hence will need your co-operation. It may be that we ultimately have different views but, even in that event, there are advantages for professions participating in the study.

Conclusion

In the legal profession those who are interested in affordable justice for the average person in the street must take some time to identify community needs. Having assessed

those needs it is vital that these services be delivered in a way that is affordable to those people.

Affordable justice will probably only come where some scope is provided for real competition in the profession, because it is basically through competition that service providers (including the professions) become more attuned to the market's needs and the creation of innovative services which result. If the profession recognises that there is a greater role for competition then opportunities and challenges will open up. If the profession isolates itself from these processes the real danger is that the market will become frustrated and turn to other alternatives, thus bypassing the profession.

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Paralegals and Making Access to Justice Effective

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This paper addresses some of the very practical issues in relation to the future development of paralegal professions in this country. In addition, it links discussion of practical issues with the underlying focus of this Conference, that is, improving access to justice. Cappelletti's concern with making access to justice effective will be used to provide a wider context within which we can focus on paralegal professionals. This concern with access being effective stresses that access is much more than just an abstract right to justice - one that often does not exist in practice except for the rich - but that it must be in fact, effective access, affordable and available to all (Cappelletti & Garth 1979).

The first half of the paper outlines some of the key issues that confront the development of 'paralegal professionals' - and that term is used deliberately - in the immediate future; the second half links the discussion of these issues with the wider access to justice context and particularly the debate over access to legal services.

The second part of the paper obviously alters the focus dramatically away from the practical and immediate concerns to a wider range of political and policy questions in relation to access to legal services. It is important to ensure that the debate about paralegal professionals does not take place in a political and policy vacuum. Indeed it could be argued that this is what happened when paralegals were the subject of attention in the 1970s, and that it is one of the reasons that very little progress was made in the area. A good example is a paper by Hanks (1980) 'Improved Access to Law - Without Lawyers' which does not appreciate or discuss the difficulties in making greater use of paralegals, or how they could be practically encouraged to play a greater role in the justice system. But it is unfair to be too critical in hindsight. Perhaps we should just see Hanks' paper as one step along the way - that the naive phase of the 1970s had to be passed through in order to arrive at the more pragmatic 90s.

If the 1970s was the naive phase, the first wave of interest in paralegals that did not confront the basic practical and political issues necessary to make the greatest use of paralegals' potential, then how can we make sure that the second wave of interest in the 1990s is hard-headed, pragmatic and ultimately, more successful? This paper is an attempt to sketch a possible course of action that will result in major developments in the use of paralegals and in access to legal services.

Issues for the Future

There can be little doubt that the most fundamental barrier to the development of paralegal professions in the future is political. The 'traditional legal profession', or lawyers, are particularly wary of any such professions emerging. Why? The sociology of the professions suggests that all professions attempt to defensively shore up the cracks as other groups attempt to make inroads into 'their' work (Szelenyi & Martin 1988; Abel & Lewis 1988). Governments too are very cautious about making moves in this direction - partly because there are usually a number of lawyers in most governments, but also because most governments respond to a large extent to political pressure to bring about major change. At the moment this is not happening in any organised way in relation to paralegal professions.

But is the defensiveness by the leadership of the traditional legal profession anything more than this? Is it anything more than political? Is it really so irresponsible for paralegal professions to undertake some legal services provision?

It is now possible to argue on the basis of many years' experience that paralegal professions are viable. The objections are largely political. The evidence from the United States of America and the limited use of paralegal professions in this country demonstrates that careful education and training provides all the safeguards necessary to protect clients, the legal profession and the standards of the justice system. The legal profession, judiciary and governments need to accept that this is true and act on that basis. Quite clearly the insurmountable obstacles exist primarily in the minds of some sections of the legal profession only.

The solution is therefore also political - the profession in particular has to face up to the decisions that need to be made in this area and be prepared to be involved in working out the future development. But governments and the judiciary also have to be freer to look carefully at what needs to happen for the successful development of paralegal professions. A way that this may be possible will be suggested later in this paper.

Given that the stumbling block is essentially political what are some of the issues facing the development of paralegal professions? What are some of the issues that we need to identify and start working on now?

A Paralegal Association

The most important question at stake in all of this is: who will create the space for paralegal professions to fill? Without doubt, it has to be paralegals themselves - with the assistance and support of other groups of course. In particular, they have to organise themselves into state, and then hopefully national, professional associations so that they can undertake the vast range of work necessary.

Quite obviously, this is going to be a difficult project over a number of years that will probably meet resistance from some sections of the legal profession, judiciary and governments. It is also reasonable to expect resistance from sections of the public as well who may feel that the only people who can provide any legal services are another part of the legal profession - lawyers.

A few gifted people who are already highly competent paralegals will need to take the running on all of this. They will need to be well trained and educated, very experienced in their work and be able to demonstrate the viability of paralegal professions. In addition, they will need to be visionaries who can see the potential for paralegals. They will need to be practical and well organised, and capable of developing skilled tactics for the battles that almost inevitably lie ahead. (The recent history of lawyers in this country defending their current share of the legal services

market is not very encouraging. *See* Bell 1985; Nieuwenhuysen & Williams-Wynn 1982). Finally, they are going to need a lot of luck. But history is on their side - this sort of development has taken place in many other traditional professions and it is simply a matter of time with the legal services professions.

A great deal of help will be needed from other groups - ranging from the employers of paralegals to those sections of the lawyers and judiciary who can recognise the value and importance of paralegal professions. Sections of the wider community who recognise the importance of improved access to legal services for the whole of society will also play a major role in pressuring governments to reform the unnecessarily restrictive legislation governing the provision of legal services. Trade unions and the welfare sector generally will need to be capable allies. This point will be returned to below.

The critical value of paralegals establishing their own association cannot be overestimated. It will not be just some form of cosy club for these new professionals, nor will it be just a way of ripping off work from lawyers more efficiently and quickly.

The importance of the associations is that they will need to undertake the path-breaking work of deciding the following sorts of matters:

- appropriate levels of education and training;
- the extent of specialisation in the training and the work of paralegal professionals; and
- the industrial issues such as awards and conditions of service.

This work can and must be done by the paralegals themselves. Nevertheless, what are some of the issues involved here? Some of the questions involved will now be identified and some of the arguments teased out. For example:

What training and education is needed? Should it be general or specialised? This will depend largely on what sort of paralegals society decides it wants. At this stage there is a need for the development of at least four paralegal professions:

- lay legal advisers;
- advocates for tribunals such as the SSAT and AAT;
- advocates for bail hearings, guilty pleas in minor matters, etc.; and
- legal assistants for the traditional legal practices, whether they be public or private.

The first three need quite specialised training - though it is possible that one person could be trained to do all of these areas of legal work. The training of the 'legal assistants' for the legal practices will probably need to be a fairly general one - but this depends very much on what the traditional legal profession decides it wants. (It goes without saying that there is a need for landbrokers to undertake conveyancing in those states where they are currently not doing so.)

Who will provide such training and education? Will it, and should it, be the traditional legal profession or should they only play a small role in partnership with other groups? Again, while not wanting to pre-empt the debate, it should be argued at this stage that it would be wiser for paralegals to ensure that their education and training is not controlled by lawyers. The argument that was adopted in the United States in the 1970s is probably correct - though difficult politically, given the likely response of the lawyers. Many paralegals in the United States in the 1970s argued that

the American Bar Association had no role in controlling the content of the paralegal training courses that were springing up all over the country. They argued - and often the arguments took place in court - that paralegals were not going to be doing lawyers' work, or work that lawyers actually did, rather they would be filling gaps in legal service delivery. They would not be replacing or competing with lawyers but doing work that was not being done at all (Deming 1980). That same line of argument should be applied in this country.

This does not mean that lawyers should have no role in deciding what happens in these courses. For the legal assistants' courses, one would expect that the lawyers would largely shape the content, given the work that people will be doing in the traditional legal offices. In the United States many courses are 'accredited' by the American Bar Association for the same reason (Deeming 1980; Noone 1987).

Lawyers should also have an input into the other paralegal courses suggested above, but they must not be allowed to control them. The inevitable result would be courses that, in practice, churned out mini-lawyers, and they would always be regarded as such - second rate, not real or completely trained lawyers. Paralegal training will need to establish itself as training new forms of legal professionals not just mini-lawyers.

As the experience of the Legal Services Commission of South Australia is showing, and again this reflects what happened in the United States, there is an enormous untapped market for legal education ranging from short-term 'public education in the law' courses, to long-term training for lay legal advisers and other legal professionals. As other states start offering the 'Law Handbook Live' and other courses to the public, they will discover that it opens a floodgate of demand for legal education in society. Some people will simply want to know about the law at a very general level; others will want substantial training in specific areas of law in relation to their work, and then there will be those who want to embark on a career as a paralegal professional.

Lawyers clearly have a large contribution to make over and above just teaching in such a variety of courses, but this does not mean that they should control the content as they see fit, or that the content should simply serve the needs of the traditional legal profession.

Where will the training and educating take place? Should it be linked to law schools in any way at all? Should it be run by the traditional legal profession? Again the experience of the United States is interesting and worth learning from. Paralegal courses there run from 13 weeks to degree length and graduate courses. They are taught at universities, colleges, and at specialised paralegal training institutions. There is no reason why there should not be such a variety of institutions involved here - some courses at TAFE, some at the universities and colleges. There is also no reason why there should not be a similar variety of courses reflecting the different needs for education and training in the law that we have noted already exist in society. (For a list of some of the courses currently available *see* Appendix 1).

These are just some of the issues that need to be dealt with and it is suggested that a paralegal association(s) is vital to their resolution.

Research Needs in Relation to Paralegals

Research about paralegals is the next area requiring urgent attention. The bibliography provided by the Institute of Criminology for this conference is a good way of reminding us of how little we know - not just in relation to paralegals, but more generally in relation to the whole area of access to legal services and justice in this country. The references provided demonstrate the dearth of research and publications in relation to paralegals. It is also worth noting that there were no Australian government reports or

inquiries cited, which again reflects the lack of interest in research and reform of legal service delivery in this country. (In the United Kingdom by comparison there have been a large number of government inquiries into legal services and related matters including: a Royal Commission into Legal Services in the late 1970s, studies of legal aid, and over the last year, a number of 'green papers' on the future of the legal profession.)

As a result we do not actually know very much about the provision of legal services. The following research priorities could be regarded as the minimum necessary for us to be able to have a reasonable understanding of paralegals and their value in the justice system:

- Where are paralegals being used currently; what work are they doing; what training are they getting; what are they being paid; what promotional prospects are opening up for them?

- What do paralegals think of their work; what more do they want from their careers; what further work could paralegals be doing given the right training; what training are they interested in; do they want a more developed career structure?

- What is the current traditional legal profession's view of paralegals; what role do they see them playing in the future; what training/education do they see as necessary? (It would be important to distinguish here between the leadership of the profession and the practitioners out in the real world as it is likely that they will have quite divergent views.)

- What do consumers of legal services want, in particular would they be willing to accept a place for paralegal professions; if so, on what basis in terms of training and safeguards for the consumers?

- What are the views of the welfare and community sectors?

- What overseas experiences can we learn from?

Finally, and very importantly, we also need to know a great deal more about how and why people use legal services, and why they do not. The Australian Bureau of Statistics is finally doing some work in this area but far more is needed. In particular, specialised studies that analyse particular social groups' use of legal services are needed. They should be of two types:

- studies of poor/disadvantaged groups;

- studies of groups of the non-poor.

Some of this work was undertaken for the Henderson Poverty Inquiry in the mid-1970s (Australia 1974), and some for the Commonwealth Legal Aid Council in the early/mid-1980s, but far more is needed, and especially of groups in the society who are not poor enough to qualify for legal aid.

Without gradually developing a deeper understanding of these areas we are abandoning our society to a legal lottery - if we are lucky enough and/or rich enough we will be all right, but the rest of us, well, tough luck.

Paralegal professions will not do away with the legal lottery altogether, but if we understand more about how the lottery functions we may be able to slot paralegals

in to remove some of the risks, or to continue the metaphor, we may shorten the odds a little in favour of ordinary citizens.

The Deregulation of the Traditional Legal Profession

The final issue that needs attention is the stance that a paralegal association and the paralegal profession adopt over the deregulation of the traditional legal profession. No matter what, if anything, results from the Trade Practices Commission inquiry into the self-regulation of the professions, the pressures to deregulate will continue to build and the lawyers will have to respond. (We should also note the major review of legal aid and the Senate Inquiry into the Cost of Justice that are currently under way. Both can be expected to put more pressure on lawyers, and to promote greater use of paralegal professions. Indeed the review of legal aid has already raised the issue of paralegals (National Legal Aid Advisory Committee 1989.) The traditional legal profession may even look to paralegals for support to help maintain a fairly restricted control over the provision of legal services.

How will paralegals respond? It is going to depend very much on how they see themselves - whether they see themselves as mini-lawyers, or whether they see themselves as doing something different to lawyers. It will be a difficult course for them to navigate having in mind both the interests of paralegal professions and the traditional legal profession. There may be gains for paralegals from the deregulation of the lawyers in terms of extending the paralegal profession's scope and power; but at the same time paralegals will need to support the continued existence of a highly qualified legal profession. Paralegals will always need to work with the traditional profession and to support it where necessary.

Paralegals and Improving Access to Justice

Ultimately the rationale for developing paralegal professions in this country is that they will improve access to justice for the population generally. While the discussion above is hopeful - some would say unrealistic - it is necessary to consider ways that access to justice can be elevated as a far more important area of public policy, and one that has a major impact on society's well-being.

There are three elements of access to legal services that should be part of an overall public policy on access to justice. Other components of such a policy would include, for example, access to the courts, dispute resolution mechanisms, and the costs of justice, but these will not be discussed here. The three elements all relate closely to paralegals:

- alternative mechanisms of legal service delivery;
- public mechanisms to monitor and advise on legal services provision; and
- legal aid services.

Alternative Mechanisms

One of the consequences of the control that the traditional legal profession has had over the provision of legal services is that alternative mechanisms have not been tested and adopted. There is no logical reason why people need to go and visit a lawyer in a traditional legal firm if they need legal services. Other countries have experimented

with other service delivery mechanisms that appear to provide better access for consumers. Two in particular should be considered for Australia - and both tend to make extensive use of paralegal professionals.

Legal clinics have sprung up in the United States as a way of providing low cost, or discount legal services. Services are standard or routine and are often provided using high levels of computer technology to print standard documents. Services may include for example legal advice, simple divorces, standard wills, and guilty pleas in minor matters. The cost for these may be 10-20 per cent cheaper than from a traditional law firm. Paralegals are used extensively, but the lawyers also become clerks, or paralegals in effect, as they sit behind computer terminals and type client data in to the spaces in standard documents.

The main problem emerging in Australia blocking this sort of legal firm is that they rely on massive television advertising to generate the high volume of low cost legal services necessary for the practice to survive. The leadership of our state legal professional bodies is slowly freeing up the quaint but archaic restrictions on advertising but to my knowledge only one legal clinic has started in Australia, in Sydney. The offices of this firm are in various Grace Bros. department store buildings. The television advertising was submitted to the Law Society for approval before being screened and was consciously made 'tasteful' so that it would be approved.

Group Legal Services (GLS) are much more interesting because they have far greater potential to improve access to legal services in both the short and long term. GLS are essentially another example of the co-operative movement in that they are established by members of a particular social group to serve the interests and needs of that group. Examples include credit unions and community housing co-ops. In the same way GLS are legal services agencies established to serve the legal needs of particular groups such as trade unions, resident and neighbourhood associations, ethnic groups, etc. Trade union GLS probably have the most potential in this country because they will not only improve access to legal services for many ordinary citizens, but also because they will create a new interest group deeply concerned about legal services for the community generally. This point will be returned to below.

How would GLS work? There are a number of ways that they can function. But in all cases legal services are provided to members of a certain identifiable group by lawyers and non-lawyers. The legal staff are often employed to work exclusively for the GLS, but some are private lawyers who have a special deal with the group involved. Some GLS offer a reduced rate to the users, others have members paying regular subscriptions or dues as in health insurance, whilst some trade unions have established GLS for their members as part of the negotiated awards for their members - in much the same way that superannuation is now included in many awards in this country.

GLS usually provide a full range of legal services such as advice, representation and drafting documents. In addition, they can also provide services in areas that lawyers may not undertake, such as assisting at tribunals, mounting test cases for their members, or class actions. But perhaps most interestingly, they also have the capacity to develop services in response to their members' needs even if they are not 'legal' in a strict sense. For example, one trade union GLS in New York conducts an ongoing legal education program with its members and also investigated the possibility of establishing a shelter for victims of domestic violence among the members of the GLS. This union GLS employed lawyers, social workers, paralegals and support staff. (For more details *see*: Purcell 1984; Regan 1988; and *see* the study undertaken on GLS in Australia for the Commonwealth Government in the early 1980s: Evans 1982).

Other mechanisms exist that attempt to improve access to legal services but none have the success rate and potential for success as legal clinics and GLS. Legal insurance, for example, insures a person against possible future legal expenses and is sold to the public like any other form of insurance. The only problem is that it just has

not worked in this country, or most others for that matter. People just will not buy it, particularly those who need it most - low income people.

There are, it would seem, no GLS in this country. The traditional legal profession has displayed a distinct lack of interest in them; governments were initially interested but it did not last; trade unions seem to have had no interest in them at all, and the general public has never even heard of them. With this amount of interest it is not difficult to understand why 20 years after they started to emerge in the United States there are no GLS in Australia. There can be little doubt however that GLS could play a vital role in improving access to legal services in our society if they were encouraged by government and the traditional legal profession. In particular they would sit well with the trade union movement's commitment to an expanded social wage. But they may need special encouragement in the form of seeding grants, or pilot project status. This point of encouraging new forms of legal service delivery will be returned to below.

Hopefully the trade union movement will not repeat the very limited model adopted in the United Kingdom where they have simply developed a better referral scheme for unionists to go to approved lawyers for what basically amounts to a simple 'free first interview' (*see* the *New Law Journal*, 9 September 1988). If unions can be encouraged to develop GLS here they should build much more developed schemes such as the one mentioned above.

Legal Services Advisory Committees

Perhaps the most important thing to note from this discussion is that in Australia there is very little pressure for innovation and change in the way legal services are provided. The traditional legal profession is to a large degree protected by legislation so they continue to maintain what is essentially a monopoly over legal services. In addition, they are left to regulate their profession in basically all things except clear examples of criminal behaviour by their members, when of course the normal criminal justice process is set in train.

Over time there have been various attempts to improve access to legal services - particularly to the poor by way of the legal aid system. But on the whole there have not been any substantially successful moves made to either overhaul legal service delivery or the legal profession.

When we sit down and identify who exactly is responsible for monitoring access to legal services and for advising on the need for developments to improve legal services accessibility we reach a startling conclusion. No one is responsible. It is quite remarkable - access to justice in the area of access to legal services is severely neglected except in terms of the access that the poor have by way of legal aid.

So one key step in improving access to justice will be to make far greater use of paralegal professionals in legal service delivery. But a far more lasting response is to ensure that each state and the Commonwealth establishes a 'Legal Services Advisory Committee' to advise governments in a number of areas. This would be an important component in the process of access to legal services emerging as a vital area of public policy.

These committees could advise in the following areas:

- the need for improvement in legal service accessibility in both the community generally and within particular groups of the community;

- the need for development of paralegal professions to complement the 'traditional legal profession' and any matters in relation to such development including training and accreditation; and

- the need for development of alternative legal service delivery mechanisms and any matters in relation to such development.

An advisory committee with this sort of brief would have a chance to steer a careful path between the sort of mad deregulating of the legal profession proposed in the United Kingdom and the 'do nothing because it is basically all right' attitude that the leadership of the profession seems to display in this country. It would also provide a structure for the relevant interest groups to consider together, how access to legal service can and should be improved.

Who should make up such committees? Undoubtedly each state will decide something different but they should include some form of representation from: the traditional legal profession, consumers of legal services, the welfare sector, the business community, the non-English speaking ethnic groups, women's groups, the youth sector, and very importantly, the trade union movement.

It is most important that many groups of people are involved in such committees and that they start to take some responsibility for the provision of legal services in society generally. In the end it is not fair to leave such responsibilities to the uncontrolled vagaries of the markets.

Some of the first steps that such committees could take would be to:

- encourage the legal profession to establish more legal clinics;
- encourage trade unions to investigate establishing group legal services for their members - perhaps initially on a pilot project basis; and
- encourage the provision of legal education to the community ranging from short-term courses to paralegal profession training.

In the long term however, we may decide as a society that as the evidence all points to the fact that legal aid does not work very well in targeting legal services to the poor, and that many people seem to miss out on legal services because of cost, location, language and confidence difficulties, that something else is needed. At the moment, all of this is true but there are not enough groups in the society who know or care. But over time, if we can undertake some of the things talked about above, we may be able to come to these sorts of conclusions, and all the suggestions for improving access to legal services are simply making fewer of us experience the justice system as bystanders and objects who are unconsciously processed by the system. This range of suggestions also results in other key interest groups being involved in shaping our justice system so that it serves the community better.

What could we do if we did conclude that access to legal services clearly was inadequate for the members of our society?

Legal Aid Services for the Whole Community

We could do what some other societies have done and set up a system to try to ensure that legal services are for the whole community - that is, a universal legal aid scheme. These societies have established legal aid schemes for all the members of their society as a basic right of citizenship in the same way as a right to education and health services. These countries include Sweden, Austria, and The Netherlands. (The Swedish scheme is described in Boman (1979) and it is analysed and compared with legal aid in the United States and Australia in Regan (1989a). Universal legal aid was also in place in the Solomon Islands until recently, and is compared with Australia's legal aid in Regan (1989b).)

According to the research undertaken by the author over the last couple of years this is the only serious - and successful - solution to the problem of how a society ensures effective access to legal services for all its members - that it is affordable and available to all regardless of income, age, sex, disability, race and language spoken and where they live.

In addition, and this is a very important achievement in a time when restraint on public expenditure has been elevated to the status of an ideology or religion, legal aid for all is very stable politically. That is, because in our society legal aid is only for the poor, its funding can easily be reduced. Because no one but the poor benefits from it those who do not benefit are quite happy to see the funding reduced. But if legal aid is for all then no one wants to see cuts to the funding because everyone would suffer. So in the United States legal aid for the poor was cut by 25 per cent by President Reagan in the early 1980s, while in Sweden where legal aid is essentially for all, funding has just about kept pace with inflation and has remained the highest per capita funding of legal aid in the world.

Some of the characteristics of the Swedish scheme are:

- legal aid is funded from normal taxation revenue by wage and salary earners;
- aid is granted on a tapered means-tested basis to all but the rich;
- legal services are provided by both public legal aid offices and private law firms who compete with each other to some extent for legal work from the public;
- services are provided by paralegals and lawyers; and
- a full range of legal services is available including for example legal advice, representation, and drafting of documents.

Additionally, the legal aid scheme is complemented by measures that ensure that many matters never become disputes to resolve on the basis of fault in a court. In particular, extensive use is made of national no-fault insurance schemes in a range of areas to ensure that many civil matters are not resolved in court. These include workers compensation, medical and pharmaceutical injuries, and injuries in motor vehicle accidents.

One of the central factors in the Swedes abandoning their previous 'legal aid for the poor' scheme in the mid-1970s - ironically, just at the time when we were establishing ours - was that it did not work very well. Many poor and disadvantaged groups were missing out. Also the trade union movement bargained for the universal scheme on the basis that all members of the society should be assisted in this basic right of citizenship.

Perhaps if we can start involving trade unions and other groups in this country in the policy debates over paralegals, group legal services, and access to legal services generally, we may one day see the launch of our own universal legal aid scheme. We could call it Legibank.

Conclusion

The debate in this country over paralegal professions is therefore very important. It is not a fight about trying to take some of the work from the lawyers or trying to compete with them. It is rather a step towards improving access to legal services for the community and in this way improving access to justice. It needs to be viewed in this

light. If it is, then quite clear choices will open up. But the future legal needs of society will be best served if a partnership develops between various groups so that a project of work can develop between paralegal professionals, lawyers, trade unions and other interest groups in the society.

It is therefore important for these groups to become involved in debate over paralegals, for group legal services to be encouraged, and for legal service advisory committees to be established by governments to bring these groups together to build the partnership. Only in this way will access to legal services emerge as a vital area of public policy.

We need to maintain the hard-headed focus on paralegals as they have much to offer, but we must not lose sight of the possibility of Legibank, how we might get there and what it promises for the wellbeing of society.

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Appendix 1

Register of Legal Education Courses for Non-Lawyers

The following information was provided by participants in the Conference. This list of courses is intended as a guide only, and for current information on these and any new courses, readers are invited to contact the sponsoring organisations:

NEW SOUTH WALES

Name of Course:	Introduction to Local Courts
Name of Sponsor Organisation:	Court Support Scheme
Address of Sponsor:	PO Box K 391, Haymarket, Sydney, NSW 2000
Phone No.:	(02) 281 2688
Target Audience for Course:	Volunteers working in local courts
Duration of Course:	4 days plus on the job training
Certification Provided:	No

Name of Course:	Graduate Diploma of Law
Name of Sponsor Organisation:	University of Wollongong
Phone No.:	(042) 270 926
Address of Sponsor:	PO Box 1144, Wollongong NSW 2500
Target Audience for Course:	Courts Administrators

SOUTH AUSTRALIA

Name of Course:	Associate Diploma in Justice Administration
Name of Sponsor Organisation:	Court Services Department & Department of Education, Training and Further Education, South Australia (DETAFE).
Address of Sponsor:	Court Services Department, 25 Franklin Street, Adelaide, SA 5000
Phone No.:	(08) 218 6211

Target Audience for Course:	Court Staff
Duration of Course:	4 years
Certification Provided:	DETAFE Associate Diploma

Name of Course:	Certificate in Justice Studies
Name of Sponsor Organisation:	Courts Services Department and Department of Education, Training and Further Education
Address of Sponsor:	Court Services Department, 25 Franklin Street, Adelaide, SA 5000
Phone No.:	(08) 218 6211
Target Audience for Course:	Court Staff
Duration of Course:	2 years
Certification Provided:	DETAFE Certificate

Name of Course:	Paralegal Training Course
Name of Sponsor Organisation:	Legal Services Commission of SA
Address of Sponsor:	82-98 Wakefield St, Adelaide, SA 5000
Phone No.:	(08) 224 1222
Target Audience for Course:	Commission Staff & Community workers
Duration of Course:	1 year at 3 hrs per week
Certification Provided:	Yes

Name of Course:	Law for Non-Lawyers
Name of Sponsor Organisation:	Legal Services Commission of SA
Address of Sponsor:	82-98 Wakefield St, Adelaide, SA 5000
Phone No.:	(08) 224 1222
Target Audience for Course:	General Public
Duration of Course:	4 weeks at 2 hours per week

Certification Provided: Yes

Name of Course: Law Hand Book Live

Name of Sponsor Organisation: Legal Services Commission of SA

Address of Sponsor: 82-98 Wakefield Street, Adelaide, SA 5000

Phone No.: (08) 224 1222

Target Audience for Course: General Public

Duration of Course: 13 weeks at 3 hours per week

Certification Provided: Yes

Name of Course: Social Security-Law Policy & Practice

Name of Sponsor Organisation: Welfare Rights Centre (SA) Inc

Address of Sponsor: 155 Pirie Street, Adelaide, SA 5000

Phone No.: (08) 223 4446

Target Audience for Course: Workers in field of Income Security

Duration of Course: 16 hours (2 days) or 6 weeks (3 hours per week)

Certification Provided: On completion of course

VICTORIA

Name of Course: Law for Non-Lawyers

Name of Sponsor Organisation: Federation of CLCS (Vic) (with grant from Law Foundation of Victoria)

Address of Sponsor: 272 George St, Fitzroy, Vic 3065

Phone No.: (03) 419 2752

Target Audience for Course: General Public

Duration of Course: Approximately 12 weeks

Name of Course: Associate Diploma of Business in Legal Practice

Name of Sponsor Organisation: Institute of Legal Executives (Victoria)

Address of Sponsor: *Phone No.*:	5 Inglisby Road, Mount Albert, Vic 3127 (03) 885 4008 or 890 3414
Target Audience for Course:	Law Clerks
Duration of course:	4 years part-time
Certification Provided:	Associate Diploma