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The Commissioners
Productivity Commission
Canberra, ACT

Dear Commissioners,

Re: 'Part Two - Submission to the Productivity Commission's Inquiry into Access to Justice Arrangements'

Background

1. This submission, Part Two, builds on Part One which contained references and articles relevant to the Productivity Commission's 'Issues Paper' questions. This Part will endeavour to identify briefly key issues and where possible use real life examples to highlight key points. Chapter Twelve will also include a response on issues around legal education and the national regulation of the profession based on views the author has also sought from some of her colleagues in the Australian National University (ANU) Legal Workshop.

2. As the Productivity Commission's own ongoing working paper (See Part One) reveals - poverty, disadvantage and vulnerability (these being overwhelmingly the groups assisted by Legal Assistance Services in Australia) cannot be viewed in isolation. The human situations are varied and complex, often multiple legal and other social issues exist and in a setting of systemic factors that contribute to and exacerbate disadvantage. As an example, in the author's experience in many years in legal practice, it is not uncommon for an individual with an intellectual disability to be on a low income, have many fines, be in debt, be facing criminal sanctions, have a record of poor institutional experience as a child and be socially ostracised. Issues all compound and often sufficient social support services and occupations for such people are scarce – prison has become a real option for such people. This is not of great assistance to their well-being or resolution of their civil law problems which often escalate.

3. In addition, each area of law has different policy and legislative settings and imperatives that can be difficult to understand and navigate even for the most intelligent and diligent

lawyer let alone for such individuals who do not know the law or their rights and responsibilities within it. This is why the Productivity Commission's task in examining the 'Access to Justice Arrangements' in Australia is not easy and ought reflect that the system is complex and nuanced and needs to be responsive to individual circumstances as well as examining and improving systemic problems where possible.

4. The author has written extensively on access to justice issues since the mid- 1990s in different professional capacities. She has worked in private practice, for community legal centres, as a volunteer and in paid employment most recently as a Director of the West Heidelberg Community Legal Centre. She has worked for non-legal community agencies and held positions on community service Boards, some of which service the most disadvantaged. She has also worked for a humanitarian organisation and run her own small business. She has also held academic positions which enabled her to combine client case work, policy and research. She was a clinical legal education supervising solicitor for seven and a half years and is now and academic at ANU also combining research, legal practice and student, legal professional and community legal education. She is still working directly with clients and community members in need of legal assistance. This experience enables her to write extensively on issues affecting access to justice both in her own right and in collaboration with others with an expertise in access to justice issues.

5. As noted in Part One, most recently, the author has conducted research evaluations into effectiveness, efficiency and quality in legal service provision and effective approaches to solving legal problems. This work has received international and national attention with recent presentations and workshops in Oxford, The Hague and Canada and with published referred articles and conference papers on the topic. Agencies keen to discuss the approaches to measuring effectiveness, efficiency and quality have included the World Bank and Legal Aid Ontario and Law Clinics Ontario, the former Legal Services Research Centre in the United Kingdom and University College London to name a few.

6. Nowadays, as well as being an academic and conducting research, the author also teaches in the Graduate Diploma in Legal Practice which is a Practical Legal Training program of the Legal Workshop. She will also therefore make comment based on discussion with other colleagues in Chapter 12 in relation to Practical Legal Training and Legal Education. She will also draw on her clinical legal education teaching experience in a previous role. She is still involved in legal practice being seconded to a community legal centre on ANU's behalf one day a fortnight which makes her teaching up to date and practically relevant to her students.

7. The Productivity Commission, in view of limited time, has granted a week's extension for this submission and enabled it to take the form of bullet points given the limited time and in view of the facts that time has also been spent pulling together material relevant to the Inquiry in Part One. The author thanks the Productivity Commission for this flexibility.

8. **Chapter Two-Avenues of ADR and Importance of Access to Justice –**

- ADR is important. It should be low cost and informal. However, often there are significant imbalances between repeat players and inexperienced litigants who, even if they are not legally represented, can have rings run around them if unrepresented. This can nullify the idea of access to justice and put people at a disadvantage by leading them into settlement which is inappropriate.
- In family law matters, it is critical that assessment processes for mediations ensure vulnerable parties have taken separate legal advice on their rights. When at a legal centre one Somali client came to seek our help after she had been to mediation. She had signed her rights away and left her children exposed to danger. We asked ourselves if this matter was suitable for mediation. Prior to the mediation her husband (a violent man) had told her to be quiet at the mediation as if she spoke up she was certain to lose the children as the tribunal would look unkindly on her if she spoke up. She went into the mediation completely unaware of her legal rights, gave in and was left exposed. She stated that had she been better informed prior to the mediation of the parameters of the Family Law Act and its considerations she would have been more vocal in articulating the issues affecting her and her children.
- The author is aware of cases where the mediators, having excluded lawyers, gave in to the 'repeat player' and made the penalty for the unrepresented person one which was contrary to the law. Mediators should have some awareness of the protections offered at law for vulnerable and disadvantaged people and remedies for poor corporate practices otherwise they can find themselves encouraging and embracing unlawful activity. Protections for the poor and their families under the social security legislation, human rights, equal opportunity, anti-discrimination legislation and Judgement Debt Recovery Act are examples of protections the legislature has offered but which some mediators, due to their lack of awareness/bias flout. As people are unrepresented often they do not know the legislative protections. This author is not arguing for legal representation all of the time but for better training of mediators and greater awareness of and assessments for power imbalances.

  An example is a compulsory mediation which took place between a debtor and a 'pay day' lender. The 'pay day'' lender had taken out a 'goods mortgage' over the debtor's home furniture, children's toys and appliances. The debtor's income was below the poverty line and he had children. The practice of securing a loan over certain household items is unconscionable given that there are certain items by law that are protected from seizure particularly when the party is poor/on social security and over which a creditor cannot claim a righto seize. In the case at hand, the practice of the 'pay day' lender was unconscionable, a point made at length by the debtor's legal representative in the mediation. This practice by some disreputable debtors is often referred to as 'blackmail' or 'threatening' lending. In this case, the mediator indicated that the debtor was 'being unreasonable in not giving up some ground' and suggested that the debtor negotiate by handing over

to the creditor their household fridge. The mediator pressured the debtor to give up items which in law would have been protected from seizure and were essential items for family life and hence protected assets.

- A further example -in some instances (based on my time working at a generalist community legal centre in a poor area of Melbourne from 2001-2010) individuals who had legal representation had their representatives excluded by VCAT and they were forced to represent themselves even when these individuals lacked the numeracy, literacy or had other impediments to their being able to tell their story. The basis for this exclusion was that the Office of Housing (OoH), real estate agents or State Trustees were not represented. Many clients/patients (the legal centre is co-located with a health service) lack the confidence to be able to self-represent. Many have little education and find the prospect of confronting a real estate agent and, more particularly, the Office of Housing daunting. This is particularly the case for many clients with a mental illness or intellectual disability. In addition, the OoH, particularly, has significant power over the individual's future needs for shelter and so many individuals fear reprisals and/or are frightened of losing other entitlements offered by the State. This may seem surprising but many of the members of our community are new arrivals (and used to State reprisals in their original homelands) or are so used to being told what to do and how to live their lives or have been threatened with all sorts of consequences (that are legally unlikely) that they will acquiesce in order to protect their interests or those of other family members. One worker commented:

  > 'My main thought is that structures like VCAT need to work harder to give power back to individuals who are disadvantaged and support them. The people feel they (the VCAT and the OoH, real estate agents, state trustees etc.) are up there and we are down here, what's the point, they'll tread on us anyway and we don't have rights'

  In another example, the OoH had served a notice to vacate on a tenant. The neighbours had complained about the OoH tenant. The witnesses in the case all had written notes. They had all met with the OoH prior to the VCAT case and the OoH had assisted them with the content to put in their written narrative. The client had a duty lawyer. The duty lawyer raised concerns about the collusion and coaching of the witnesses which had clearly been undergone. The VCAT member said this was not a problem as far as they could see and the client lost the case. This highlights some of the issues involved in ADR.

This submission is not suggesting that ADR is not a critical and useful component of the justice system but rather care is needed in such cases and that the approaches need to be improved.

- The Human Rights and Responsibilities Charter in Victoria has seen many disputes settled through its use as a tool for negotiation by community members with

public authorities. Conversations which would not otherwise have occurred are enabled by the Charter. The mechanism offered by the Charter alerts public authorities to issues earlier and can lead to better public policy and improved and better informed individual decision-making that reflect the specific circumstances of a person.

By way of example, on the same day as receiving training on how to use the Charter by the author, a community nurse who had been trying to assist a very ill asylum seeker access a hospital used the Charter to remedy the refused treatment. The hospital was refusing treatment on the basis the asylum seeker could not afford to pay and did not have a Health Care card. The woman who had children was at risk of hemorrhaging due to a rupturing caused by significant organ damage acquired from previous brutality and a rape in a refugee camp. A supervisor at the hospital had assured the nurse the asylum seeker would be able to have access to the hospital's health service. When it came to receive the access it was indicated by a staff member at the hospital that the service would be denied unless the patient paid, insisting on prior proof of capacity to pay from the lady.

On questioning the staff member on whether this 'contravened the Charter', the staff member said she did not know. The community nurse then sent an email to senior management and the staff member at the hospital raising the Charter rights. On receiving her email the matter was bought to the attention of management and further circular email was sent by the Divisional head of the department to all hospital staff in Victoria. This email directed staff to follow a DHS directive stating all asylum seekers and refugees were to receive free services from the hospitals and alerting them to the Charter obligations. The woman received treatment just in time which saved her life.

And

An Occupational Therapist (OT) used the Charter on behalf of a woman who was unable to leave her house because of a departmental refusal to provide a ramp by a local authority on the grounds of cost and argument between state, Commonwealth and council departments about who had the responsibility. The woman was in a wheel chair and without a wheel chair was effectively imprisoned in her small house. The woman had been trapped in her house for six months and could not visit her two children who lived away from home and they had significant disabilities as well. The lady became increasingly depressed and distressed about not being able to leave the home. Sections 12 (freedom of movement), 18 (right to take part in public life), section 17 (right to protection of families and children) and 10 (inhuman and degrading treatment) were used to argue that a ramp was required. After Charter arguments, the department reconsidered their position.

And

A Healthcare Coordinator sought strategy advice for a man who was at serious risk around how she could use the Charter to ensure improved hospital care for a man. As a result of being made aware of Charter rights and how to make the relevant arguments she felt better positioned to call a meeting. Feedback from the Coordinator after the meeting was that "They went armed and ready, but were able to negotiate without having to "bring out the big guns" because of the Charter. "So, I think I will take this as a win. The man is now at home with services and rehabilitation in the home has now been provided after long delays and refusals to help him meet his care plan as set by his health workers. The client was able to outline what he wanted and was entitled to with the help of the social work team, and the medical team compromised. It was a good outcome from the clients view point and from us as their case worker."

9. Chapter Three - Legal Needs

- Research identifies that many clients and even their non-legal workers (see Part One for references) may not be able to identify what is a legal problem and what is not and therefore do not seek help.
- It should not be assumed that legal need is easy to measure as it may exist but as people do not know their legal rights or how the law operates they may not be able to identify they have a need and rely on someone with legal training to categorise whether the problems are legal in nature or capable of having a legal solution, i.e. are 'justiciable'. Recent studies on advice seeking behaviour from the Legal Services Research Centre, Hazel Glenn and the NSW Law and Justice Foundation are helpful.
- This means people are missing opportunities to prevent their problems from escalating.
- As a result of these research findings, educating non-legal workers was undertaken by the author in the local area of a generalist legal centre in Melbourne. It included psychologists, social workers, youth workers, council staff, allied health profseeionals, doctors and nurses. The author having conducted a mapping exercise of referring habits of health and allied and social service providers became aware of how suspicious and mysterious even qualified professionals felt about the law. With better information and training about the array of issues that are capable of a legal resolution using the law (many workers perceived lawyers only do criminal and family law and were not able to do anything about debt, domestic violence, housing) referrals from non-legal workers increased and more serious problems were identified earlier and with interventions did not escalate.

- The Productivity Commission needs to be mindful however that such work with non-legal service providers increases the demand for services and needs proper resourcing. The positive side of this assistance however is that some of the most

vulnerable people in our community get legal help that they would otherwise be unable to access. Such work also reduces stress on individuals, ill health and can save the courts and legal system money in the longer term.

An example was when a doctor referred a young boy who was a minor who had been wetting himself and had recently started having anxiety attacks. The doctor referred the boy to the author. It turned out the boy had been hiding a mobile phone bill of $5,000 from his parents for many months. After one short appointment, the telecommunications company agreed the contract was unlawful and noted the bill need not be paid and the contract/plan was unenforceable. The boy's anxiety and toilet problems ended. He did not have to pay and his medical issues were resolved.

10. Chapter Four – Costs of Accessing Civil Justice –

- Legal aid services and community legal centres may need more funding to be able to develop and operate more innovative legal services that can reach out and go into communities where the people most likely to need help are. By working with those services likely to be accessed by people most in need, rather than continuing to work on the traditional appointment and attendance basis only, may extend the reach of many legal aid services. This is not to say that appointments and legal service offices do not still have a place - but - to reach those people with the least access to justice more flexibility and service delivery models informed by research about people's advice seeking behaviours and the factors in their exclusion are needed.

11. Chapter Five - Exploring legal need, concern amongst particular groups –

- The Literature Review the author wrote which was commissioned by the Attorney General's Department and released in April 2012 (mentioned in Part One) highlights many of the issues that confront specific groups and brings together many Legal Assistance Service evaluations and reports from over almost a decade. In addition, the Australia-wide Legal Survey commissioned by National Legal Aid and released in August 2012 offers useful insights into particular groups.
- In the author's experience different client groups need a responsive and informed approach that is good at targeting those groups and includes advice from these groups on what works well with them. For example, the author's many years of experience in working with the Horn of Africa community usually involved having a community liaison person to assist in building trust and making pathways. Training was not in formal settings but rather in conversational settings involving food. In working with Aboriginal Australians, the author learned that building trust, being direct and honest and reliability is critical. Many distrust generalist and non-indigenous services due to past experiences. Having positive relationships with that community and

understanding the contexts in which they live is also critical in being able to assist members but this takes time and energy. Each community is different to the next and so responses need to be tailored and community led.

- Different client groups need different and tailored responses informed by what is an effective way of working with the specific community which is most likely to be known by the community itself. In addition, the research mentioned in the first bullet point in this section highlights that many groups overlap. The author had clients who had multiple conditions and numerous legal and social problems at any given time and belong to more than one group. Often as a result these people get referred on from service to service as they have other disorders and no-one takes responsibility. This highlights the need for holistic and integrated service delivery as is being developed in many Legal Assistance service across Australia.

12. Chapter Six – Avenues for improving civil justice-

- One thing that is critical, if people are to either avoid problems or escalation of their problems (which for many of our clients are multiple) then the availability of community education about how they can navigate or better understand a complicated legal system is crucial. This legal education will not work if it is a one off training but should be provided on an on-going and within a community development framework.
- The reality in service agencies is that staff turnover can be high and therefore one-off training is not enough. It needs to be on-going, regular and target both service providers and members of the community.
- Some people will only seek help when they are forced to and others will act on knowledge if they have it. In our community it should not be assumed everyone has had access to education, has a computer or access to one. Some have significant language barriers, or can neither read nor write. Therefore, written information provided over the internet and self-help is of limited value. These offerings assist well educated and articulate confident people but are of limited value in some sections of the community.
- Good educational pedagogy shows that for some people they need information to be provided in a variety of formats to suit how they absorb or process information. This is why there is a need for provision of community development and community legal education in communities based at places where those members of the community are likely to congregate or seek help. The former Legal Services Research Centre in the UK has stated:

> ‘not doing anything about the problem points to the lack of knowledge about the seriousness of the problem and what action to take, and being able to handle a problem alone requires expertise, confidence and also monetary resources. It is certainly the case that sometimes people are more than able to deal with problems alone, and sometimes it might be reasonable to make no attempt to

resolve the problem. No one strategy to deal with problems can be universally prescribed. However, particularly for those people who face problems of social exclusion, and may be the least able to solve problems themselves, clear information and assistance may be vital to enable them to escape from civil justice problems that might well act to entrench or even worsen their predicament.'[1]

- Another area is the use of restorative justice/problem solving approaches in resolving disputes or to avert disputes arising in our community. This will involve bringing together different members of the community and local agencies in contexts where often adversarial approaches are employed and stereotyping occurs. One area is public housing notices to vacate given to tenants. Often there is a lack of awareness of context and different perspectives or a failure of different groups to think more laterally or flexibly about solutions using the social service space and local councils. For an example of this see L Curran and A Vernon, 'Creating the Rights Spaces' Report, 2010 mentioned and attached to Part One.

- The international experience with properly run restorative justice programs (and the authors own experience at forums in the past) has been that when communities and agencies are bought together to share experiences and perspectives it can avert stereotypes and build better understanding and empathy[2], reduce misunderstandings and conflict and reduce social exclusion.[3] Evidence suggests that restorative justice/justice reinvestment also has a role in increasing community participation and improving agency engagement. Key areas we would seek to explore restorative justice approaches would be in youth crime, issues where criminal consequences are not the only solution,[4] (criminal not being the remit of the Productivity Commission Inquiry but relevant given it can lead to other civil justice problems), educational issues around exclusion and suspension, use of public space and housing issues.

13. Chapter Seven – Preventing Issues from evolving into bigger problems –

[1] A. Buck, N J Balmer and P Pleasence, 'Social Exclusion and Civil Law: Experience of Civil Justice problems among Vulnerable Groups', (2005) 39 *Journal of Social Policy and Administration*, 302-320 and A Buck, P Pleasence and N J Balmer, 'Education Implications from the English and Welsh Civil and Social Justice Survey', *Annexe to the PLEAS Taskforce Report* (London: PLEAS Taskforce (2007).

[2] See C Smith, 'Children's Rights; Judicial Ambivalence and Social Resistance' (1997) *International Journal of Law, Policy and Family*, 103-109 and Ministry of Social Development, *Achieving Effective Outcomes in Youth Justice, An Overview of Findings*, Final Report (2004) 18

[3] G Bazemore and M Umbreit, *Rethinking the Sanctioning Function in Juvenile Court: Retributive or Restorative Responses to Youth Crime, Crime and Delinquency* (1995), 296-316, J Braithwaite, *Crime, Shame and Reintegration* (1989), M King and J Wager, 'Therapeutic Jurisprudence and problem-solving judicial case management', (2005) 15 *Australian Journal of Judicial Administration,* 28-36

[4] A Freiberg, 'Problem-oriented Courts: Innovative Solutions to Intractable Problems, 11 (1) *Journal of Judicial Administration*, 2001, 1 and A Freiberg, 'Problem-oriented Courts: An Update, 14 (4) *Journal of Judicial Administration,* 2005, 196 and Magistrate H Hannam, 'Problem-solving and Therapeutic Jurisprudence in the Children's Jurisdiction', (paper presented at Children and the Courts Conference, National Judicial College of Australia, 5 November 2005, 1).

- Building relationships and collaborations between legal, health and social services takes time and resources of staff. In addition, some funding models make it difficult for agencies to be responsive and work holistically which can be more effective than working through different problems in silos when they are often inter-connected and can compound unless dealt with in conjunction and strategically. Flexibility and autonomy to work in this way when a legal assistance and non-legal service think it will be more effective and lead to better outcomes should be given scope. It will often lead to earlier intervention and prevention of issues escalating.

14. Chapter Nine – Using informal mechanisms to best effect –

See responses to points 8, 10 and 12 above.

- Identifying trends and working with numerous strategies to stop poor and unlawful practices and stop the revolving door of litigation is highly relevant in avoiding cost to the public purse and community. Strategies can include all or some of the following at appropriate times or in conjunction - media, community education, presence on advisory committees, strategic case work, public interest litigation, community restorative processes and law and policy reform. These are all effective at making changes that benefit a larger number of people or in improving laws and their administration where trends are identified. For some examples of successes of such approaches see the author's Reports 'Solving Legal Problems: A strategic approach', March, 2013 (http://www.law.anu.edu.au/legalworkshop-gdlp/publications) and 'Making the Legal System More Responsive to Community: A Report on the Impact of Victorian Community Legal Centre (CLC) Law Reform Initiatives', La Trobe University and the Reichstein Foundation, May 2007.

15. Chapter Twelve – effective and responsive legal services

What reforms could usefully be made to the academic qualifications and legal training required of prospective lawyers?

- This broad question should be considered in the wider context of global changes to higher education and the qualification processes for lawyers across jurisdictions internationally. There are three main issues: the quality of regulatory control, the wider context of professional learning and assessment, and the detailed research required in order to answer this question.

- Regulatory control of legal education is undergoing significant change. In Canada, for example, the Law Society of Upper Ontario is considering substantial changes to the process of articling, substituting a primary vocational qualification and a

placement experience. In England and Wales, there are major changes being carried out to legal services education, following the Legal Education & Training Report (letr.org.uk) and its recommendations for professional education in legal services. In the USA, a recent major report on legal education by the American Bar Association has suggested substantial changes to legal education process and content, following the economic problems stemming from the high costs of legal education, and the perceived inability of many JD programmes to prepare students for the world of private and public legal practice (http://bit.ly/1aA8saA) and which also suggests regulatory change. Many of these and other jurisdictions are facing problems similar to those faced by Australian regulators and providers. In many respects and in the context of globalized legal education practice, solutions crafted in our jurisdictions have an effect on large global firms and international practice – the dominance of the New York Bar Exam, and its effect on the take-up of US Masters programmes, is a good example. Another example is the form of regulated entry to specific jurisdictions for practising lawyers – for example the Qualifying Lawyers Transfer Scheme operated by the Solicitors Regulation Authority in England and Wales (http://www.sra.org.uk/qlts/).

- The question should also be considered within the context of other professions, their educational practices and forms of regulated entry. Medical education and regulation is the classic example here. Many of the innovations that have been central to the development of high-quality medical education can be adapted to legal education. Finally, the question assumes that we know the answer. However in many areas of legal educational research the quality of data is poor, uncertain or requires updating. This is a serious issue that requires sustained attention by government, regulators and other professional bodies and academics working in the field. It is clear from many of the debates that reform is required. Which reforms should be carried out requires detailed research, however, into the nature of the problems; and that research and its publication is wanting.

- Within the broader context of these issues, it is reasonably clear that there is need to better prepare graduates for the uncertainties and realities of practice with a focus on communication skills as well the actual practice of the law. More clinical experiential or practical opportunities for students are desirable rather than purely case based learning. It is noted however, that, such experience needs to be framed by good quality and careful supervision and structured educational de-briefing opportunities for students to assist in constructive student learning and support students appropriately as some case and client work can be confronting and challenging.

- It should be noted that, clinic apart, much of legal education is still carried out according to academic patterns and typologies. These patterns of learning and assessment are not well aligned to professional understanding and practice. In addition, the divide between undergraduate academic and postgraduate vocational education can be said to be an ineffective way of preparing students for

the profession. It is acknowledged that a considerable proportion of law students do not enter the legal profession (though we do not have precise figures for this). However it is reasonable to assume that the great majority of students will enter some sort of professional life, and therefore that a critical education in and knowledge of the working of law in society at every level would be useful to them.

- Clinical and other experiential learning programs need adequate resourcing as students are not 'cheap labour' but participants in education and practical learning activities. As students are still learning, they can make mistakes if not properly supervised which can impact negatively on their clients if such protections are not in place. Accordingly, there are public indemnity insurance issues for those who supervise students.

- Many recent graduates of law have little exposure during their undergraduate degrees to what the practice of the law is really like. Some are quite surprised to discover that a lot of legal practice involves human interaction, not just knowledge of technical laws. They struggle applying the law to given scenarios that they would face in practice. The ANU Legal Workshop's GDLP (which is a prerequisite in many jurisdictions for admission to practice -it replaces Articled Clerkships in most states) endeavors to remedy this, but much more could be done to develop this understanding during the undergraduate law degree.

- Clinical and some Practical Legal Training Programs at universities do great work engaging students in supervised service delivery to community members experiencing disadvantage. This author has coordinated a Judicial Mentoring Program and taught in a clinical legal education program at La Trobe University. The author is now at the Australian National University. The following is an extract from an article which has been submitted to the editors of the International Journal of Clinical Legal Education by the author of this submission and her colleague, Associate Professor, Tony Foley. In this article, we note that the Australian National University students are involved in practical legal training and clinical programs which sees them learning but also improving access to justice.

  As an example, ANU runs two clinical programs in partnership with Legal Aid ACT, namely the Legal Aid Clinic (LAC) and the Clinical Youth Law Program (CYLP) with the assistance of law students from ANU's College of Law (undergraduate law students) and Legal Workshop Programs (Graduate lawyers doing their Practical Legal Training (PLT) course a requirement for admission to practice).

  'The Youth Law Centre (YLC) at ANU provides free and confidential advice to young people aged 12-25 and also provides outreach and community legal education to schools, technical colleges and to non-legal youth agencies. International and

national research has found that many vulnerable and disadvantaged people do not contact a lawyer because of perception and access barriers.[5]

The Legal Aid Clinic Program (LAC) is one option in the Legal Placement Experience requirements for the Graduate Diploma of Legal Practice at the ANU Legal Workshop. LAC is conducted by Legal Workshop staff members at the ACT Legal Aid Office in Canberra and is integrated into Legal Aid's "advice and minor assistance" activities. The LAC Program is intended to expose students to social justice issues through direct contact with Legal Aid clients and to provide students with "hands on" legal experience, principally through interviewing and interview follow-up, in the period just before they are admitted as practitioners. LAC is a clinical program that has been running since 1996 and has been the subject of early research as an example of the delivery of minor assistance follow up work.[6]

Student evaluation reports over the life of the LAC Program constantly identify interviewing as the most valuable learning experience in the LAC Program.

Typical evaluation comments from the 2013 LAC Program include:

- The main LAC Program was a 'great experience in making chronological notes, interviewing clients, watching supervisors give advice and doing research for clients'.
- 'Very valuable experience interviewing clients never had this experience in law school'.
- 'I found client interviewing the most useful aspect of the LAC program. Having no experience in client interviews before, I found that being thrown into the deep end was great experience. I also found it a very valuable experience watching how the instructors interacted with the clients & their differing styles.''
- 'The client interviews – it was great to interact with the clients on a one-on-one basis and practice interviewing skills. It was helpful to learn from the supervising lawyer what issues to focus on & how to focus on those issues.'

For further discussion see:

[5] Christine Coumarelos et al, 'Legal Australia-Wide Survey: Legal Need in Australia' (Report, Law and Justice Foundation of New South Wales, (August 2012) <http://www.lawfoundation.net.au/ljf/app/6DDF12F188975AC9CA257A910006089D.html>.

[6] Harrison, J, Holmes, V, Rowe, M, Foley, T, Sutherland, P Capacity of a Clinical Program to provide 'Minor Assistance' within the Structure of a Legal Aid Commission, paper presented to the 3rd International Journal of Clinical Legal Education/8th Aust. Clinical Legal Education Conference, Melbourne, 13-15 July 2005

L Curran, 'Human Rights: making them relevant to the vulnerable and marginalised in Australia,' June 2008, Vol 33 (2), *Alternative Law Journal*, pp 70 -75.

L Curran, 'University Law Clinics and their value in undertaking client- centred law reform to provide a voice for clients' experiences,' *International Journal of Clinical Legal Education*, December, 2008, pp 105- 129.

- Given the high rates of depression in lawyers and law students identified in recent studies such as those by the Brain and Mind Institute, the well-being and building resilience of students should be considered in their training and ongoing continuous development as practitioners.

  See: Molly O'Brien, Stephen Tang and Kath Hall, 'No time to Lose: Negative Impact on Law Student Wellbeing May Begin in Year One', *, Vol 2, No 2, The International Journal of the First Year in Higher Education, 2011.*

- Students should not just be taught how to identify an ethical issue but also given opportunities to develop skills to address ethical issues in a constructive and professional manner. This will help retain good lawyers in practice and ensure high professional ethical standards.

- Students are often taught ethics as a stand-alone subject. This is good, but it can mean that students fail to understand the context in which ethical issues can arise (e.g. when working on a commercial transaction). When ethical dilemmas are scattered deliberately in the ANU Legal Workshop into commercial, consumer and property law often students do not identify that ethical issues come into all areas of law and that they need to be thinking about how to handle them. Some students do not identify an ethical issue, for example, it is a conflict of interest to act for a borrower and the guarantor in disputed circumstances about whether the borrower and creditor informed the guarantor about the nature of a guarantee. Students have made comments that they 'did not think ethical issues are relevant to commercial law and think it unfair that ethical issues should need to be considered in the subject.' This demonstrates a disconnect between under-graduate treatment of the study of ethics and the reality of where and when ethical issues can arise. One wonders how often practitioners overlook and fail to identify such ethical concerns. This can have ramifications for clients and for perceptions of professional conduct.

  For further detail see:

  Vivien Holmes, Tony Foley, Stephen Tang and Margie Rowe, 'Practising Professionalism: Observations from an Empirical Study of New Australian Lawyers', *Legal Ethics, Vol 15, No 1, 2012*

Tony Foley, Vivien Holmes, Margie Rowe and Stephen Tang, 'A Puppy Lawyer is not just for Christmas: Helping new lawyers successfully make the transition to professional practice', 2011, SSRN, Working Paper Series.

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Is the current regulatory framework for legal practitioners appropriate?

- The National Legal Profession Reform process is taking a long time. There are sometimes, among the various admitting authorities and others examining admission to practice, in some states and territories, arbitrary decisions taken with little or no evidence or a level of sophistication about developments in practical legal education and effective learning for practice in the current world. There is much national and international work in the practical legal training and legal education spheres that could inform such conversations.

16. Chapter Fourteen – Better measurement of performance and cost drivers

- Complexity of the nature of legal service delivery to vulnerable, poor and disadvantaged people and the different policy and legislative settings operating in different areas of practice.
- Evaluations, such as the one this author developed for Legal Aid ACT, which are informed and shaped by what the actual service does, the nature of their clients are key in driving efficiency, effectiveness and improving performance and help unravel complexity. The methodology and instruments have been deliberately made available on the Legal Aid website for legal and non-legal agencies to be able to adapt and use. The approach is also not burdensome especially in view of limited resources of many not for profit services but do enable the human aspects of service delivery and complexity to be revealed and to drive quality of the legal service. The approach also takes into account demographic and

geographical factors and different client groups. If conducted in a participatory way it is very useful as the services own the findings and so are keen to make improvements. Such evaluations, as they are relevant, useful and informed by what actually happens ensure the service itself grows and learns about what they do and how it might be improved and what is working well and why.

- Given service diversity, the likely impact on people's lives and complexity of delivering legal services it is critical evaluation approaches are 'bottom up' rather than 'top down.' Evaluations are risky in terms of their accuracy without an understanding of the realities services face and where they often compare services that are not 'like for like'. This is the risky as the findings can cut across ensuring the service remains responsive and effective to client groups. 'Top down' evaluations where the approaches are fixed in isolation from what is within the control of agencies and what they do and why can be misleading and not very usable. Evaluations that apply a 'one size fits all' risk trying to homogenise service outcomes, reducing responsiveness to the situation at hand and thus effectiveness. In addition, measurements which focus on transactions and activities tell us little about the effectiveness of those interventions.
- Quantitative data can only explain so much. Often the reasons that lie behind statistics that ought be understood are hidden. This is why qualitative data should be a necessary compliment to quantitative data collection. For example, aboriginal children missed schooling for a two week period. This reflects badly on school retention rates. When qualitative data is collected over the same 2 week period it would have been revealed that there were a significant number of suicides in the small community over the same period of time and the children were attending funerals and grieving for their family members. This information may lead to a different response that assumptions made from the quantitative data alone would disclose.
- See references in Part One submission for further and detailed discussion of measurement of legal assistance services.

I hope this submission will be useful.
Please do not hesitate to contact the author with any further questions or queries.

Yours sincerely

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