A comparative study of paralegalism in Australia, the United States of America and England and Wales

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A Comparative Study of Paralegalism in Australia, the United States of America and England and Wales

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Statement of Sources

The work contained in this thesis has not been previously submitted for a degree or diploma at Southern Cross University or any other higher education institution.

To the best of my knowledge or belief, this thesis contains no material written by another person except where due reference has been made.

I also certify that the best of my knowledge any help received in preparing this thesis, and all sources used have been acknowledged in this thesis.

Parts of Chapters Three and Four have been derived from articles previously published by the candidate;


Jill Irene Cowley
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Abstract

This thesis entitled, *A Comparative Study of Paralegalism in Australia, the United States of America and England and Wales*, examines the role that paralegals play in the delivery of legal services and the educational opportunities that are available to support that role in Australia as compared to England (and Wales) and the United States of America (US). As in other parts of the common law world it is accepted in Australia that not all work which is of a legal nature is performed by qualified legal practitioners. This is despite a rigid demarcation between qualified lawyers and other legal workers. The structure and regulation of the legal profession have an impact in determining the nature of paralegalism in Australia. The legal profession’s monopoly in Australia is, however, confined to the right of appearance in a court of law and to the preparation of certain documents for reward, which leaves a vast field of legal tasks open to performance by other workers, including paralegals.

The legal profession is facing many challenges in the twenty first century, including the need to deliver better and cheaper legal services. Paralegals, as part of the legal service industry, are affected by the same tensions but are well placed to contribute to a more “streamlined” practice and to assist in providing greater access to justice for many disadvantaged Australians.

This thesis explores the difficulties for Australian paralegals given that there is little formal recognition of, or status accorded to, the paraprofession. Indeed, the word *paralegal* is not easily understood nor widely used and this translates into uncertainties as to qualifications, market position and function to provide a definition and to determine the parameters of the profession. Paralegals work in a variety of legal environments which include, but are not limited to, working in private legal practices where they are supervised by lawyers.

Further, in order to achieve recognition and to make a meaningful contribution to legal service delivery, paralegals require specialist education. This thesis examines the educational opportunities which are available to paralegals in Australia and makes recommendations as to future accreditation based on appropriate qualifications and experience.
In order to gain further insight, comparisons are made between the role that paralegals play in the delivery of legal services in two other common law jurisdictions and Australia. Paralegals play a significant role in the delivery of legal services in the US, where many states constitute bigger jurisdictions than the whole of the Australia. American paralegalism has a twenty year “headstart” on that of Australia and it is reasonable to anticipate that their challenges will mirror ours in the future. England, on the other hand, has a legal system very close to our own and the examination of paralegals in both England and Wales has revealed both similarities and differences to our Australian experience, both of which inform the research.
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CHAPTER 1

INTRODUCTION

“retaining a lawyer is like hiring a surgeon to pierce an ear.”

INTRODUCTION: PARALEGALS IN AUSTRALIA – HISTORY AND DEFINITIONS

This thesis is concerned with paralegals and the role they play in the delivery of legal services in Australia, as well as the educational opportunities available to support their role. However, unlike in other parts of the common law world where paralegals are recognised as an important part of the way in which legal services are delivered, in Australia there is no substantive acknowledgment by lawyers or the community of paralegals as a distinct legal group or of their dependence upon paralegal services. Nevertheless, it appears that the paralegal profession has been evolving in Australia, largely in the shadow of the legal profession. Further, the practice of law in Australia is changing in response to the economic, social and political pressures of the twenty first century. Consumers of legal services are demanding more affordable products and greater access to them. It is clear that many legal practitioners, in both private and public practice, are using paralegals to deliver those services. Further, it is apparent that paralegals are performing many tasks that might also be performed by lawyers. But what are the parameters of paralegalism in Australia?

A logical starting point of any inquiry as to the scope of paralegal practice in Australia is to determine a workable definition, and in doing so provide some context and understanding of the role that they play in the legal system. Describing a paralegal as a person who works beside a lawyer has been criticised as being neither useful nor functional. The question is whether it is possible to point with any certainty to qualifications, market position or function

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2 Para is a prefix derived from the Greek meaning beside or auxiliary to. It denotes a relationship or proximity. This prefix is also used in relation to other professions, for instance, a paramedic is person trained to do medical work but is not a qualified doctor. See Brown L (ed), The New Shorter Oxford English Dictionary, Clarendon Press, Oxford, 1993
to provide a better definition and to determine the parameters of the profession. These issues will be discussed later in the thesis.

The concept of paralegalism and even the spelling of the word *paralegal* itself create difficulties. In Australia they have been variously called *paralegals, legal assistants, law clerks, articled clerks, police prosecutors* and certain *court clerks* - depending to some extent upon their role. In England and Wales the concept of a paralegal is more likely to be called a *legal executive* or *clerk*, and in the United States of America (US) the terms *paralegal* and *legal assistant* are completely interchangeable. And yet, unlike a legal practitioner, it is not possible to point with certainty to qualifications, market position or function to provide a definition and determine the parameters of the paraprofession.

Definition is, thus, one thing which creates difficulties.

Dictionaries are a rich source of sociological interest, reflecting as they do the vernacular of the society of which they are a product (albeit with a timelag). Accordingly, discovering the inclusion of the word *paralegal* gives an appropriate historical context. The definitions provided, and even the part of speech, are equally illuminating.

There would appear to be consensus that the word *paralegal* was first coined in the US. The Merriam-Webster OnLine Dictionary, claims the year 1969 as the date of its first appearance, in the following entry.

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“Main Entry: para.le.gal
Pronunciation: “par-&-'1E-g&l
Function: adjective
Date: 1969
: of, relating to, or being a paraprofessional who assists a lawyer
para.le.gal / noun. “
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3 English law applies in England and Wales. Great Britain, a political geographic term for England, Scotland and Wales, has no common legal system even though many statutes are applicable to Scotland. The United Kingdom also included Northern Ireland. References in this thesis to England include Wales but not Scotland or Northern Ireland.

The *Oxford English Dictionary*, \(^5\) published in 1970, contains no entry for the word *paralegal*: nor *Osborn’s Concise Law Dictionary*. \(^6\) Both of these dictionaries were popular reference tools for Australian lawyers during the 1970s.

The 1982 supplement to the *Oxford English Dictionary*, \(^7\) however, includes the following very useful definition:

“paralegal... **a** and **sb** Chiefly **N.Amer**... A **adj** Of or pertaining to auxiliary aspects of the law. **B** **sb** One trained in subsidiary matters, though not fully qualified as a lawyer, etc; a legal aide

1972 *NY Law Jnl* 22Aug 2/7 (Advt) Para-legals (that is legal assistants or paraprofessionals) are used by an ever-increasing number of prominent attorneys to reduce their unwanted load of paralegal matters and free up their time to render legal advice more efficiently....”

By the early 1980s, it seems, there was the recognition in England of a nascent *para-profession* of paralegals, chiefly (but not exclusively) working in North America.

The Australian situation is reflected in the definitions provided in the *Macquarie Dictionaries*, which were the first Australian dictionaries. The *Budget Macquarie Dictionary* \(^8\) included the word *paralegal* as an adjective, defined as,

“related to the legal profession in a supplementary capacity, often used of legal workers who are not formally qualified.”

*The Macquarie Encyclopedic Dictionary* (1990) contained no advancement - the same definition and still an adjective. By 1998, however, the compendium *Legal Terms* \(^9\) included the following:-

“**Paralegal** A person who performs legal, quasi-legal, or related work, although not admitted as a legal practitioner. Also known as “legal assistant” or “legal executive”.

The *New Oxford Dictionary of English* \(^10\), published in 1998, contains the following entry:-

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“Paralegal chiefly N.Amer noun a person trained in subsidiary legal matters but not fully qualified as a lawyer. Adjective of or relating to auxiliary aspects of the law.”

From the literature, however, it seems that the term paralegal has been used in Australia for several decades, albeit tentatively and interchangeably with other terms. Robinson, in her 1976 report to the Law Foundation of New South Wales (NSW) on the need for the training of legal paraprofessionals, defined a legal paraprofessional as

“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.”

In the 1997 study, Lawyers Outside Private Practice and Paralegals, Abbott has adopted the word paralegal and writes that the following “may be described by the umbrella term paralegals…” They are,

“a defined class of specialist clerks and a few secretaries who have 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 lawyers.”

In 1979, Jones had examined the role of the layman in Australia’s legal system and defined para-legal (note the spelling) as meaning “beside the legal”. He concluded that such workers perform many different functions, but remained as assistants to the legal practitioner.

From the very early 1980s, the word paralegal has been part of the vernacular, as both a noun and an adjective. There is consistency, too, in a definition allied to a paralegal’s function, namely as one who works under the guidance of a legal practitioner. However, there was concern given that such definitions merely “emphasise that paralegals are not qualified lawyers” without any real attempt to describe their actual function.

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9 Nygh P E, et al (eds), Legal Terms, Butterworths Guides, Butterworths, Sydney, 1998, p74
13 Abbott J, Note 12, p47
14 Abbott J, Note 12, p47
15 Jones D, “The Role of the Layman” (1979) 53 ALJ 447 - particularly at p455
For Terry, writing in 1983, the word and the notion caused anxiety. “That there are people in this society who could properly be designated ‘non-lawyers’ is irksome. It is no more a descriptive term than ‘non-banjo player’ or ‘non-mother’. It is disagreeable because it denotes centrally the lawyer and represents everybody else as circumstantial. Similarly, that there are those dubbed ‘paralegals’ causes the semantic alarm bells to ring with urgent tintinabulation [sic].”

The difficulties were twofold. First, was a definition seen as pejorative and “irksome”. Second was the notion of the development of an underclass of workers, performing lesser tasks - the crumbs left over when the lawyer has assigned his or her own functions. These same concerns were echoed later by Menkel-Meadow who wrote that, “Where possible, one should resist turning over whole areas of law or whole categories of tasks to paralegals or lay advocates. Once a field has been “paralegalized”, it may be just that, beside or outside of the law ,...”

Thus we may not know what a paralegal is but we know what she is not. We know that she is not a lawyer and does not perform legal work (work reserved by statute, common law or convention to an authorised legal practitioner). But still there is no unanimity. Australia is not unique here. Even in the US, where it is argued that paralegalism is well established, there is a perplexing array of definitions provided by the majority of state bars and the many national legal organisations.

Not every task that constitutes legal work need, necessarily, be performed by a qualified legal practitioner. There are many people in Australia who work in a legal capacity but who are not admitted to practice, and therefore cannot be called legal practitioners. As mentioned earlier,

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16 Office of Legal Aid and Family Services Attorney-General’s Department (OLAFS), Paralegals and Legal Aid. Discussion Paper, 1992, Canberra, p7
18 Terry J, Note 17, p181
19 Menkel-Meadow C, “The Paralegalization of Legal services to the Poor.” (1985) 19(2) Clearinghouse Review 403, p410. The American spelling of paralegalised is noted. Throughout this study I have adopted the English/Australian spelling of many words and not made particular reference to the American spelling where the words used are as direct quotations or as proper nouns.
20 Compare Scutt’s argument re mediation and the creation of a second class system (to cut costs) by removing justice from the public eye and thereby adding to the powerlessness of the poor. Scutt, J “The Privatisation of Justice: Power Differentials, Inequality and the Palliative of Counselling and Mediation” in Mugford (ed), Alternative Dispute Resolution, Canberra, 1986, AIC Seminar Proceedings No 15 185, p203
they have been variously called paralegals, legal assistants, law clerks, articled clerks, police prosecutors and certain court clerks – depending to some extent upon their role. Australian lawyers, it seems, have been slow to embrace the notion that persons other than qualified lawyers can perform legal or quasi-legal functions with aplomb. Even now, at the beginning of the 21st century, “embrace” is probably not the appropriate word.

In Australia, as elsewhere in the common law world including the United States (US) and England and Wales, the legal profession has maintained an effective monopoly over legal practice - a monopoly ensured by statute and cosseted by education. It hinges upon the eligibility for admission (to the profession and the court), which is acquired by way of education, and the corollary of a right of appearance in court following the successful completion of all educational requirements.

Lawyers in Australia must be qualified, attaining certain specified academic qualifications and practical training, which lead to admission to the profession by way of a practising certificate. Armed with such qualifications, and following admission, the lawyer becomes an officer of the court and may then carry out legal work for payment. If there is no admission to the profession, then, there is no reward.22 In New South Wales (NSW), for instance, a legal practitioner is defined as “a person enrolled in the Supreme Court as a legal practitioner.”23 Such a person may practice as either a solicitor or barrister in NSW, but must hold “a current practising certificate”24 which is granted at the discretion of the Law Society Council or Bar Association. Unqualified persons are precluded from practice.25 In Western Australia, unqualified persons are precluded from conducting legal work which is defined under ss76

22 Section 48E Legal Profession Act 1987 (NSW)
23 Section 3 Legal Profession Act 1987 (NSW)
24 Section 25 Legal Profession Act 1987 (NSW)
25 Section 48B Legal Profession Act 1987 (NSW)
and 77 of Legal Practitioners Act 1893 (WA). Accordingly, a legal practitioner is prescribed by qualifications as well as market position and role or function.

It is these indicia that distinguish a legal practitioner and define the legal profession as a profession. Professions of any kind are tight-knit groups. For Goldring28 “some community of purpose, personnel and knowledge distinguishes a “profession” from other associations....This community extends to language, values, role definitions, and selection of future members.” Members of the professional community profess common aims, which in Goldring’s view include increasing and maintaining wealth and power and a tight hold on the collective and exclusive knowledge of the group. “Any attempt to reduce or redistribute the class’s monopoly of culture or knowledge is therefore to be resisted.”

Goldring’s rather harsh view of the legal profession, is somewhat qualified later in the article, recognising that part of the rationale for a monopoly of legal services is the protection of the unknowing public (the client) from unqualified and unskilled persons who may not adequately or correctly unravel (or demystify) the law. This protection can be seen as simultaneously self-serving (maintaining the monopoly and even excluding certain people from access to legal services) and altruistic (protecting clients from “charlatans”). One of the questions to be considered later in this thesis concerns whether paralegals, like lawyers, are part of a distinct profession.

However, a central objective of this introduction is to settle a workable definition for an Australian paralegal, for while the term paralegal is now commonly used, there is still some disagreement and misunderstanding about its meaning. Accordingly, this thesis will seek to

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26 Section 76 (1) No person other than a certificated practitioner shall, whether in their own name or that of any other person, directly or indirectly sue out any writ or process, nor commence, carry on, solicit, defend, or appear in any action, suit, or other proceedings in any court whatever of civil or criminal jurisdiction in Western Australia, nor act as a barrister, solicitor, attorney, or proctor of the Supreme Court of Western Australia in any cause, matter or suit, information or complaint, civil or criminal, wheresoever and before whomsoever the same is to be heard, tried, or determined, or under any commission for the examination within the State of witnesses, or others issued by any court in or out of Western Australia. (2) Nothing in subsection (1) shall be construed as preventing a party from appearing or defending in person as heretofore, nor to prevent any person from addressing the court if permitted to do so pursuant to section 29 of the Local Courts Act 1904.

Section 77. (1) No person other than a certificated practitioner shall directly or indirectly perform or carry out or be engaged in any work in connection with the administration of law, or draw or prepare any deed, instrument, or writing relating to or in any manner dealing with or affecting real or personal estate or any interest therein or any proceedings at law, civil or criminal, or in equity.


Note also the previous references to Legal Practitioners Act 1987 (NSW) s3, definitions of both a barrister and solicitor and Part3 (s25 and s48B)

28 Goldring J, Note 27, p5

29 Goldring J, Note 27, p5

30 Goldring J, Note 27, p5
determine a workable definition, more suited to the new millennium. This may acknowledge that paralegals are not necessarily restricted to “work beside lawyers” but are employed in a wide variety of law-related roles. Thus, this study will examine whether a paralegal in Australia is “a person who is employed, usually for reward, in a legal environment, who possesses legal knowledge, but also has organisational, communication, and interpersonal skills which are utilised in providing a service to the community.”\(^{32}\) This definition recognises that a knowledge of laws and a use of that knowledge is crucial, but a paralegal’s role falls short of the right of appearance in court. Inherent in this definition is the understanding that a paralegal’s role is not merely as a “little people[s] …little lawyers.”\(^{33}\)

By way of contrast, in 1997, the American Bar Association Standing Committee on Legal Assistants adopted a definition of a legal “assistant/paralegal” (replacing their 1986 definition) so that it reads as follows:-

“A legal assistant or paralegal is a person, qualified by education, training or experience who is employed or retained by a lawyer, law office, corporation, government agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible.”\(^{34}\)

The difference is subtle yet important. In the US, a connection between paralegal and lawyer is maintained – no matter where he/she works, a lawyer is responsible. In Australia, on the other hand, there is semantic, if not apparent, independence.

It may be that one should merely heed the words of Statsky when he said, “The day has long passed when so many had to ask, “What’s a paralegal?” Today the most likely question is, “What’s the most effective way to use a paralegal?” \(^{35}\) Clearly, further inquiry is warranted.

**BACKGROUND AND JUSTIFICATION FOR RESEARCH**

The Australian Law Reform Commission (ALRC) in their Issues Paper No 21, had raised the following concerns:-

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\(^{31}\) Goldring J, Note 27, p7


\(^{33}\) Terry J, Note 17, p183


“Q.4.2 Are paralegals and lay advocates likely to play a greater role in future proceedings before courts and tribunals? If so, what sort of training do paralegals and lay advocates require and who should provide such training?

Q.4.3 Should paralegals and lay advocates be subject to any ethical rules, minimum standards or system of accreditation or regulation? If so, what should these ethical rules and minimum standards cover and who should oversee accreditation and/or regulation?”

36

As will be described in Chapter Four, paralegals in Australia would appear to occupy an important position in the Australian legal system. Just how important, however, was essentially unknown as there has been very little contemporary literature written, and few studies conducted about paralegals. Given this, the issues raised by the ALRC could not be answered with any authority. Addressing the issues raised by the ALRC is the primary reason for this thesis. It was also felt that comparisons with other like jurisdictions (the US and England and Wales) would inform any inquiry.

The School of Law and Justice at the Southern Cross University (SCU) had established a paralegal education program in 1991, recognising a demand. As indicated in Chapter Four, it was soon realised that the demand for paralegal education was much wider than had been initially anticipated and the program on offer was, therefore, enlarged to include further, more comprehensive, courses of study. The content of these courses of study is regularly reviewed to determine relevancy. Such review relies upon contemporaneous and scholarly information to assist the process.

This thesis seeks to respond to the issues raised by the ALRC, in light of the education and training opportunities available in Australia (especially those offered by SCU) to make recommendations and to contribute to scholarly research on the subject.

This is also a comparative study, looking carefully at paralegalism in the US, which, when considered as a collection of fifty large states is arguably the most influential common law jurisdiction (or collection of jurisdictions). There is also an examination of the state of

paralegalism in England and Wales. These jurisdictions were chosen in order to inform the research and better the understanding of the role of paralegals in Australia. To the author’s knowledge there are no other scholars working on such an endeavour.

RESEARCH QUESTIONS AND HYPOTHESIS

The Australian Law Reform Commission, in their Issues Paper No 21, had raised several issues in relation to the role that paralegals can and do play in the delivery of legal services in Australia. It further asked about training and the desirability of accreditation and/or regulation for paralegals.

The background, as just presented, leads to the following research questions in relation to paralegals in Australia:

1. Who is a paralegal?
2. Is there a paralegal profession?
3. Are paralegals helping to meet the need for legal services and providing greater access to justice? Is their role likely to expand?
4. What education and training opportunities are available to them? Is paralegal education appropriately designed and who should provide it?
5. Is there a need for regulation?

These questions lead to the hypothesis tested in this thesis that:

A paralegal in Australia is part of an undefined, unregulated professional group, who are generally poorly educated, and lack recognised qualifications, but whose existence is fundamental to meeting the need for legal services in Australia.

METHODOLOGY AND SOURCES

This thesis primarily employs qualitative research techniques. In the first instance, this is part of the conventional legal methodology of analysis of both primary sources of law and secondary sources, which is information retrieved by electronic and hard-copy research. Secondly, information is deployed that was obtained from discussions with peers, both from Australia, the US and England. Thirdly, both qualitative and quantitative data is used that was collected from a survey designed to assist the inquiry. (See Appendix B)

37 See my earlier note re United Kingdom, Great Britain and England.
Primary Sources - Case and Statute Law from Australia, US and England

While in both Australia and England there is little relevant case law concerning paralegals, there is a significant body of case law from the US which establishes some definition and role for the paralegal profession in that country. In researching and analysing these legal opinions, however, it is salient to remember that, firstly, there are fifty different states (and jurisdictions) in the US which ensures that there is no necessary application of uniform legal principle from state to state, let alone to the other countries which are examined in this thesis. Secondly, most of the case law refers to prosecutions of paralegals for unauthorised practice of law, which is a concept foreign to Australia and the UK, where the legal professional monopoly is not so defined. Examination of the case law of the various states of the US is, therefore, informative but not determinative of the Australian situation.

Various Australian Acts provide definitions for legal practitioners in this country and prescribe their practice. Lawyers are thus distinguished from paralegals. This thesis also refers to statutes, found in several states and the Northern Territory that regulate a certain class of independent paralegal (licensed conveyancers). In the UK there are several pieces of legislation which have been passed to reform the legal system and to improve access to justice. The effects of these are examined to determine whether paralegalism has been affected. In the US, several states have passed Court Rules to define legal practice (and hence un/authorised practice of law). There is also one state – California - which has enacted legislation defining and regulating paralegals.

Secondary Sources

The data which is used was obtained from several sources:

- Journal articles
  - In hard-copy and obtained from research of libraries in the US, England and Australia.
  - Through Electronic Databases, covering all three jurisdictions. Again, it is recognised that the greatest amount of available information is relevant to the US.

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38 Legal Practitioners Act 1970 (ACT), Legal Profession Act 1987 (NSW), Legal Practitioners Act (NT), Legal Profession Act 2004 (Q), Legal Practitioners Act 1981 (SA), Legal Profession Act 1993 (Tas), Legal Practice Act 1996 (Vic), Legal Practitioners Act 1893 (WA).

39 Conveyancers Licensing Act 2003 (NSW), which repealed the 1995 act of the same name; Conveyancers Act 1994 (SA); Settlement Agents Act 1981 (WA); Pt 13 Legal Practice Act 1996 (Vic); Agents Licensing Act (NT)
• Reports and other documents – including the research of Law Reform Commissions in Australia. This information is predominantly Australian and English.
• Information from professional associations (both legal and paralegal), by personal attendance at their offices, telephone and email enquiries and from the relevant websites.
• Information provided by governments.
• Information gathered from attendance at conferences\(^{40}\) and the papers generated by, and distributed at, these conferences.
• Discussion with peers – paralegal and legal educators and with legal practitioners in all three jurisdictions.

The information gathered from the above sources is used in Chapters Two, Three and Four, which examine paralegalism in the US, England and Wales and Australia respectively.

First, the literature available is predominantly concerned with a marking of boundaries between paralegal and legal practice and, secondly, with suggestions as to how paralegal practice can be expanded to improve access to justice.

In the US, particularly, regulation to prevent *unauthorised practice of law* by paralegals has been the subject of extensive criticism and proposals for change.\(^{41}\) Some scholars have challenged the idea that the public was being protected and that these rules were about the integrity of the legal profession; they have argued that these rules were about excluding competitors and maintaining the legal monopoly.\(^{42}\) On the other hand, a number of scholars present cogent arguments in response,\(^{43}\) the most common critique of *unauthorised practice of law* prosecutions being that they deny disadvantaged people access to justice.

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\(^{41}\) See Rhode D, Note 1. Prof Rhodes argues that in order to expand choice and provide services to the poor that paralegals should be permitted to provide legal services provided that there is adequate public protection.

\(^{42}\) See Ray D, “Promoting Justice Through Interdisciplinary Teaching, Practice, and Scholarship Regulating Legal Assistant Practice: A Proposal that Offers Something for Everyone.” (2003) 11*Wash U JL & Pol’y* 249, (arguing, amongst other things, that lawyers will not admit that the real agenda is that they want protection for the profession not for the public)

There are other writers, however, who question whether the paralegalisation of areas of law which particularly affect the poor results in the creation of a second-class system of law for the disadvantaged. Commentators, who are educators of paralegals, counter this with the argument that paralegals can and do provide an efficient and high quality service to the public, provided that they are properly qualified.

The Survey
The final source of information for this thesis was a survey of Southern Cross University graduates. As human subjects were involved, approval was sought and granted by the Human Research Ethics Committee of Southern Cross University before data collection began.

A survey instrument (in two sections) was constructed which returned both quantitative and qualitative data. It was in the form of two self-completion questionnaires, and was part of the investigation of the School of Law and Justice into how the content, design and delivery of all courses could be improved. The survey was posted to all graduates (644) of the school as at September 2000 in April of 2001. Of these graduates, 523 were paralegal graduates. It was intended that the student would fill out the first section of the survey (Student Survey) and that they would ask their employer to fill out the second part (the Employer Survey). For the purposes of the Report (which is reproduced at Appendix C) paralegal graduates included graduates from the Associate Degree in Law (Paralegal Studies), Associate Degree in Correctional Administration and the Bachelor of Legal and Justice Studies (BLJS). Also included in the results are responses from graduates who completed the Associate Degree in Law (Paralegal Studies) and then articulated into the Bachelor of Laws.

There were a total of 154 Student Surveys returned. Of these more than 76% (118) were from paralegal graduates. This is a response rate of 19.6%. “The proportion of people who respond as requested to such ‘cold’ postal questionnaires is quite low….As a rough guide, any social researcher will be lucky to get as many as 20 per cent of the questionnaires returned.” The implications of this in any study are that the small proportion who did respond to the survey may not represent a true cross-section of the population being surveyed (for sex or age, for

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44 See, for instance, (for Australia) Terry J, Note17 and Menkel-Meadow C, Note 19
45 See generally, articles written for the Journal of Paralegal Education and Practice, produced by the American Association for Paralegal Practice (AAfPE).
46 Approval No ECN-11-Q10
47 Reproduced at Appendix B.
instance), given that there are some types of people who are known to be more likely to return surveys than others.\(^49\) It is submitted, however, that the results are valid given that the survey population is a known class of persons and thus, excepting information about income, the poor response rate does not skew the data obtained. Less reliance can, and is, placed on the Employer Surveys, however, given that only 19 were returned. The data gleaned from that section of the survey is treated with caution and is presented as giving background information only.

Graduates and employers were invited to complete the form provided and to return the information in a stamped envelope already addressed to the School of Law and Justice. Anonymity of each respondent was thus assured, enabling them to respond freely to the questions posed.

The Student Survey questionnaire inquired as to career destination and asked for some personal details,\(^50\) course details, reasons for choosing to study at the School of Law and Justice at SCU, changes to employment status since enrolment and graduation, and the nature of employment since graduation (including details of income, type of work engaged in and type of work performed). The instrument also sought information about the relationship of the course to the workplace and to each graduate’s satisfaction with the course of study undertaken.

With the exception of Parts 1 and 2, each Part of the designed questionnaire allowed for qualitative responses to be included. This was particularly so in the latter part (Part 7), which sought information about individual units in the course of study and invited more general comment about both teaching and the relevancy of the course.

The design and administration of the survey, was guided by relevant social science literature\(^51\) and the expertise of the Statistics Officers of SCU. I was assisted by my research assistants\(^52\) in the construction of the questionnaire and the collation and use of the obtained

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\(^49\) See Denscombe M, Note 48, p8.
\(^50\) There were limited identifiers to ensure anonymity.

\(^52\) Lucy Keogh and Helen Walsh.
data. This was to ensure integrity of the process and to overcome any researcher bias or limitations.

**OUTLINE OF THE THESIS - DESCRIPTION OF CHAPTERS**

**Chapter Two** of this thesis examines the education and role of paralegals in the delivery of legal services in the United States (US). The reason for this chapter is that the experience of paralegals in the US arguably informs the paralegal profession in other parts of the common law world – including Australia. This chapter seeks to understand the scope of paralegalism in the US by describing the jurisdictional differences between the states as to where paralegals stand *vis-à-vis* the legal fraternity in that country. It also examines the available relevant case law and the influence of the various professional bodies that represent both paralegals and attorneys. Paralegals are offered a vast array of education and training opportunities in the US and these are also described.

**Chapter Three** investigates the role played by paralegals in a jurisdiction which is more proximate to Australia – England and Wales. Paralegals (most commonly called by another name) have been part of the delivery of legal services in this jurisdiction in greater numbers and for much longer than either the US or Australia. This chapter briefly examines that history and notes the changes that have ensued over the centuries. Relative to the number of lawyers there would not appear to be as many paralegals working in England as there were at the beginning of the twentieth century. Paralegals, however, still play an important role. Changes wrought by legislation to improve access to justice, and private practitioners seeking to make their businesses more cost effective, have provided an apparent role expansion in the twenty-first century.

**Chapter Four** concerns paralegalism in Australia, an inquiry informed by the investigations of the previous two chapters. It identifies those who are working in Australia as paralegals and examines the scope of their work. It notes that they are not represented by any professional association (nor assisted by any of the legal professional bodies) and that any such association could be instrumental in advancing their professionalism and status. It also describes the educational opportunities open to paralegals in Australia.

**Chapter Five** contains the conclusions drawn in this thesis and make recommendations in response to the questions posed above in this chapter.
LIMITATIONS OF THE STUDY

This study faced several limitations including, the paucity of primary laws and published literature on paralegals in Australia, and, on the other hand, the overwhelmingly large amount of information available from the US. There were also time and financial constraints. These did not allow for either further research in the US, the inclusion of more graduates in the survey, or a further survey of employers. A larger, more comprehensively resourced study of employers of paralegals would clearly be beneficial here.

There were also necessary limitations imposed by word constraints and therefore there are other common law jurisdictions\(^{53}\) which were not examined in this thesis, even though it appears to this writer that the study could benefit from their inclusion. There is clear justification, however, for including both the US and England and Wales. Paralegals play a significant role in the delivery of legal services in the US, where many states constitute bigger jurisdictions than the whole of the Australia. Further, American paralegal practice has been developing since the 1960s – well ahead of Australia - and it is reasonable to anticipate that their challenges will mirror ours in the future. On the other hand, England, which includes Wales, has a legal system very close to our own and the examination of paralegals in both England and Wales has revealed both similarities and differences to our Australian experience, both of which inform the research.

\(^{53}\) For example, relevant jurisdictions such as other parts of the UK (Scotland and Northern Ireland) as well as New Zealand, Eire, South Africa and Canada were not included in this study, even though much could have been learned from their inclusion.
CHAPTER 2
PARALEGALS IN THE
UNITED STATES OF AMERICA

No comparative study of paralegalism could be complete without an examination of the role that paralegals play in the United States of America (US).¹ This is because it is comprised of many of the largest common law jurisdictions and the experience of paralegals in the US undoubtedly informs the profession in other parts of the common law world – including Australia. The US is a union of fifty states, all with “vibrant” legal systems.

This chapter will look at the role that paralegals play in the US, noting that because of the differences between the states there is enormous variation in the ways in which states may mark the boundary of the authorised practice of law, effectively leaving the residue to non-lawyers such as paralegals. Accordingly, paralegal practice appears nebulous and difficult to define in the US. There is, however, considerable national support for the profession and agreement as to the value of paralegal education and training. The early support of the American Bar Association is noted here, as is the work of the other national professional associations.

THE BEGINNINGS OF PARALEGALISM IN THE US

It is clear that the word “paralegal” has its origin in the United States of America (US).

According to the Meriam-Webster Online Dictionary, it dates from 1969 and has been ascribed the following meaning, “of, relating to, or being a paraprofessional who assists a lawyer.”² These were humble beginnings. There was no formal education or training – nor was there agreement as to the correct terminology, although legal paraprosisinals was the most commonly used term.

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¹ It needs to be noted that there are variations of spelling between the American and Australian English. The American spelling will be retained as part of any direct quotation or name and will not be particularly noted.
However, even if there was no consensus as to terminology nor acknowledgement of a distinct group, the American Bar Association (ABA) understood the value of using such paraprofessionals in private law practice. In 1968 the ABA created the Special Committee on Lay Assistants for Lawyers with the aim of “developing, encouraging, and increasing the training and utilization” of legal assistants, who they saw paralegals as being able to play an important role in improving access to justice. The name of the Committee has been subsequently changed many times, however, the mission remains constant.

“WHO ARE YOU?”

Are paralegals really just “hybrids, in part performing traditional lawyer tasks and in part tasks commonly performed by secretarial and clerical support staff…partial substitutes for lawyers…”? (emphasis added)

There is a bewildering array of definitions for a paralegal in the US. This is because, given that there are no uniform regulations or standards, they are defined variously by professional associations, state bar associations, legislatures, court rules and some case law. As stated by the National Federation of Paralegal Associations (NFPA):

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3 Quoted in Rasmussen J & Sedlacek P, ““Paralegals Changing the Practice of Law” (1999) 44 SDL Rev 319 at p321 as from the ABA website (1999) (This quote no longer appears on the site although it was there when the site was accessed by this writer on 4 September 2003.) See ABA Standing Committee on Legal Assistants, http://www.abanet.org/legalservices/legalassistants/home.html for the current Mission Statement.

4 The Special Committee on Legal Assistants was been changed to a Standing Committee on Legal Assistants, and further to Standing Committee on Paralegals. Information on the Committee is now found under the website link to Committees - Paralegals (Replacing the term Legal Assistant) (Site accessed 3 October 2003)

5 Note the following Mission Statement from the ABA website at http://www.abanet.org/legalservices/legalassistants/home.html “The American Bar Association Standing Committee on Paralegals has a 25 year history. The mission of the Standing Committee is to work within the ABA and with other groups to help make quality legal services more accessible and affordable, primarily by fostering the increasingly effective integration of paralegals into the legal services delivery team. The Standing Committee advises and acts on behalf of the ABA on all matters relating to the present and future roles of traditional paralegals who, as members of the legal services delivery team, work under the supervision of lawyers”.


“No doubt the spectrum of state statutes, court rules, and law defining a paralegal – or neglecting to do so - leave many paralegals as perplexed as Alice. [Reference to the character Alice in Lewis Carroll’s novel, Alice in Wonderland.] What is the paralegal’s role? What tasks must be left to an attorney? What tasks are substantive? Procedural? When can a paralegal represent a client in court? And when does performing legal services lap over that nebulous line into UPL [Unauthorized Practice of Law.]?

The problem is, the answers to those questions vary from state-to-state, district-to-district, circuit-to-circuit. Even the US Supreme Court is yet to define a paralegal, even though it allowed fees for paralegal services in Missouri v Jenkins, 491 US 274 (1989).”

At one end of this spectrum are the definitions provided by the ABA and many of the national professional paralegal associations – NFPA, National Association of Legal Assistants (NALA) and the American Association for Paralegal Educators (AAfPE). These associations provide broad definitions, possibly the broadest being that provided by the NFPA:

“A paralegal is a person qualified through education, training or work experience to perform substantive legal work that requires knowledge of legal concepts and is customarily, but not exclusively, performed by a lawyer. This person may be retained or employed by a lawyer, law office, governmental agency or other entity or may be authorized by administrative, statutory or court authority to perform this work.

NFPA’s definition is not meant to exclude any member of the profession whose job duties fit the definition of paralegal but who is still called a legal assistant.”

The following is arguably more restrictive (with emphasis on the educational requirement) and was adopted by AAfPE on October 9, 1998:

“Paralegals perform substantive and procedural legal work as authorized by law, which work, in the absence of the paralegal, would be performed by an attorney. Paralegals have knowledge of the law gained through education, or education and

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9 http://www.nala.org
10 http://www.aafpe.org It is worth noting that both the AAfPE and the NFPA began with the ABA definition as a starting point and some differences between them can be accounted for because of the different roles that each organisation plays.
work experience, which qualifies them to perform legal work. Paralegals adhere to recognized ethical standards and rules of professional responsibility.\textsuperscript{12}

The ABA now defines a paralegal/legal assistant as:

“A legal assistant or paralegal is a person, qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible.”\textsuperscript{13}

This definition replaces that of 1986, adding the term paralegal,

“since the terms “legal assistant” and “paralegal” are, in practice, used interchangeably” and the term that is preferred generally depends on what part of the country one is from. The current definition streamlines the 1986 definition and more accurately reflects how legal assistants are presently being utilized in the delivery of legal services.”\textsuperscript{14}

Some state legislatures have defined paralegals within their codes.\textsuperscript{15} Other State Supreme Courts have adopted rules defining paralegals.\textsuperscript{16} The Bar Associations of thirty-one states have adopted definitions.\textsuperscript{17} The professional paralegal associations of many states have also defined paralegals, often within the by-laws of their associations.\textsuperscript{18} Further, the case law of some states has provided definitions.\textsuperscript{19}

The only commonality to all these definitions is the notion that a paralegal is not a lawyer and accordingly is not authorised to practice law or to perform legal work reserved to a lawyer.

\textsuperscript{12} This information (and following) is from the NFPA site, See http://www.paralegals.org/Development/org_def.htm#AAfPE (accessed 8 September 2003)

\textsuperscript{13} See http://www.abanet.org/legalservices/legalassistants/ (accessed 3 October 2003)

\textsuperscript{14} See Note 13 (accessed 3 October 2003)


\textsuperscript{18} Delaware, District of Columbia, Illinois, Indiana, Kentucky (Louisville), Minnesota, Missouri (Kansas City), New York (Long Island, West/Rock), Ohio, Oregon, Pennsylvania (Chester County), South Carolina, Texas (Dallas).NFPA, http://www.paralegals.org/Development (accessed 8 September 2003)

WHAT TASKS ARE RESERVED FOR LAWYERS? THE BLURRED LINE BETWEEN PARALEGAL PRACTICE AND UNAUTHORISED PRACTICE OF LAW (UPL)

Given the very real difficulty in the defining of a paralegal (and hence the determination of the role that they play in the delivery of legal services in the US), the most practical solution is to determine how each of the states define practice of law and the other side of the coin, unauthorised practice of law. And yet here difficulties remain.

The American Bar Association provides a thirty-one page document on its website, detailing the definitions of Practice of Law on state-by-state basis. No state is entirely silent on this issue, although some are more concerned to delineate than others. Again, many of these definitions have been established by case law, others are to be found in the rules of the various Supreme Courts, and yet others by statute.

Many states adopt a broad-brush approach, leaving “grey areas” around the fringes, requiring determination by the courts. According to Kathleen Justice, the courts have adopted four tests to differentiate between the legitimate practice of law and unauthorised practice of law (UPL). These are; the traditional practice test (which looks to see whether the type of activity is traditionally undertaken by a lawyer); the professional judgment test (which asks whether the service in question requires specialized legal skill); the incidental legal service test (which asks whether the activity is merely incidental to another commercial activity, such as the completion of real estate forms); and, the public harm test (which is concerned as to possible detriment that accrues to the public).


22 People v Title Guarantee & Trust Co 277 NY 366 (1919) per Justice Pound

23 Kountz v Rowlands 46 Pa D & C 461 (CP 1942)

24 Merrick v American Sec & Trust Co 107 F 2d 271 (1939)

25 State v Buyers Serv Co 292 SC 426 (1987)
Other states attempt specificity by way of court rules or statute. For instance, Rule 31 of the Supreme Court of Arizona, Regulation of the Practice of Law, (adopted 15 January 2003, commencing 1 July 2003) defines the Practice of Law as follows:

“2. Definition: Practice of Law. The “practice of law” means providing legal advice or services to or for another by:

(A) Preparing any document in any medium intended to affect or secure legal rights for a specific person or entity;
(B) Preparing or expressing legal opinions;
(C) Representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitrations or mediations;
(D) Preparing any document through any medium for filing in any court, administrative agency or tribunal for a specific person or entity;
(E) Negotiating legal rights or responsibilities for a specific person or entity.”

Further, it is considered to be unauthorised practice of law to use “the designations “lawyer”, “attorney at law”, “counselor at law”, “law”, “law office”, “JD”, “Esq” or any equivalent words” which might imply that a person is a lawyer. Thus, in Arizona, according to the definition above, it is an offence to call yourself a lawyer or perform specific legal work (both transactional and adversarial) unless sanctioned to do so, having completed the appropriate education and training and having been duly admitted as an attorney within the jurisdiction.

Unauthorised practice laws impose restrictions on who may practise, and in doing so, “impose controls on the availability of legal services to those in need of such services and on the quality of the services offered.” There is both inconsistency and controversy given that the line, which separates the practice of law and what is allowable business and professional activity by non-lawyers, is less than distinct. In many jurisdictions unauthorised practice is a crime. As Babb notes, in those jurisdictions, UPL is punishable by way of injunction,

29 See The Florida Bar v Furman, 451 So. 2d 808 (Fla 1984), where Furman was sentenced to 120 days in prison with 90 days suspended, and The Florida Bar v. Schramek, 670 So. 2d 59 (Fla 1996),where the court found the respondent, Schramek, guilty of indirect criminal contempt and sentenced him to 90 days imprisonment. The court held that respondent had violated its injunction by acting directly or indirectly as a spokesperson or representative in the courts of the state in “blatant disregard” for the injunction issued in earlier proceedings to refrain from engaging in unauthorized practice of law. See also Johnstone Q, “Bar Associations: Policies and Performance.”(1996) 15 YaleL&Pol’yRev 193, p218
contempt of court or a criminal misdemeanour as well as disciplinary action by the bar association in which he or she is a member (if appropriate).

Justice notes that,

“The Regulation of UPL in the United States has fluctuated between periods of public and private control of the profession. For the most part, however, states have permitted members of the legal profession to regulate themselves through organized bar associations. Public influence on bar practices appears strongest after periods of either excessive litigation by attorneys or aggressive enforcement of UPL statutes by the bar.”31

In detailing the history of enforcement to counter UPL, she writes that bar associations established their control over the practice of law between 1870 and 1920, which dominance was further compounded until 1960. She claims that the use of “the newly fashioned UPL statutes”32 by the bar associations to suppress UPL and the common law doctrines which evolved, effectively excluded non-lawyers from the practice of law. These measures were (and are) most often justified by the various bar associations in terms of public and professional protection.

Between 1960 and the mid 1970s there were several challenges to the privileged position of, and the monopoly enjoyed by, the legal profession. In 1975 the United States Supreme Court, in Goldfarb v Virginia State Bar, 33 held that the legal profession was engaged in anti-competitive behaviour by maintaining a monopoly over legal services and that federal anti-trust laws applied. Mr and Mrs Goldfarb wanted to purchase a home in Virginia, and contacted a lawyer (a member of the Virginia State Bar) to provide a title examination because of the requirements of their prospective mortgagee. The lawyer quoted the fee suggested in a minimum fee schedule published by the county bar association. Mr Golfarb contacted a total of 37 lawyers and received 20 replies, all quoting exactly the same fee for the search. Unable to find a lawyer who would examine the title for less than the fee fixed by the schedule, Mr and Mrs Goldfarb commenced action against the state and county bar associations, alleging they offended the Sherman Act 1890 34 (US antitrust legislation), by effectively setting a minimum fee schedule for lawyers. The Court found that the title search was “an integral part of an interstate financial transaction and a basis existed for antitrust

31 Justice K, Note 21, pp182-3
32 Justice K, Note 21, p183
33 Goldfarb v Virginia State Bar 421 US 773 (1975) (Goldfarb)
34 15 USCS § 1,
jurisdiction”\footnote{Morgan T, “The Impact of Antitrust Law on the Legal Profession.” (1998) 67 FordhamLRev 415, p424} and did not support an exemption for the “learned profession” from such antitrust laws. However it did provide that, “[i]n holding that certain anticompetitive conduct by lawyers is within the reach of the Sherman Act we intend no diminution of the authority of the State to regulate its professions.”\footnote{Goldfarb , at 793} This left the possibility that the professions might be accorded special treatment under the antitrust laws. Morgan describes this case as a turning point, but notes that, “[i]ronically the principal impact of Goldfarb has been on other professionals, not lawyers.”\footnote{Morgan T, Note 35, p427}

According to Kolovos\footnote{Kolovos P, “Antitrust Law and Nonprofit Organizations.”(1996) 71 NYULRev 689}, in the post Goldfarb years, “lower courts attempted to read some flexibility into the rule of reason for the professions.”\footnote{Kolovos P, Note 38, p705} In several cases, including \textit{Paralegal Institute Inc v American Bar Association (Paralegal Institute Case)}\footnote{Paralegal Institute v American Bar Association 475 Fsupp 1123 (1979) (Paralegal Institute Case)} the court allowed a self-regulatory rule to survive a challenge under the antitrust laws on the basis that the “regulation contributed to increasing the quality of the service to the public….”\footnote{Kolovos P, Note 38, p705} In the \textit{Paralegal Institute Case} a New York corporation involved with the recruiting, training and employment placement of paralegals challenged the ABA’s accreditation standards for paralegal programs as offending against the \textit{Sherman Act} because accreditation standards “were designed and intended to eliminate competition from, and restrict entry into, the market for the recruitment, training and placement of paralegals, and were unreasonable when applied to proprietary schools [such as the Institute].”\footnote{Paralegal Institute Case, at 1125} After considering Goldfarb, and others, the court held that the “ABA Guidelines and accreditation program are reasonable insofar as they affect the paralegal field…”\footnote{Paralegal Institute Case, at 1130} and that there was neither an attempt to monopolise nor a conspiracy to monopolise.\footnote{Paralegal Institute Case, at 1132 & 1133.} For writers such as Kissam\footnote{Kissam P, “Applying Antitrust Law to Medical Credentialing.” (1981) 7 AmJL and Med 1}, this decision rested not so much on the courts willingness to find for the ABA, supporting the “reasonable proposition that professionally sponsored accreditation programs are not per se violations of antitrust laws, [as] … the plaintiff’s failure to allege or produce any evidence of specific anticompetitive effects resulting from the ABA’s standards.”\footnote{Kissam P, Note 45, at 11}
Despite challenges such as Goldfarb, bar associations continued to press actions against instances of UPL. This included the bar of the State of Florida. In Florida Bar v Brumbaugh the Florida Supreme Court stated that the publication of forms and instructions for their use did not constitute UPL if the instructions were addressed to the public in general rather than to the legal problem of a specific individual. Brumbaugh, who was not an attorney, had advertised a secretarial service offering to perform typing services, and "do-it-yourself" divorces. The court held that Brumbaugh, and others offering similar services, could sell printed material and forms and that it was proper for a secretarial services to type forms for clients, provided that the information was copied from information provided the service in writing. However they could not offer advice. Accordingly, the court stated that the service "may not make inquiries nor answer questions from her clients as to the particular forms which might be necessary, how best to fill out such forms, where to properly file such forms, and how to present necessary evidence at the court hearings."  

The later Florida case of Florida Bar v Furman also dealt with a non-attorney who offered a divorce service. The court found that the respondent had advised clients to mislead the court and indicated that it took such behaviour and UPL seriously when it was prepared to sentence Rosemary Furman to 120 days imprisonment. As Overton J said, at 816,

"Ms. Furman's "clerical service" is a profit-making enterprise. She has not just prepared forms for a fee; the uncontroverted evidence reflects that she has advised her customers to take actions that were contrary to their best interests and, even more egregious, has advised her customers to provide the court with false or misleading information. This conduct not only constitutes the unlawful practice of law but it also corrupts the judicial process. If Ms. Furman were a lawyer, this conduct would be a serious disciplinary offense that could lead to disbarment."

Several UPL cases from Ohio were decided in 1977. According to Wills these cases considered,

"several areas including an independent paralegal drafting and signing pleadings without attorney supervision, advising clients and appearing in court; a financial

47 Florida Bar v. Brumbaugh (Fla. 1978) 355 So.2d 1186
48 Brumbaugh at 1191, 1193
49 Brumbaugh at 1194
50 The Florida Bar v Furman, 451 So. 2d 808 (Fla 1984)
51 The Florida Bar v Furman at 816, per Overton J
53 Akron Bar Ass’n v Greene et al 673 NE 2d 1307 (Ohio 1997) (Greene)
planner, corporation and non-Ohio attorney advising clients on estate planning and trusts, preparing legal documents and supervising their execution54; lay persons marketing and preparing living trusts on behalf of a corporation, advising clients on specific questions about particular probate assets, trust forms, taxation and selection of beneficiaries55; and lay persons preparing and filing appeals of real property valuations on behalf of taxpayers with the county board of revision56.’’

The activities detailed in these cases all involve non-lawyers performing tasks traditionally reserved for attorneys, and (with others subsequent) reveal a gradual encroachment into the traditional attorney reserves – in the preparation of real estate documents, insurance law, workers’ compensation, divorce, accounting, taxation, probate, and estate planning.

The Greene Case57 is of particular interest to paralegals. Raymond Greene was not an attorney licensed to practice law in Ohio, and yet he drafted and filed divorce documents for a client (under a corporate name), signing as “Paralegal for Doretha Driggs”. He then appeared in court on behalf of Ms Driggs. The trial judge dismissed the case because neither the plaintiff nor an attorney had signed the complaint. The Akron Bar Association brought a claim against the both the corporation formed by Greene and Greene himself. The Board of Commissioners on the Unauthorized Practice of Law of the Supreme Court of Ohio issued an order prohibiting Greene from any further such activities. Greene indicated by letter that, “he had not represented himself as an attorney and would no longer ‘perform acts that are questionable.’”58 Despite this undertaking he further prepared and filed a counterclaim on behalf of another client, signing the complaint for “Deborah Price Christian, pro se [,] R Edinborough Greene, Paralegal, Power of Attorney for both.”59 Having determined that Greene was not an attorney, the trial judge refused to hear Greene’s representations on behalf of Ms Christian. The Akron Bar pursued an action against him. Relying on the 1934 case of Dworken,60 the court said that,

“[t]he practice of law embraces the preparation of pleadings and other papers incident to actions and special proceedings….Further we held in that case that the

54 Tumbrill Bar Ass’n v Hanna 684 NE2d 288 (Ohio 1977)
55 Akron Bar Ass’n v Miller 684 NE 2d 288 (Ohio 1977)
56 Gammarino v Hamilton Bd of Rev 684 NE 2d 309 (Ohio 1997)
57 Greene, Note 53
58 Greene, Note 53 at 1307
59 Greene, Note 53 at 1307
60 Land Title Abstract & Trust Co v Dworken (1934) 193 NE 650 (Dworken)
practice of law also “includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured.”\textsuperscript{61}

The court found against Greene, instructing the respondents to refrain

“from any further activity involving the counseling of persons with respect to their legal rights, the preparation of legal instruments and documents to secure legal rights for any person, the preparation, signing or filing of pleadings or other papers on behalf of persons incident to actions in courts or other tribunals in the state of Ohio, and the appearance of respondents on behalf of any other persons in any court or tribunal in the state of Ohio.”\textsuperscript{62}

At first instance it might appear that the significance of the Greene Case was that it effectively defined the practice of law in Ohio to include the giving of legal advice, preparation or filing of documents and appearing in a court or tribunal. It would also appear that it was wholly supportive of the bar association’s case to suppress UPL. However, its real significance for paralegals resides elsewhere. Greene, it must be remembered, was an independent paralegal. The decision reaffirmed that non-lawyers cannot practice law (and defined the practice), but did not consider whether the same work (“specifically delegated substantive legal work”) could be performed by a paralegal “if a lawyer is responsible” for that work. In other words, if Greene had been a paralegal in the employ of an attorney supervising his work, then his actions may not have been considered to be UPL. This issue was not considered by the Ohio Supreme Court until 1995 in Community Mutual Insurance Co v Tracy\textsuperscript{63} when the court opined that,

“A lawyer often delegates tasks to clerks, secretaries and other lay persons. Such delegation is proper if the lawyer maintains a direct relationship with his [sic] client, supervises the delegated work, and has complete professional responsibility for the work product. This delegation enables a lawyer to render legal service more economically and efficiently.”\textsuperscript{64}

\textsuperscript{61} Dworken at 650 cited in Greene Note 53 at 1308
\textsuperscript{62} Greene, Note 53 at 1308
\textsuperscript{63} Community Mutual Insurance Company, Appellee and Cross-Appellant v Tracy, Tax Commissioner, Appellant and Cross-Appellee 653 NE2d 220 (Ohio 1995), (Tracy)
\textsuperscript{64} Tracy, Note 63 at 222
Two further UPL cases (from South Carolina) are worthy of note here. In *In re Easler*, the court said at 401,

“[P]aralegals are routinely employed by licensed attorneys to assist in the preparation of legal documents such as deeds and mortgages. The activities of a paralegal do not constitute the practice of law as long as they are limited to work of a preparatory nature, such as legal research, investigation, or the composition of legal documents, which enable the licensed attorney-employer to carry out a given matter to a conclusion through his [sic] own examination, approval or additional effort.”

Here the court was asked to examine the role of a paralegal as a support for the supervising lawyer. In words which appear to be similar to the later *Tracy* decision, the court was able to accommodate a role for a paralegal purely of a preparatory nature even though they acknowledged that the role of paralegals was increasing. The situation was reversed, however, in *Doe v Condon* where the court was asked to consider whether the activities of a paralegal, who appeared to be supported by the lawyer, constituted UPL.

“Specifically, [the] petitioner ask[ed] (1) whether it is the unauthorized practice of law for a paralegal employed by an attorney to conduct informational seminars for the general public on wills and trusts without the attorney being present; (2) whether it is the unauthorized practice of law for a paralegal employed by an attorney to meet with clients privately at the attorney’s office, answer general questions about wills and trusts, and gather basic information from clients; and (3) whether a paralegal can receive compensation from the paralegal’s law firm/employer through a profit-sharing arrangement based upon the volume and type of cases the paralegal handles.”

The court determined that the activity here clearly crossed over to UPL, because there was no meaningful lawyer supervision – indeed the roles were reversed.

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65 *In re Easler* 275 SC 400 (1980)
67 *Doe v Condon* Note 66 at 23
THE ROLE OF PARALEGALS IN THE US

Missouri v Jenkins is considered to be the seminal case that (finally) acknowledged a role for paralegals in the delivery of legal services in the US. The original litigation had involved school desegregation, wherein the Kansas City Missouri School District, the school board and children of two school board members took a class action against the State of Missouri and others, alleging racial segregation in the schools of the Kansas City metropolitan area. In this 1989 case, however, the issue was the appropriate fees to be awarded to the plaintiffs’ attorneys, but, importantly, the US Supreme Court also considered the issue of fees due to paralegals. It held that the compensation of paralegals and law clerks at relevant market rates, as part of the attorney fees, was proper, when it said, at 288,

“It has frequently been recognized in the lower courts that paralegals are capable of carrying out many tasks, under the supervision of an attorney, that might otherwise be performed by a lawyer and billed at a higher rate. Such work might include, for example, factual investigation, including locating and interviewing witnesses; assistance with depositions, interrogatories, and document production; compilation of statistical and financial data; checking legal citations; and drafting correspondence. Much work lies in a gray [sic] area of tasks that might appropriately be performed by either an attorney or a paralegal.”

So that while the term, paralegal, was not explicitly defined in this judgment, Jenkins effectively drew many of the definitions together and recognised the importance of the paraprofession and the role that a paralegal plays in the delivery of legal services by describing many of the tasks undertaken by them. The judgment also approved the recovery of fees for paralegal services. There are many writers who consider that this case provides the “legitimization of the paralegal profession” in the US.

Since the 1960s when “individuals were trained to assist attorneys in making legal services available during the “War on Poverty””, the roles and functions of paralegals in the US have continued to expand and evolve, until 2002 when Flaming could write with some certainty that they “have come to play a vital role in the modern American legal system as they are

69 491 US 274 (1989) Jenkins. See also Note 8, and the quotation from the NFPA website.
70 Jenkins, at 288
71 Flaming J, Note 68, at p489, who also cites Flynn T, “Should More be Done to Credential Paralegals?” (2001) March Mich Ba J pp52& 54; see also Rute K, “To Fee or Not to Fee: That is the Question. The Tenth Anniversary of Missouri v Jenkins” (2000) 16 Journal of Paralegal Educ and Prac 85
72 Flaming J, Note 68, p489 and see also, See NFPA’s site at http://www.paralegals.org/Choice/whatis.html
increasingly relied upon to support those in the legal profession.”

Johnstone and Flood,
writing in 1982, indicate that there was a rapid expansion of paralegal numbers in the US in the late 1970s. Relying on a survey from the National Law Journal of the 200 largest American law firms, they claim that numbers grew from 1,899 in 1975 to 3,348 in 1978.

During the next 20 years the numbers expanded exponentially. In 2003, the number of paralegals working in the US is not settled, however they are significant. According to the statistics provided by the Bureau of Labor Statistics, US Department of Labor, there were 183,530 paralegals and legal assistants working in the US in 2001. Elsewhere, also from the Department of Labor, it is claimed that, “Paralegals and legal assistants held about 188,000 jobs in 2000.” The difference is not of great consequence, it merely highlights the difficulties facing researchers attempting such information collection and analysis. More interesting is the acknowledgement of a wide-ranging employment base.

“Private law firms employed the vast majority; most of the remainder worked for corporate legal departments and various levels of government. Within the Federal Government, the U.S. Department of Justice is the largest employer, followed by the U.S. Departments of Treasury and Defense, and the Federal Deposit Insurance Corporation. Other employers include State and local governments, publicly funded legal-service centers, banks, real estate development companies, and insurance companies. A small number of paralegals own their own businesses and work as freelance legal assistants, contracting their services to attorneys or corporate legal departments.”

The reasons for the continued and steady development of paralegalism in the US, are many, but would include: the establishment of professional organisations (and active participation of paralegals within them); education to degree level and beyond; and, the more effective use of

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73 Flaming J, Note 68, p487
74 Johnstone Q & Flood J, “Paralegals in English and American Law Offices.” (1982) 2 Windsor Yearbook of Access to Justice 152 Note that, at p153, they define paralegals as “law office employees who have not qualified as lawyers but who perform legal tasks also performed by lawyers and who are under the general supervision or control of lawyers.’
75 Johnstone Q & Flood J, Note 74, p156
76 Based upon Bureau of Labor Statistics, US Department of Labor, “National Employment and wage data from Employment Statistics survey by occupation, 2001”, http://www.bls.gov/news.release/ocwage.t01.htm (accessed 30 October, 2003) This number is considerably increased if those working in allied fields as Court Reporters (15,300); Law Clerks (40,340); Title examiners, abstractors and searchers (42,720) are added – to 281,890
paralegals by legal practitioners and other employers who recognise and understand their capabilities and qualifications.\(^79\)

Schneeman\(^80\) indicates that there has also been an economic dimension to the apparent growth. In addition to the economic factors she lists the following specifics as reasons for the “boom”. These are,

1. Growth in demand for legal services in this country
2. The need to keep legal services affordable for the general public
3. The need to utilize attorney time in a more effective manner
4. Computerization in the practice of law
5. Increased competition, leading to the need to give clients more personal and responsive attention
6. Increasing use of the systems approach to handle the complexities of the modern law
7. Greater specialization in the practice of law” \(^81\)

It is also arguable that the stewardship of the ABA was an important factor.\(^82\) Harris argues that the support of the ABA was crucial to the “successful development of paralegal education and training in the Unites States”\(^83\) and this view is wholly supported by Jones, who was one of the earliest Australian writers in the field.\(^84\) Support and encouragement were shown by the ABA not only by the early establishment of the Special Committee on Lay Assistants for Lawyers\(^85\) but also by sponsorship of paralegal education conferences, the provision of guidelines for educational programs and the establishment of an ABA accreditation scheme for paralegal educational institutions and programs.\(^86\) The ABA’s role and stewardship was recounted in the 1979 Paralegal Institute Case. The court noted the early formative work of the Special Committee when it said, at 1126

“During the first few years of its existence, the ABA Committee conducted, co-sponsored or participated in a variety of programs to investigate and consider

\(^79\) Rasmussen J & Sedlacek P, Note 3, p319
\(^80\) Schneeman A, *Introduction to Paralegalism*, Delmar Publisher Inc, NY, 1995
\(^81\) Schneeman A, Note 80, p6.
\(^82\) See Harris R, “Paralegal Education: A View from “Down Under” – An Australian Perspective”, 1996) 12 *Journal of Paralegal Education and Practice* 49, p51, who quotes from Professor Therese Cannon’s address to the Californian State Bar Convention of 1988. Harris also notes that this is in stark contrast to Australia.
\(^83\) Harris R, Note 82, p51.
\(^84\) Jones D, “The Role of the Layman.” (1979) 53 *ALJ* 457
\(^85\) See earlier reference to the ABA’s establishment of the now standing committee – under the paragraph “Who are You?”.
various aspects of the paralegal field: (1) a study to determine the types of tasks that were being performed by lay personnel; (2) a study and conferences to identify the efforts then underway to train paralegals; and (3) a pilot project to train lawyers and paralegals to work productively together. The ABA Committee then published the results of these projects along with a proposed curriculum for paralegal institutions in ABA publications.87

In 1974 the ABA adopted an accreditation process and by 1979, at the time of the Paralegal Institute Case, the court indicated that 55 paralegal education institutions had applied for ABA accreditation. The ABA Guidelines for the Approval of Legal Assistant Education Programs have been revised several times, most recently in February, 2003.88

As to national professional organisations, there are several which represent paralegals in the US: the Association of Legal Administrators,89 Legal Secretaries International Inc,90 the National Association of Legal Assistants (NALA),91 NALS92 (formerly the National Association of Legal Secretaries), the Legal Assistant Management Association (LAMA),93 the National Federation of Paralegal Associations Inc (NFPA),94 and most recently, the American Alliance of Paralegals.95

NALA and the NFPA are the largest organisations, with the NFPA claiming to be the oldest and the largest association. According to information obtained from the NFPA website (in a document dated 18 December, 2002) the “NFPA is a non-profit professional organization comprising state and local paralegal associations throughout the United States and Canada. Founded in 1974, NFPA is a federation of 60 member associations representing over 17,000

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87 Paralegal Institute Inc v American Bar Association 475 F Supp 1123 (1979), at 1126
90 Their headquarters are in Houston, Texas
91 See http://www.nala.org The association was incorporated in 1975 and claims representation of more than 16,000 legal assistants (accessed 26 August 2003)
94 See http://www.paralegals.org This association claims to be the oldest and largest paralegal organization, having been established in 1974 and with over 17,000 individual members (accessed 8 September 2003)
individual members who reflect a broad diversity of experience, education and job
responsibilities.” 96

Like the NFPA, NALA seeks to promote the professionalism of paralegals/legal assistants.
According to its website, the,

“The National Association of Legal Assistants, Inc., is composed of over 5,000
institutional members and 87 state and local affiliated associations, representing
over 16,000 legal assistants. Established in 1975, NALA goals and programs were
defined to:

• increase the professional standing of legal assistants throughout the nation
• provide uniformity in the identification of legal assistants
• establish national standards of professional competence for legal
assistants.” 97

Importantly, both these associations acknowledge the importance of education, with the
NFPA requiring qualifying education as a prerequisite for membership. They both provide for
further and continuing education to support the credentials.

NALS is an association originally formed for the benefit of legal secretaries, and while not
claiming to be the largest association, it now claims to have a membership of more than fifty
percent paralegals and legal assistants. It is a clear example of the shifting demographic of the
industry, as indicated on the website,

“NALS was formed [in 1929] and began moving ahead with the goal of
enhancing the careers of legal secretaries. As the profession evolved so did
NALS. The information needed by legal secretaries was changing along with their
job descriptions and the information provided by NALS paralleled this shift.
Diversity of membership reflected a changing legal services industry.
After several years of discussion on the topic of a name change to better reflect
the nature and membership of NALS, it was determined that NALS would no
longer be used as an acronym but rather as a name.” 98

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96 NFPA, “Statement of the National Federation of Paralegal Associations, Inc. for the New Roles in Law II:
Improving Citizen Access to Justice.” National Paralegal Reporter Online
97 See NALA, “The Certified Assistant Program and the United States Supreme Court Decision in Peel.”
All of these national professional associations have been instrumental in the development of a distinct group of legal workers, educated to degree level and beyond. They have ensured the more effective use of paralegals by legal practitioners and other employers who recognise and understand their capabilities and qualifications.

EDUCATION AND TRAINING FOR PARALEGALS IN THE US

Since the mid-1960s there has been a growth in the use of paralegals and an increased complexity of the work delegated to them. “[P]rivate law firms and corporations recognized the benefits of employing paralegals to supply efficient support, reduce the expense of legal services and increase the availability of services to the public.”99 It is difficult to determine whether this expansion in the number of paralegals and in the nature of paralegalism ensured the need for appropriate education and training, or whether the early advent of educational programs fostered the expansion. The two appear to have grown together in a mutually advantageous way.

The legal profession generally and the ABA, in particular, had been quick to recognise the value of using paralegals in law offices. The ABA established the Special Committee on Legal Assistants in 1968, which was charged with the task of investigating “the type of training that might be necessary for a paralegal; the role of the legal profession and the bar in providing such training: and the merits of recognizing competence and proficiency of paralegals through academic recognition or other suitable means.”100 During the late 1960s and early 1970s many paralegal training programs were established, and in response to inquiries from many of the educators involved with these programs, the ABA “decided to promulgate minimum standards for educational institutions offering paralegal programs and to develop a system for identifying those institutions which met or exceeded those standards.”101 Accordingly, in 1974, the ABA adopted its Guidelines for the Approval of Legal Assistant Education Programs. The process of the development of those accreditation guidelines is dealt with comprehensively in the Paralegal Institute Case. The accreditation process which was promulgated involved four steps:

- The institution applying prepares a self-evaluation application
- This report is checked by the ABA – they may ask for further information

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99 Flaming J, Note 68, p489
100 Paralegal Institute Case, at 1126, Note 87
• An ABA team conducts an on-site inspection of the institution
• The ABA reviews both the application and the on-site inspection report and makes a recommendation.

The Guidelines were extensively revised in 1996, but not all educators of paralegals maintain their enthusiasm for the close-knit arrangement with the ABA and its accreditation process. For Allan Tow, the process is indicative of “total lawyer control of paralegalism.” 102 However, “ABA approval is a widely-accepted standard for determining the quality of a paralegal program… [In 1999] there [were] approximately 600 paralegal education programs in the United States. Slightly over 200 of these programs are approved by the American Bar Association.” 103 The process is costly and time-consuming and above all is determined by the legal profession not by the paralegal profession. Nevertheless, ABA approval has become the benchmark and in some areas employers require credentials from an ABA approved institution.

The very first paralegal programs were short and offered certificates to its students, but as the range of career opportunities developed so did the educational opportunities. Programs became longer and more complex in response to the perceived needs of the employers and students. They are now offered from both public and private institutions, including community colleges, four-year colleges, universities, business colleges and private educational facilities. There are five common types of programs on offer.

The first type – the short-term course - is of concern to paralegal educators and a policy statement to that effect was released by the American Association for Paralegal Educators (AAfPE) 104 in 2002. The following (lengthy) extracted statement also provides an insight into the pedagogical objectives of the AAfPE.

“Paralegal programs must be of sufficient length and quality to prepare students for the challenges of the paralegal profession. AAfPE has previously published two policy statements related to entry-level

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101 Paralegal Institute Case , Note 87
104 The American Association for Paralegal Educators is the only national organisation for educators of paralegals. It began in 1981 and claims to have over 450 institutional members. See http://www.aafpe.org For a
paralegal education. AAfPE’s Core Competencies for Paralegal Education Programs specifically describes the exit competencies expected of students completing the curriculum offered in quality paralegal education programs. AAfPE’s Statement of Academic Quality sets out the minimum standards for paralegal education programs in such areas as curriculum development, physical facilities, faculty, marketing and promotion, instruction, qualification of the program director, student competencies, and student services.

In 2001, AAfPE went a step further and created a document, the Position Statement of the American Association for Paralegal Education Regarding Educational Standards for Paralegal Regulation Proposals that sets forth the following minimum educational standards:

A person is qualified as a paralegal with (1) an associate or baccalaureate degree or equivalent course work and (2) a credential in paralegal education from a paralegal program associated with an educational institution accredited by a nationally recognized agency completed in any of the following types of educational programs: associate degree, baccalaureate degree (major or minor), certificate, or master’s degree.

In addition to, and because of its belief in quality paralegal education, AAfPE, along with the five other major law-related associations, the National Federation of Paralegal Associations, the National Association of Legal Assistants, the Legal Assistant Management Association, the Association of Legal Administrators, and the Standing Committee on Legal Assistants of the American Bar Association, drafted the brochure, Choosing a Quality Paralegal Education Program. These organizations, all of which are dedicated to insuring the quality and growth of this profession, set forth the minimum education necessary to prepare a person to succeed in an entry-level position in the paralegal field. The collective wisdom of these law-related organizations is that a paralegal program must include at least 18 semester units of paralegal coursework and appropriate general education.”

Other common types of program are Associate Degree Programs (60 to 70 semester units); Baccalaureate Degree Programs (offered by four year colleges and universities which have paralegal studies as a minor or major); Certificate Programs (18 –60 semester units) designed for graduate students from associate or baccalaureate degrees; and, Master’s Degree Programs. Statistics available from the Legal Assistant Management Association (LAMA) suggest that employers are giving preference to those paralegals who have four year degrees.106

The course content would vary according to the duration and intensity of the program, however, the NFPA believes that the subjects that should be included in a core paralegal curriculum are Litigation/Civil Procedure; Legal Research and Writing; Real Property Transactions; Business and Corporate Law; Wills, Trusts, and Estate Planning; Family Law; Torts; and Contracts. Further, depending on the length and structure of the paralegal program, other elective paralegal subjects, such as Administrative Law, Bankruptcy Law, Criminal Law, Debtor/Creditor Rights, Elder Law, Environmental Law, Immigration Law, Intellectual Property, Labor Relations/Employment Law, Law Office Economics and Management, Pension/Profit Sharing, Social Security Law, and Tax Law may be taught as legal specialty courses.107

According to Flaming, paralegals are not only skilled but well educated. She writes that, “according to the NFPA, “nationwide 21 % of all paralegals have an associate degree, 53% have a bachelor degree, and 8% have a masters or JD. Eighty-three percent received paralegal training as part of or in addition to college education.”108

Several of the associations are seeking to standardise levels of proficiency as well as ethical and professional conduct. As to levels of performance and proficiency, both NALA and the NFPA also recommend that paralegals undertake further tests which measure competency and lead to certification or registration. To become a Certified Legal Assistant (CLA) under NALA, a paralegal must qualify for the examination (having graduated from an ABA

106 LAMA, “LAMA Legal Assistant Utilization Survey, November 2002”, Question 15, “What is the minimum educational requirement of your firm or legal department for legal assistants/paralegals?” 79% required 4 year degrees, as opposed to 33% requiring a 2 year degree, 38% requiring no qualifications at all. See http://www.zoomerang.com/reports/public (accessed 4 September 2003)
108 Flaming J, Note 68, p490 (It is noted that the figures quoted add up to 82% not 83%)
approved program, or having received a bachelor’s degree plus one year of work as a paralegal, or having a high school diploma plus seven years of paralegal experience). An examination is then held over two testing levels of proficiency and expertise which the student must pass. Once certified, the paralegal can maintain the certification by participating in continuing legal education (at least 50 hours over a five year period). The certification is valid for five years.\textsuperscript{109}

NFPA’s registration process is similar, with an experienced paralegal (four year’s experience or two years plus a bachelor’s degree plus having completed an accredited paralegal program) eligible to sit for the exam - Paralegal Advanced Competency Exam. If the paralegal passes the exam and “maintains the continuing educational requirement”\textsuperscript{110}, then the paralegal becomes a PACE- Registered Paralegal (PR). Neither qualification is required for working as paralegal, however, both associations consider that these tests could be used to establish professional standards by any state seeking to regulate paralegals, although it must be noted that the two associations disagree about the need for such regulation – the NFPA is in favour and NALA is not.\textsuperscript{111}

In \textit{Peel v Attorney Registration and Disciplinary Committee of Illinois (Peel)}\textsuperscript{112} the US Supreme Court considered the issue of the use of professional credentials awarded by private institutions. (Peel was an attorney advertising his trial lawyer specialisation) The court said that a claim of certification was not misleading because, “The facts stated on petitioner’s letterhead were true and verifiable and were not misleading or deceptive on their face but instead served the public interest.”\textsuperscript{113} It was also important that the certification was available to all peer professionals with the application of objective and consistent standards and, further, that the certification did not suggest any greater standard of professional expertise than could be reasonably inferred from an evaluation of the certification process.\textsuperscript{114} NALA maintains that its certification process is sufficiently rigorous and verifiable, and would allow those certified under it to assert their qualifications, consistent under the \textit{Peel} decision.\textsuperscript{115}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{109} See NALA, “The Certified Assistant Program and the United States Supreme Court Decision in Peel.” \url{http://www.nala.org/peel.htm} (accessed 26 August 2003)
\item \textsuperscript{110} Flaming J, Note 68, p490
\item \textsuperscript{111} The issue of regulation is discussed later in this chapter.
\item \textsuperscript{112} \textit{Peel v Attorney Registration and Disciplinary Committee of Illinois} 110 St Ct 2281 (1990) (\textit{Peel})
\item \textsuperscript{113} \textit{Peel}, Note 112, LexisNexis Case Summary
\item \textsuperscript{114} NALA, “The Certified Assistant Program and the United States Supreme Court Decision in Peel.” \url{http://www.nala.org/peel.htm} (accessed 26 August, 2003)
\item \textsuperscript{115} NALA, Note 114 (accessed 26 August 2003)
\end{enumerate}
\end{footnotesize}
Given the large numbers of paralegals in the workforce, for Flaming “it is surprising that no national guidelines currently exist to standardize [paralegal] ethical and professional conduct.”

Both NFPA and NALA have adopted such codes for their members. For other paralegals, however, great potential arises for conflict of interest and confidentiality, let alone the difficulties of UPL. To this end it is worth noting that the AAfPE recognizes the need to include legal ethics as a core course in a paralegal curriculum. “Knowledge and information relating to the role of the paralegal in the delivery of legal services, ethics and professional values is vital to paralegal competence… [and accordingly paralegal graduates need to]

“5. Understand the legal and ethical principles that guide paralegal conduct, including, but not limited to: unauthorized practice of law and lawyer supervision of non-lawyers; confidentiality and attorney-client privilege; conflicts of interest; competence; advertising and solicitation; handling client funds, legal fees and related matters such as attorney fee awards and fee agreements; prohibitions relating to fees including fee referrals, fee-splitting and partnerships between lawyers and non-lawyers; limitations on communications with persons outside law firms, including represented persons, judges, jurors; special rules relating to litigation such as proper courtroom conduct, honesty and candor, frivolous claims and defenses, sanctions for misconduct;”

The matter of provision of paralegal education and training should not be considered lightly as the case of *In the Matter of the State of New York v Carl E Person* attests. The respondents operated a training institute for paralegals and advertised that graduates would “earn a high salary starting at $9,000 or more per year in the city of your choice.” (This is a large amount given that it was the early 1970s.) The offer was for a refund of tuition fees if such a placement was not made – provided that the student cooperated in the placement process. The court found against the respondents who they described as “overly optimistic [in] view of the job market for paralegals.”

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116 Flaming J, Note 68 , p491
117 See Peterson E J III, “Ethical Considerations for Law Clerks and Paralegals.”(1999) 23 JLegProf 235
119 *In the Matter of the State of New York v Carl E Person* 75 Misc 2d 252 (1973)
120 Note 119, at 253
121 Note 119, at 253
THE SCOPE OF PARALEGAL DUTIES - WHAT IS THE NATURE OF THEIR WORK? WHERE DO THEY WORK?

To a large extent information about paralegals’ work is dominated by statistical information, available from such sources as NALA, NFPA, ABA, LAMA and the US Department of Labor (DOL), all of whom conduct surveys and issue reports. Qualitative analysis is more difficult to find. However, it is clear from both the quantitative and qualitative information that is available that paralegalism is a growth industry. “In a 1983 survey randomly selected ABA members 54 percent of the respondents stated that their firms employed paralegals.”122 The growth in employment opportunities occurred across the board not just in private law firms, but also in governmental agencies (both federal and state), corporate legal departments, banks, insurance companies, publishing companies, trade associations to work in “nontraditional” paralegal jobs.123 A similar survey in 1998 by the ABA revealed an increase in that “almost two-thirds of the lawyers who responded, 65.5 percent, employ legal assistants at their firms.”124

In 2003 Bureau of Labor Statistics, an aspect of DOL, indicates that there are in excess of 188,000 paralegals working in the US.

“Paralegals and legal assistants are projected to grow faster than average [21 – 35% increase from 2000 –2010] for all occupations through 2010. Employment growth stems from law firms and other employers with legal staffs increasingly hiring paralegals to lower the cost and increase the availability and efficiency of legal services. The majority of job openings for paralegals in the future will be new jobs created by rapid employment growth, but additional job openings will arise as people leave the occupation. Despite projections of fast employment growth, stiff competition for jobs should continue as the number of graduates of paralegal training programs and others seeking to enter the profession outpaces job growth.”125

According to Schneeman, adapting a 1993 survey from Legal Assistant Today, approximately 75% of paralegals work in private law firms, 16% in corporations, the remaining 10% work in

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123 Eimermann T, Note 122, p11
124 See ABA, “ABA Survey Shows Lawyers Depend on Legal Assistants to Help Deliver Client Legal Services”, http://www.abanet.org/media/sept98/leg-asst.html (accessed 4 September, 2003),
the public sector, generally in government agencies. The figures provided are somewhat misleading and nor do they take into account the numbers of independent or freelance paralegals working in the US, but they do indicate the proportional places of employment.

**Paralegals working in Private Practices**

By far the greatest number of paralegals work for lawyers in private practices. Moreover, the larger the firm, the more likely they are to employ paralegals. However, paralegals working in the smaller firms are more likely to deal directly with clients. According to the ABA, “Lawyers at smaller firms generally delegate more varied tasks to legal assistants than do lawyers at larger firms. Acting as a liaison with clients, opposing firms, and courts; drafting correspondence; and drafting legal documents are among the tasks that smaller-firm paralegals are more likely to perform than paralegals at larger firms.”

Clearly circumstances differ from firm to firm, according to the nature and complexity of the work delegated. Paralegals working in private law firms are likely to work in any number of areas of law – civil litigation, personal injury, family law, real estate law, criminal law and other areas. Entertainment law is the area of law least encountered according to the NALA 2000 survey. The need for knowledge and skills in these areas of work are reflected in the contents of the educational syllabi on offer from the various institutions.

Table 2.18 of the 2000 NALA survey provides a summary of the duties of paralegals in the workplace. Drafting correspondence and assisting with clients are the activities occupying the greatest amount of time for paralegals. Assisting in or attending mediations and law library maintenance were the least undertaken activities. The report suggests that a paralegal needs a high level of communication (both oral and written) and advanced analytical skills in such a working environment.

**Paralegals working for Corporations**

Given the nature of corporate law – dealing (unsurprisingly) with corporations - paralegals working in this field “spend most of their time drafting documents and preparing reports for

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126 Schneeman A, Note 80, p7. Note that the addition of the figures exceeds100% and the date of the survey is given as both 1992 an 1993.
129 NALA Report, Note 128,Table 2.18 (accessed 14 March 2001)
stockholders and government agencies. The documents include articles of association, corporate by-laws, resolutions…” and many more. Paralegals also, however, work in-house for many corporations and their work would also include employment law and torts – as for any client. Schneeman claims that approximately 20% of all paralegals work in corporate legal departments and that a national association to attend specifically to their needs has been formed – the American Corporate Legal Assistant Association (ACLAA).

Paralegals working in the Public Sector – Government

Eimermann claims that paralegals working in the public sector are performing the same basic tasks as those employed in private law firms, but that what distinguishes this group is that as part of a civil service there are “certain career expectations and due process protections...[and that there are] two general job classifications for paralegals” these being the Legal Clerk/Technician (GS-986) and Paralegal Specialist (GS-950). Their duties would obviously depend on which department they work in. Those working for Attorneys-General, for instance, would be likely to be working in the area of criminal law.

Further roles for paralegals are to be found in the Armed Forces. Colonel Richard Black, writing for the journal, *Army Lawyer*, in 1990, describes a “major restructuring” at one of the military establishments “converting seven civilian positions from clerks and court reporters to paralegal specialists.” “The civilian legal community has recognized the invaluable contributions paralegals can make in a legal setting, and today the paralegal profession is one of the fastest growing professions in the United States. Consequently restructuring the Fort Ord SJA [Staff Judge Advocate] office around a paralegal building block predictably produced a more powerful, productive organization.” It is claimed that the creation of these positions has provided a career promotional path and imported skills and efficiency into the process.

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130 Eimermann T, Note 122, p16
131 Schneeman A, Note 80, pp9 and 10
132 Eimermann T, Note 122, p24
133 See Eimermann T, Note 122, p26
134 Schneeman claims that the Department of the Army is the 5th highest employer of government agencies, Note 80, p11
135 Black Colonel R, “Notes From the Field: The Paralegal in Army Legal Practice.” (1990) November *Army Lawyer* 70, p71
136 Black Colonel R, Note 135, p71
The Contract/Independent/Freelance Paralegal

It is difficult to estimate the numbers of independent and freelance paralegals working in the US, however, the NFPA estimates that freelance paralegals began to pursue their careers not long after paralegalism emerged in the 1960s. A freelance (or contract) paralegal differs from a traditional paralegal in as far as such a person is not permanently employed by one firm, but rather will work casually for several, as needed. Issues of confidentiality may well arise here. A freelance paralegal does, however, work under the supervision of a lawyer.

By contrast an Independent paralegal is self employed and works without supervision. The NFPA indicates that they are sometimes referred to as forms practitioners or document preparers. The obvious issue for independent paralegals is whether their work is legally substantive and therefore offends against the UPL laws. The Greene Case\textsuperscript{137} which was discussed earlier is one such incident.

Most states have considered the issue of disbarred or suspended lawyers working as paralegals,\textsuperscript{138} however, there is some inconsistency in the approach and only a few will effectively allow them to “transmute” into independent paralegals.\textsuperscript{139} Harrell and McGuffee\textsuperscript{140} indicate that the states’ approaches fall into five categories concerning the issue. Some states will allow disbarred or suspended attorneys to be employed as paralegals.\textsuperscript{141} Other states have placed limitations on their employment and will consider each application on a case-by-case basis.\textsuperscript{142} Alabama, Indiana, Michigan, Mississippi, New Jersey, Tennessee, Rhode Island, South Carolina, Wisconsin and Wyoming on the other hand are the most restrictive and prohibit both suspended and disbarred attorneys from working in a legal office in any capacity.\textsuperscript{143} Some states allow their employment but will only allow them to perform

\textsuperscript{137} Greene, Note 53
\textsuperscript{138} By way of court rules, case law or statute.
\textsuperscript{143} Harrell S & McGuffee K, “A Fallback Career?: Can a Disbarred or Suspended Attorney be Employed as a Paralegal? A Survey of Current Laws.”, Note 140, pp38 - 41
Finally, there are some states that “have not addressed the issue, and presumably allow disbarred attorneys to work as paralegals. These states are Connecticut, Idaho, Louisiana, Maine, Missouri, Montana, Nevada, New Hampshire, New York, North Dakota and Texas.” It is these states that would also, presumably, allow for disbarred lawyers to “transmute” into independent paralegals. However, as Harrell and McGuffee note, these states all have rules prohibiting UPL and would be concerned to enforce those rules by way of a check upon paralegals working independently.

CONDITIONS OF EMPLOYMENT

“In order to provide clients with quality legal services without imposing severe financial or administrative costs, lawyers increasingly turned to paralegals or legal assistants to aid them in performing legal services. This trend has resulted in confusion as to the appropriate limits on paralegal responsibilities and the proper classification of paralegals under state and federal employment statutes.”

This issue of whether a paralegal is entitled to over-time pay or not goes to the heart of the debate about status for the profession. In 1994 DOL withdrew from its appeal against a district court jury’s finding that 23 paralegals in the employ of a ten-lawyer firm – Page and Addison – were not entitled to overtime pay because “each one was found to exercise independent judgement and discretion when she [sic] performed her duties and fulfilled her responsibilities, even though a supervisory attorney must approve or reject the paralegal’s work.” While the decision applies only to the paralegals working in that firm, the implications for the wider profession are clear. The paralegals were found to be skilled workers, in an identifiable professional group and as such were exempt under the administrative provisions of the Fair Labor Standards Act of 1938. Not all paralegals are willing to accept the elevation in status as a “tradeoff” for wages forgone. Overtime is not uniformly paid by employers and appears to be falling. The DOL helpfully provides that,

147 DOL v Page & Addison US District Court, Northern District of Texas, Dallas Div No 3:91-CV3655-P
149 NALA Report, Note 128, Table 2.4, (accessed 14 March 2001)
“Paralegals employed by corporations or government usually work a standard 40-hour week….Paralegals who work for law firms sometimes work very long hours…. “

Interestingly, new DOL regulations (2004) now specifically define paralegals as non-exempt employees and, accordingly, are entitled to overtime.

The NFPA 2001 Compensation and Benefits Survey reveals that the average salary was $41,742 with 65% of participants earning an additional $2,468 by way of a bonus. “The National employment and wage data from the Employment statistics survey by occupation, 2001”, available through the Bureau of Labor Statistics provides a somewhat lower figure of $39,220.

WHEN CAN A PARALEGAL REPRESENT A CLIENT IN COURT?

Paralegals are not permitted to represent clients in courts (which are part of the judicial branch). There are, however some agencies (which are part of the executive branch) which do allow paralegals to appear. As Johnstone notes, there are some circumstances where the delineation between authorised and unauthorised practice of law has been blurred because “[t]he federal government has intervened in a few aspects of [UPL] to permit non-lawyer performance of legal services in some clearly ascertainable situations, including the right to represent clients before certain federal [and state] administrative agencies.” The circumstances are, however, limited, based upon the need to deliver such services to the poor and indigent. The Table reproduced at Appendix A, compiled by the NFPA, reveals the tribunals and agencies where paralegals can practice as advocates. The Table is of some interest. Firstly, given that the list purports to be inclusive of all jurisdictions, state and federal, it is not extensive. Clearly the possibilities of paralegal advocacy are quite curtailed. Secondly it is a work in progress and was the result of research (“to date”) by NFPAs Roles and Responsibilities Committee. This suggests that such information is not readily available.

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151 NFPA, “News” http://www.paralegals.org/News/PressReleases/122601d.htm Note also that statistics are available through LAMA and NALA as well
153 This does not include Pro Se, or self representation.
154 Johnstone Q, Note 28, p811
GENDER ISSUES

Overwhelmingly the paralegal profession in the US is dominated by women, although the NFPA reports that, “Compared with the results of five previous surveys on alternate years beginning with 1991, the trend reflects a slow increase in the number of male paralegals and the number of persons of color who are paralegals.”\textsuperscript{155} While much has been written about the difficulties encountered by women entering the workforce as lawyers, there has been less attention given to gender issues and paralegals specifically. Three articles are worthy of comment in this context, however.\textsuperscript{156} For Franklin, difficulties for women arose from the time of the emergence of the paralegal profession, given that “paralegals formed a new tier in the law firm hierarchy between lawyers and secretaries. Unlike the gentlemen clerks of the 19\textsuperscript{th} century, and like the secretaries that replaced them, paralegals are primarily women.”\textsuperscript{157} According to Dahlborg, “The dominance of women in the field may mean that the profession is viewed less seriously than it might otherwise be. Importantly, salaries are lower and working conditions poorer in female-dominated professions than in male-dominated professions.”\textsuperscript{158} They are paid significantly less than then the lawyers (predominantly male) which allows for more law firm cost efficiency. Dahlborg describes the wage of a paralegal as a “living” wage only, ensuring the perpetual advocacy of the professional associations to push for higher wages.

According to Pierce, evident lower status results in curtailed career mobility and the emergence of the expectation of a mothering role or emotional labour as part of the role. Expectations are, therefore, high, but the status is correlatively low.\textsuperscript{159}

It is not possible to include more than a small reference to such issues in this work, but it is necessary to bear such issues in mind when considering the role of a paralegal in the workforce. Certainly they constitute some of the many challenges facing the profession in the twenty-first century.

\textsuperscript{155} See NFPA, “News”, \url{http://www.paralegals.org/News/PressReleases/12601d.htm} (accessed 8 September, 2003)
\textsuperscript{157} Franklin C, Note 156, p139
\textsuperscript{158} Dahlborg L, Note 156, p34
\textsuperscript{159} Pierce, Note 156, particularly at p129
CONCLUSIONS. THE FUTURE OF PARALEGALISM IN THE US - REGULATION OF PARALEGALS?

There has already been a remarkable growth in paralegalism, both in the number of those practising and in the expansion of opportunity.

“The obvious consequence of the changes that have taken place is that the line between what constitutes practicing law and what is permissible business and professional activity by paralegals and other nonlawyers is blurred. Paralegals have identified various opportunities that were not available in the past and expanded their role to effectively use their legal background to forge new career paths. Nonlawyers, such as ombudsmen, real estate brokers, mediators, arbitrators, special advocates, and estate and trust officers are and have been performing legal-oriented services successfully, satisfactorily, efficiently, and less expensively to the public’s benefit. Some paralegals act in a representative capacity before administrative agencies at the local, state, and national levels. With the increased use of computers in law firms, corporations, and the courts, paralegals are entering the ranks of litigation support managers, computer consultants, and programmers and have successfully created a union between technology and the legal community.”

But while the boundary between what constitutes the practice of law and what is permissible business might seem blurred, the legal profession remains in tight control, fighting off competition from non-lawyers through the numerous bar associations, state legislatures and courts. For many writers this is indicative of the worst aspects of the American legal system and has led to a “crisis”, leading to repeated calls for greater access to be provided to legal services, particularly for the poor. It is worth repeating here that chief among those calling for improved access to justice was the ABA and that this is the essential impetus of the ABAs recognition of the paralegal profession in 1968.

Many areas of law, such as bankruptcy law, immigration law, “elder law”, domestic violence are largely underserved by the legal profession. In “poor peoples’ courts” that handle housing, bankruptcy, small claims, and family matters, parties without lawyers are less the exception than the rule. Cases in which at least one side is unrepresented are far more common than those in which both sides have counsel. This is reality for low-income Americans, who cannot obtain adequate and affordable advice or representation. The result is also a clogged court system as judges are obliged to spend time explaining both substantive and procedural matters to the unrepresented litigant. As Stone said when addressing a symposium in 1997, “The systems that deliver legal services to people in poverty…are terribly broken and largely misguided. The immediate crises…are easily misunderstood. The deeper crisis lies in the way we deliver legal services.” For Rhode, “‘Equal justice under the law” is what America proclaims on its courthouse doors. What goes on inside them, however, looks entirely different. It is a shameful irony that our nation, which has the greatest concentration of lawyers, has one of the least adequate systems for legal assistance.” The appropriate questions to ask concern how such an apparently “broken” system can be fixed, and how paralegals can be part of that solution?

The literature follows several threads here. For some writers the answers lie in increased pro bono programs to be delivered by the attorneys. Cramton also explores the efficacies of rejuvenating the legal aid system, such as the Federal Legal Services Program initiated under the Johnson administration. However, the predominant theme suggests an expansion in non-lawyer participation, to the benefit not only of the public but also, it seems, to the lawyers as well. The 1996 the ABAs report, Agenda for Access: the American People and Civil

recommended eleven steps which could constitute an “Agenda for Access”. Importantly, the first step involved increasing the flexibility of the civil justice system with the aim to expand the options available to people seeking help with a legal problem. High on the agenda here was the need to “[f]ind new ways for lawyers to work with nonlegal third parties and expand roles for paralegals.”

For Ray there is a simple solution. “[L]et’s regulate legal assistants, let them handle more lawyer stuff, and everyone will benefit.” It may not be that simple. Ray’s solution involves two notions. The first involves a “transgression” into the practice of law (“lawyer stuff”), whereby paralegals could potentially represent individuals in court, draft documents and provide legal advice. There is already evidence that these occur in limited circumstances, but it is often unclear whether such activities offend against UPL laws.

Further, outside of the lawyers, there appears to be support for paralegals being able to offer expanded services to poor Americans, in areas where it is not cost-effective for attorneys to practise. Whether it would necessarily perpetuate a system of “Poor Man’s Justice” remains to be seen. For writers such as Carrie Menkel-Meadow, Joel Handler and Louise Trubeck there is inherent danger in “paralegalising” whole areas of law, because “[o]nce a field or task has been “paralegalized”, it may be just that, beside or outside the law, and efforts to control or regulate arbitrary actions by others may be made more difficult” and that the “poor will once again get second-class service.” Such stratification, after all, can be self-defeating, paving the way for a permanent, political justification for cost-cutting. There is evidence, however, that a two-tiered system already exists and that an expansion of paralegal services into this area of law would certainly create competition, given that experienced paralegals are most likely to be as competent or even may well be more suited to niche jobs created under such an arrangement.

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171 Cantril, Note 170

172 Ray D, Note 162


175 See Ray D, p257 and Mund Hon G, Note 162
The second notion inherent in Ray’s solution is an even more contentious step: the regulation of paralegals (presumably in all states). The role of paralegals’ professional policymaking associations is important here. Both NALA and the NFPA have been active advocates for paralegals, promoting the profession by assisting their members, creating codes of ethics and establishing educational standards. LAMA has also been active. On the issue of regulation, however, both the NFPA and LAMA are in favour of some form of regulation whereas NALA is opposed.

The NFPA endorses the mandatory regulation of paralegals (on a state-by-state basis) as long as it provides for an expansion of their role. This would be provided by a two stage licensing process, standardisation of ethics and education, a method to assess advanced competency, a disciplinary process and a definition of tasks. LAMA does not favour mandatory regulation. NALA opposes regulation, reasoning that there has been no demonstrated public need and that it will increase costs and inhibit the growth of paralegal activities.

The Ray proposal has some merit, “combining a competency-based legal assistant registration system with the lawyer regulation and legal assistant supervision infrastructure already in place in every state.” The paralegal would be registered by the attorney’s state supreme court, providing that the paralegal meets particular competency criteria. Competency contemplates both education and “good character” requirements. Under the authority of the attorney the paralegal can then practise without offending against the state’s UPL laws. The nature of the duties assigned is the result of negotiation between the paralegal, the lawyer and the client.

However, it is not convincing how such an arrangement would deliver cheaper and more accessible legal services to the poor. The indigent person would still need to approach the lawyer to negotiate the job and the fee. The barrier is still too high. Nor does Ray’s proposal

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177 NFPA, National Paralegal Reporter Online (accessed 8 September 2003), Note 173
178 This argument would appear to be largely based on the fact that legal assistants work under the supervision of lawyers – ignoring the circumstances where this is not so and failing to appreciate that any expansion of role inevitably takes them out from under the lawyer’s supervision and malpractice insurance.
180 Ray D, Note 162
adequately address the issue of the independent paralegal given that the nexus between attorney and paralegal remains very firm. It does not contemplate the specialised independent paralegal of the ilk described by Judge Mund,\footnote{Mund Hon G, Note 162, p340} for instance, when she wrote,

“In the opinion of this author, a trained paralegal who possesses certain knowledge, displays it on competency tests and has had an apprenticeship should be able to give advice to the debtor, negotiate with the creditors and prepare schedules. If this is practicing [sic] law without a license, state regulations should be rewritten to authorize it.”

Nor does it contemplate the establishment of “lay specialist” Advice Bureaux modelled on the English system and as advocated by Rhode, who also sees the need for licensing and the necessity for paralegals to carry malpractice insurance for the benefit of the public.\footnote{Rhode D, “Symposium: The Constitution of Equal Citizenship for a Good Society: Access to Justice.”, Note 161, pp1814 & 1817} The beauty of the Ray model is, though, that it appears to be “easy and inexpensive to implement and administer”\footnote{Ray D, Note 162, p250} and provides a good starting point for the debate.

And the debate is here. California has already passed legislation to regulate paralegals in that state.\footnote{California Business and Professions Code (2003), Division 3. Professions and Vocations Generally, Chapter 5.6 Paralegals, paragraphs 6450 –6456} This is

“…major legislation that defines the occupational title “paralegal,” sets standards for persons to use “paralegal” and comparable job titles, and defines and limits the functions that paralegals can perform. The new law makes it unlawful for persons to identify themselves as paralegals unless they meet the qualifications set forth in the statute and work under lawyer supervision. Other key provisions establish mandatory continuing education and the paralegal’s duty of confidentiality. The impact of this controversial and unique approach to the regulation of paralegals will be watched carefully as paralegal regulation is considered in several states, including Texas, Arizona, Wisconsin, Hawai’i and Rhode Island.”\footnote{Cannon T, “California Regulates Paralegals.” ABA Standing Committee on Paralegals \url{http://www.abanet.org/legalservices/legalassistants/updatefiles/cacannon.html} (accessed 4 September 2003)}

The reaction from the legal community, and particularly from paralegals and their associations has been mixed. There are many who believe that it has been poorly drafted and
that further legislation will be necessary to address questions and issues of concern. As Therese Cannon further notes,

“While this law dictates the qualifications and functions of paralegals in California, it is NOT licensing or certification by a state agency nor does it require registration of paralegals with a state or local government entity. There is no governing body, no competency testing, no moral character check, no ethics code, no disciplinary system, no reporting. Penalties for violation of the two provisions noted above and civil liability are the only enforcement mechanisms. This law is not, therefore, a typical regulatory scheme, such as that being considered in Wisconsin.” 186

It is likely that once one state has legislated others will follow, even if it is not in the same form. To draw from the theme of Paul Haskell’s writing, “paralegalism has passed its stage of infancy” and is no longer even in its “early adolescence”187 but as a thriving and mature profession it continues to face many challenges. The biggest test for paralegals may well be not determining the issue of whether regulation is appropriate or not, but rather, ensuring that they have some meaningful input into the process (even if it falls short of control).

In this chapter we have considered paralegalism in the US, as a means of providing some context for an examination of paralegals in Australia in Chapter Four. Paralegals in the US belong to a thriving and expanding profession. It is clear that they are an integral part of the legal services industry. They are a distinct professional group who, it would seem, have the requisite legal knowledge and skills to advance their profession. Their role is prescribed by the various UPL laws in each state which provide for some ambiguity of role but allow for sufficient scope to practice in almost all areas of law. There are, however, limited opportunities for advocacy. Further, they have recognisable qualifications which are supported by extensive and continuing educational programs, many of which are accredited by the ABA.

In the next chapter we will examine the role of paralegals in England and Wales, a jurisdiction which provides both contrast and similarities and which will further enhance our understanding of the Australian profession.

CHAPTER 3

PARALEGALS IN ENGLAND AND WALES

This chapter examines the very important role played by paralegals in the delivery of legal services in England and Wales¹. For while the word *paralegal* first emerged in the US in the 1960s, the concept of a paralegal, as a legal assistant, has a much older and more established derivation England. After all, lawyers in England have a long history of dependence upon legal assistants that goes back for centuries. This necessitates some understanding of the history of the English legal profession generally, and the part played by paralegals in the modern English legal system.

England is also the home of common law and in many respects paralegals in that jurisdiction and the US are very similar: a common legal heritage accounts for many of these similarities. In both countries, it seems, they are part of an identifiable profession,² even if dominated by the lawyers. However, the structure of the English legal profession, with its historical division between solicitors and barristers, informs a different role for paralegals in that country. There also appears to be differences in the education and training opportunities available to English paralegals and their willingness to avail themselves of those opportunities. Also absent is the concept of unauthorised practice of law as known in the US. The role of paralegals in the England must also be seen in the context of the discourse of the legal profession as a service industry, and the need to provide greater access to justice. Accordingly these are all matters that will be examined in this chapter.

Paralegals in England are not lawyers admitted to practice as either barristers or solicitors, nor are they Fellows of the Institute of Legal Executives (ILEX) that have fully qualified and are therefore entitled to admittance as lawyers. Accordingly they need to be distinguished from those admitted to practice as lawyers.

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¹ Scotland and Northern Ireland have not been included in this study because of the differences between these jurisdictions and England and Wales.
² I use this term rather than *occupation* advisedly in the English context.
LEGAL PROFESSIONALS IN ENGLAND AND WALES

As already stated, the structure of the English legal profession, due to its historical division between solicitors and barristers, informs a particular role for paralegals. In England (as in many other common law jurisdictions, including parts of Australia) a lawyer is admitted to the court as either a barrister or solicitor. These are two distinct branches of the profession. A barrister is a lawyer who, by law or custom, is limited to advocacy and advisory work. “The division of the legal profession dates back to about 1340, at the time when professional advocacy evolved. The advocates with audience in the common law courts were the serjeants and barristers while the preparatory stages of an action were carried through by officers of the court in question known as attorneys.”3 The serjeants were practitioners senior to the barristers who had exclusive rights of audience in the Courts of Common Pleas, however, their role was abolished pursuant to the Judicature Act 1873, leaving the field of advocacy solely to the barristers. Barristers maintained a monopoly over advocacy in the higher courts until 1999, with the passing of the Access to Justice Act 1999 (UK) (AJA).4

In the twenty first century, there are also two modes in which a barrister may practice. They are either employed barristers, in which case they are only permitted to give advice to their employers, or they are sole practitioners, unable to be bound by such legal commercial arrangements as partnership or incorporation with other barristers or other professionals. Their professional rules admit communality only to the extent that they allow them to share office space and the employment of administrative staff with other barristers (but not other professionals). Barristers are all members of their professional regulatory association (the General Council of the Bar) and of one of the four “Inns of Court”.5 The Inns retain the power of accreditation of all barristers. The Inns, as an institution, ensured the division within the profession, having barred solicitors and attorneys from membership after the sixteenth century.

A solicitor is from the other branch of the profession (traditionally non-advocates). They are officers of the court who will typically advise clients on legal matters, prepare documents generally, convey land, prepare cases for litigation and instruct barristers for more complex matters. Their mainstay, however, had been conveyancing, a monopoly over which they maintained until 19856. “Solicitors as distinct from attorneys, first appeared in the fifteenth

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5 The Inns originally provided accommodation for all legal practitioners except serjeants who had their own Inns. They became the centre for their education and training.
6 The Administration of Justice Act 1985 (UK) ended this monopoly
century and practiced in the Court of Chancery. They were at first inferior to attorneys…. By the eighteenth century the offices of attorney and solicitor were frequently held by the same person and the distinction between them was finally abolished by the Judicature Act 1873.”  

As Reeves says, the abolition of the title “attorney at law” by the Judicature Act “ended a description which was in use at the time [when] Chaucer’s …pilgrims left the Tabard Inn at Southwark, and is also mentioned in the Statute of Merton 1235.” They are members of, and regulated by, their professional association, the Law Society, which was formed in 1739 and originally called “The Society of Gentlemen Practitioners in the Courts of Law and Equity.” Solicitors may be advocates in court; however, until 1999 such advocacy had been restricted to the lower courts. The real difference, in the twenty first century, is the interface between client and lawyer. Solicitors deal with their clients directly; barristers are mostly precluded from dealing directly with clients, acting only as consultants instructed by solicitors (or other approved persons).

For Kerridge and Davis the very clear distinction between the two branches of the profession was not just “confined to these matters of access to lay clients, conveyancing, and rights of audience. It was clear during the latter part of the eighteenth century and throughout the nineteenth century that barristers were in general better educated, and socially superior to solicitors.” They note that once qualified, a barrister still wears a “wig, [and gown which are] the uniform of the eighteenth century gentleman” indicating now, as then, a particular social status. Certainly barristers were considered to be senior in the profession and their concentration in London around the Inns – as centres of learning – and libraries contributed to their better education. Solicitors, on the other hand, were geographically more disparate and did not always have access to the libraries in London. They had also been precluded from membership of the Inns.

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7 Walker R, Note 3, p248
9 Walker R, Note 3, p248, Peter Reeves maintains that the name was “The Society of Gentlemen Practisers in the Courts of Law and Equity”, see Reeves P, Note 8.
10 The BarDIRECT scheme now allows for certain authorised clients to instruct barristers directly. See details at the Bar Council site at http://www.barcouncil.org.uk/ It is worth noting, however, that the corollary of this direct access for specific groups has resulted in a loss of barristers’ immunity from prosecution. This was confirmed in Arthur J S Hall & Co v Simons & Barratt [2000] 3 All ER 673
11 Kerridge R & Davis G, Note 11
12 Kerridge R & Davis G, Note 11, p808. As to the social standing of solicitors, Kerridge and Davis point to the novels of Jane Austen and the character of Mrs Bennett in Pride and Prejudice, Mrs Bennett’s “vulgarity” having been attributed to the fact that she was the daughter of an attorney.
13 Kerridge R & Davis G, Note 11
If the social and educational hierarchy placed barristers ahead of solicitors, the third group of legal workers was placed well below both. These were the clerks –general, outdoor, articled or managing. Neil Rose describes articled clerks, for instance, as “one species of employee even lower down the food chain [than a legal secretary].” The clerks were and are non-admitted staff working as assistants to the lawyers, although the term *clerk* has now mostly been supplanted by *legal executive*.

**EDUCATION FOR LEGAL PRACTITIONERS**

The following is a table indicating the three routes that can be taken to qualify as a solicitor in England and Wales.

There are the three ways of obtaining qualifications. For the first and second groups of students (graduates of other disciplines and law graduates) there are also three stages to the scheme. The academic stage is normally undertaken by completing a law degree (which meets the qualifying criteria) or, in the alternative, undertaking the Common Professional Examination (CPE). This academic phase is followed by the vocational phase which requires the completion of a Legal Practice Course (LPC), after which the student must complete a Training Contract, under the auspices of a training establishment that is authorised to take

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such trainees (such as a solicitor’s office). During this training phase the Professional Skills Course must be completed. For those following the third route (those who work in legal employment, such as solicitors’ offices, and undertake exams offered by the Institute of Legal Executives (ILEX)) there are some permitted variations, particularly to the vocational and training stages, because of the practical and vocational nature of their employment.

For barristers the first part of qualifying also consists of a degree or completion of the CPE course. Also called the Academic Stage, it usually consists of a qualifying law degree or a degree in another subject again supplemented by the Common Professional Examination (CPE) or an approved Post Graduate Diploma in Law (PgDL) course. It is at this stage that their education diverges from solicitors. The Vocational Stage requires the student to undertake the Bar Vocational Course (BVC) and join one of the Inns. This is followed by pupillage.16

REGULATION OF BARRISTERS AND SOLICITORS

No one may practice as a barrister in England unless he or she is a member of one of the Inns of Court and has been called to the Bar by that Inn. The Inns’ jurisdiction is not statutory; it is customary, derived from the judges (and indirectly from the monarch).17 The Inns are thus responsible for the accreditation of barristers. The General Council of the Bar, like the Inns of Court, has no statutory foundation, but was created by consent of the Bar itself and is the elected governing body of the Bar. The functions of the General Council include establishing and implementing policy and the maintenance of standards, honour and independence of the Bar. Barristers have rights of audience in all courts.

The regulatory body for solicitors is the Law Society. The Law Society has statutory powers in respect of all solicitors. The Solicitors Act 197418 is a consolidating act prescribing the standards of conduct and the rights and responsibilities of solicitors. These had been established by the courts over a very long period of time. No person may be admitted as a solicitor until he or she has obtained a certificate indicating that the Law Society is satisfied that that person has completed the appropriate legal education and training and that the person

17Walker R, Note 3, p266 the Inns of Court are described as having originated as living quarters for the very first professional advocates.
18Solicitor’s Act 1974 c47 (Solicitor’s Act)
is of good character. In order to practise as a solicitor, the person must then have his or her name entered on the Roll of Solicitors and have a current practising certificate.\textsuperscript{19} Rights of audience for solicitors before the courts and tribunals depend on either statute, regulations, custom or usage. The AJA has extended those rights to the higher courts.

Legal professionals do not have the monopoly on giving legal advice, except for a few categories reserved to qualified personnel (including barristers and solicitors) by statute. These include the transfer of real property,\textsuperscript{20} matters involving succession and the representation of clients in court.\textsuperscript{21} It is an offence, however, for an unqualified person to act as a legal practitioner.\textsuperscript{22}

**PROBLEMS OF DEFINITION FOR PARALEGALS**

Historically, the term *paralegal* has not been commonly used or recognised in the United Kingdom (UK). Lawyers and laymen alike would more usually have used the other terms, *clerk* or *managing clerk*, rather than the generic *paralegal*, which does not appear to have been widely used until the last decade of the twentieth century. Sidaway and Punt indicate that the paralegals that participated in their 1993 survey had

“a wide range of job titles, both in terms of description of their work and their status (executive”, “clerk” etc.) These included:

- legal executive
- trainee legal executive
- conveyancing executive/assistant
- legal assistant
- clerk/general clerk
- probate clerk/executive/manager
- legal/paralegal secretary
- litigation assistant/clerk
- accounts clerk
- matrimonial clerk

\textsuperscript{19} See *Solicitor’s Act 1979*, ss 1,2,3
\textsuperscript{20} Although the *Administration of Justice Act 1985* provided for the creation of Licensed Conveyancers, so this is now a “semi-monopoly”.
\textsuperscript{21} See *Solicitor’s Act 1979*, ss20-27
\textsuperscript{22} Note 21
Research conducted by this writer at the Library of the Law Society in London, and electronically, revealed the necessity to search under all of the above terms in order to ensure coverage of the topic. Unlike in the US, where the term paralegal has been a commonly understood term for some decades (even if there is still some controversy), in England non-lawyer legal professionals have been known by many different terms, depending upon that part of the legal profession in which they practice. A widely used term is that of Legal Executive, which covers all those staff or clerks who, although not admitted to the court as a lawyer, are, nevertheless, engaged in fee-earning work. This term has supplanted the older Solicitor’s Managing Clerk. Zander referred to them as “unadmitted clerks” in his 1978 book, which examined community legal services. The term trainee solicitor is sometimes used interchangeably with paralegal.

In 1982, Johnstone and Flood, wrote that, “[i]n England they are often styled clerks or legal executives.” Johnstone and Flood were careful to define paralegals as “law office employees who have not qualified as lawyers but who perform legal tasks also performed by lawyers and who are under the general supervision or control of lawyers” - such definition being consistent in both England and the US. Indeed, it is possibly because theirs was a comparative study that the term paralegal was adopted instead of clerk or legal executive. Accordingly, however, several groups of non-admitted law office workers, such as law students working in offices as interns or clerks (over the summer period or some other specified time) are not included in their study. Nor are barrister’s clerks included, given that their duties are managerial/administrative, and not fee earning or of a legal nature. It is consistent to exclude barristers’ clerks.

By 1997, Sidaway and Punt acknowledged that “the word paralegal, imported from the US, is widely used,” and it was adopted in their report to refer to

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27 Johnstone Q and Flood J, “Paralegals in English and American Law Offices” (1982) *2 Windsor Yearbook of Access to Justice* 152, p153 “Lawyers” in the UK context refers to persons admitted as either a barrister or solicitor
28 Sidaway J & Punt T, Note 23, p1
“non-admitted staff, employed in private practices, who spend at least some of their time on direct fee-earning work. They are distinguished from other managerial, administrative and clerical staff by their involvement in fee-earning work- although they may or may not have formal qualifications.”

For the same reasons as Johnstone and Flood, therefore, they also confined their study to assistants in solicitors’ offices and not barristers’ offices.

However, there is further complication to the understanding of the term *paralegal*, as there is evidence that the word is also used to refer to fledgling lawyers, *Trainee Solicitors*. Such people may have finished their degrees but not successfully completed the qualifying practical course and training component, which is a necessary prerequisite to admission to court. Contracts for these Trainee Solicitors are not always easy to find. According to an opinion piece in *The Lawyer.com*, “Competition for the elusive training contract has never been tougher. The extent to which the student and would-be solicitor must strive to stand out above the deluge of other candidates for any law-related job is a testament to the professions enduring attraction.” Consequently, “[o]nce the preserve of the non-graduate, increasingly those with legal qualifications who are waiting to find the right training contract are taking refuge as paralegals.”

Accordingly, in this work, the essential elements of the term, *paralegal*, as they relate to England and Wales, are that a paralegal is; firstly, not admitted as either a solicitor or barrister; secondly, engaged in fee-earning work; and, thirdly, engaged in work of a legal nature. The term *paralegal* can, therefore, refer to several classes of person ranging from a person possessing academic and vocational legal qualifications to a legal secretary involved in some fee-earning work, but whose role may be both administrative and of a legal nature. It excludes barristers’ clerks because the nature of their work is administrative and does not satisfy the third criterion. Importantly, however, such a definition encompasses those paralegals working outside law firms - provided they are engaged in work of a legal nature.

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29 Sidaway J & Punt T, Note 23, p1
However, whatever they have been called and whatever role they are assigned, the Institute of Legal Executives (ILEX) is quick to say that, “The concept of the ‘Paralegal’… is here to stay.” (emphasis added)\(^3\) and even a casual glance at the “positions vacant” advertisements reveals that employers are seeking *paralegals* (not clerks or legal executives) and that they are in much demand.\(^4\)

**THE ROLE OF PARALEGALS IN ENGLAND AND WALES**

*An Historical Perspective*

According to Johnstone and Flood, who confined their study to legal support staff in solicitors’ offices,\(^5\) there is a long history of extensive reliance on paralegals in England. It is much longer than that of the US law offices. Called *solicitors’ managing clerks*, they were an integral part of solicitors’ private practices for centuries. There are records of the existence of solicitors’ managing clerks from the nineteenth century\(^6\) and they were glorified in literature from the same era.\(^7\) The first association of such clerks was formed in London on 2nd August, 1892 at a meeting called by William Briggs, a managing clerk to the firm of Messrs Walters, Deverell and Co. The records show that Mr Briggs had heard a rumour that “certain proposed changes were to be made to the Rules of the Supreme Court, one of which would have the effect of taking away from a solicitors’ managing clerk his right of appearing before judges in chambers, masters and chief clerks.”\(^8\) The rumour proved to be unfounded but at the meeting that was called, the 291 managing clerks in attendance voted to establish a professional association - Solicitors’ Managing Clerks’ Association (SMCA). A report of the meeting, and the speech made by Briggs, appeared in the *Law Gazette* of 19th August, 1892.

“The immediate object of the meeting would, he trusted be the formation of a mutual protective Association (cheers). It could not be denied that managing clerks formed an important class. They were a recognised class, and had very responsible business to transact. They were a numerous body, there being in London alone, over 1,000. They were an important body too (Hear, Hear) for they often advised, and were entrusted with the secrets of their principals’ clients, and

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\(^4\) A search using the engine “Google”, utilizing the strategy “UK paralegal law” (19 November 2003) returned in excess of 30,000 hits, the vast majority being for specialised recruitment services and individual advertisements for jobs, vacancies and appointments.

\(^5\) See Johnstone Q & Flood J, Note 26, p153

\(^6\) Johnstone Q & Flood J, Note 26, p173

\(^7\) Most notably Charles Dickens created the character of Uriah Heep in his novel, *David Copperfield*

\(^8\) Murray J, “A Short History of the Solicitors’ Managing Clerks’ Association.” (1950) *Nov The Solicitors’ Managing Clerks’ Gazette* 112, p112 This article was serialised and appeared in subsequent issues
rarely moreover, he was proud to add, was there a case on record of such secrets being betrayed, or the confidence reposed in them being abused (loud cheers).”39

They were, indeed, “an important body”, such that proportionally there were even more managing clerks to solicitors in English law offices at the time, and certainly more proportionally than were in American law offices.40 The body became more important, too, over time, being strengthened by the establishment of the SMCA, which continued as a professional association until 1963 when it was transformed into the Institute of Legal Executives (ILEX). During its time, the SMCA was active in supporting and finding work for its members, preparing submissions to various government inquiries and promoting the “furtherance of legal education.”41 It is noted that between 1899 and 1902 there had been a series of lectures given (35 in all), and during the 1920s classes were held for the benefit of juniors in the profession. In line with its original objective of improving the status of the profession by establishing some form of certification, and concerned because of a post World War II shortage of new clerks, the association submitted a scheme of examination and certification to the Law Society, and certifying exams began in 1949.42 Other similar associations were formed too, many of them located outside of London. Murray records that, “Arising out of the economic and social change wrought by the first world war was the formation of the National Federation of Law Clerks, with which, for some years the Solicitors’ Managing Clerks’ Association was connected.”43 The connection with this group, however, was discontinued because it was felt that their activities bordered on “trade unionism” which contradicted their professed apolitical stance.

They were a “numerous body” too, with more than 1,000 members in London alone in 1892. Ninety years later, by 1982, according to Johnstone and Flood, their precise numbers, however, were difficult to estimate, partly because “[i]n actual practice, distinctions between paralegals and other support staff [were] often blurred”.44 It is estimated, for instance, that there were 75,000 solicitors’ managing clerks in 1939, however, there is evidence of a decline in numbers following World War II with “the increasing shortage of young people entering

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39 Murray J, Note 38, p112
40 Johnstone Q & Flood J, Note 26, p153
44 Johnstone Q & Flood J, Note 26, 174
the legal profession.”45 By 1965 there were only 30,00046 clerks (now called legal executives), and a mere 20,000 in 1976. Reasons posited for the decline in numbers of these clerks/paralegals were that law firms appeared to be relying more on the services of associate lawyers, whose numbers were increasing rapidly.47 In 1993, Sidaway and Punt conducted a survey into the work of paralegals in solicitors’ offices and wrote, “Our best estimate of the number of paralegals working in private practice in England and Wales at the time of the survey was 25,000.”48 According to this data, the number of paralegals had remained relatively static for the past twenty years. There is no data available for the number of paralegals working outside of legal offices.

In 1982, Johnstone and Flood asserted that “no thorough study has ever been made of managing clerks and other English paralegals or their roles within the legal profession.”49 Even an earlier study by the Royal Commission into Legal Services had failed to examine the role of paralegals in detail. This was despite the evidence of history, which indicated the substantial and continual reliance which had been placed on the services of paralegals in legal offices in England. Zander, writing in 1978, for instance, says that, “For more than a century solicitors have used non-solicitor staff to perform lawyer’s tasks on a massive scale. Unadmitted staff clerks known as managing clerks and today as legal executives, today provide something around a quarter of the profession’s total man-power on legal matters.”50 Consequently, given the paucity of information, the study by Johnstone and Flood (which also draws useful comparisons with the US) is of significance in any inquiry into the role of paralegals in England as are the couple of chapters in texts (published decades earlier) that had briefly discussed the work of non-lawyers within the system.51 The Sidaway and Punt Research Paper is the only contemporaneous and dedicated investigation (although it was confined to within legal offices). The Taylor Root Survey of 200152 augments that information by providing data and comparing the working conditions of paralegals employed in both English (London) firms and the London offices of US firms. There are also many

45 Murray J, Note 42, p160
47 Johnstone Q & Flood J, Note 26, pp172-3
48 Sidaway J & Punt T, Note 23, p1
49 Johnstone Q & Flood J, Note 26, p172
50 Zander M, Note 25
51 See Zander M, Note 25, for instance
shorter articles and journalistic pieces which provide some valuable background information, but no in-depth analysis.

**Paralegal Practice Today**

Non-lawyer professionals have been working in solicitors’ offices for far more than a century. The picture painted of their working conditions by Elizabeth Cruikshank is both quaint and colourful, indicating a very labour-intensive industry. It seems that for the first few decades of the twentieth century, [d]espite the availability of typewriters, conveyances…were still laboriously drafted in good copperplate hand and not until 1919 did the Society [the Law Society] draw its members’ attention to the convenience of sending carbon copies of drafts to other solicitors.”53 And later, referring to the year 1957 she wrote that, “At that time, even in London, many clerks still worked at Dickensian high desks and stools in offices heated…by smog-producing full-tar coal fires.”54

The work that paralegals perform today within law firms clearly depends upon the skills and education of the individuals, but routinely includes working in more than one area of law, “[t]heir main areas of specialisation [being] residential conveyancing, family and matrimonial work, personal injury, wills and probate and crime”55 There is also evidence that, in London at least, they work in areas concerned with the laws of finance, banking, construction, corporations, the European Community, competition, employment, information, insolvency, insurance, intellectual property or technology, property, shipping, aviation and taxation.56

The Sidaway and Punt study of 1997 reported the following:

“Three-quarters of solicitors in firms with paralegals said that their paralegals sometimes conducted the first interview with clients and nearly half that they conducted all first interviews for their own cases. . .Paralegals spent about three-quarters of their time, on average, on fee-earning work. The rest of the time was spent either on general administration or on secretarial work…or on other non fee-earning tasks such as accountancy. . .

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55 Sidaway J& Punt T, Note23, pv
Around half of all paralegals spent some time on tasks associated with litigation...

The Taylor Root Survey of 2001 goes further and provides the following job specifications for, and distinguishes between, three types of paralegals:

**1. Temporary/Administration Paralegals**
Most commonly found in large departments, this role is primarily administration based, and these paralegals are usually hired on a short term, temporary or project basis.

Responsibilities include: photocopying, faxing, filing, proof reading, creating bibles, inputting information, document relevance review, due diligence, data room supervision/creation, document coding, indexing, preparing trial bundles, paginating, searches, outdoor clerk work.

**2. Permanent Paralegals/Legal Assistants**
For these roles, the level of responsibility is greater than that of the temporary/administration paralegal. However, within this group there is still a wide variety of responsibilities depending on the department and size of team the paralegal is working in. A trend towards calling paralegals with more experience and responsibility ‘Legal Assistants’ has begun in an attempt to try to differentiate between the extremes.
Generally within this group responsibilities may include: the general paralegal duties stated above, liaising with clients, opposing parties, and outside counsel; working closely with partners and senior fee earners; drafting and preparing agreements or correspondence; responsibility for post-completion matters; company searches, legal research, document management and/or project management; supervising and/or recruiting other paralegals; opportunity to be seconded to overseas offices; receiving in-house or external training.

**3. Senior Paralegals/Paralegal Managers**
This is a small but growing group, and at this level paralegals tend to have exposure to a higher quality of work. It can often involve management elements as well as legal, including the co-ordination of a team of paralegals. This can

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57 Sidaway J& Punt T, Note 23, pxii
entail the distribution of work, training, supervising, recruiting, and overseeing the administration of overtime, holidays, etc. US firms are more likely to have Paralegal Managers and they tend to recruit these from external sources.”

Since 1987 solicitors have also had to compete with Licensed Conveyancers for real estate work. These conveyancers were created under Part II of the *Administration of Justice Act 1985* in response to public pressure for the solicitors’ monopoly to be broken and for the provision of cheaper conveyancing.59

Unlike the US, where paralegals are strictly proscribed from the unauthorised practice of law, paralegals in England have traditionally performed duties that in the US would be prohibited. This is evident when we consider the work performed by paralegals outside of the solicitor’s office. In 1978 Zander stated, “The English legal profession, unlike its counterparts in some countries, enjoys no monopoly over the giving of legal advice…” and included other professionals such as accountants and unadmitted staff in solicitors’ offices as sources of such advice. Many paralegals also provide immigration advice, whether they are employed in legal practice or in the not-for-profit sector. By the mid-70s the giving of legal advice was also a thriving business in the Community Advice Bureaux (CABx), law centres and independent advice agencies. Partington claims that in 2001, “Around 6,000 people with a variety of qualifications work in these agencies, supported by nearly 30,000 unpaid volunteers. They deal with over 10 million inquiries [sic] each year…."

It is clear that paralegals have been working (and continue to work) providing service to the wider community – such as in neighbourhood advice centres. Paralegals working in this sector are providing services to people in the lower socio-economic strata of society. The CABx, for instance, were established in 1939, in response to the needs of citizens during the

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59 Kerridge R & Davis G, Note 11. The writers make the point that their monopoly having been broken, this provided the impetus for the Law Society to press for extended rights of audience for its members into the higher courts to substitute for its loss of the lucrative conveyancing monopoly.
60 Zander M, Note 25, p298
63 Zander M, Note 25, p298. Michael Zander includes a long list of community based centres where paralegal (or non-lawyers) work.
war, and they have continued to provide advice and assistance ever since. According to the CAB website,

“There are over 2,800 locations where CAB advice is regularly available [sic] in England, Wales and Northern Ireland. Each CAB is an independent charity, relying on funding from the local authority and from local business, charitable trusts and individual donations. There are now nearly 25,000 people working in the Citizens Advice service. Seventy nine per cent are volunteers. They include CAB advisers, administrators and trustee board members.”

Many of the workers at the various bureaux throughout the UK are paralegals who provide advice and representation for clients in tribunals in certain categories of welfare law. In other cases where the client needs specific legal help, they can be referred to lawyers, who are paid under the new Community Legal Service scheme.

The changes wrought to the civil justice system and to the ways of delivering legal services to the poor (legal aid) during the 1990s need to be seen against a backdrop of “increasing criticism that the courts were failing to provide what was needed by the citizen….” and that at the time “the Government was paying more and more for a scheme [legal aid] that was benefiting fewer and fewer.” The AJA, which commenced in 2000, effectively abolished the existing legal aid scheme and replaced it with a scheme orchestrated by a new body - the Legal Services Commission (LSC). The LSC is divided into two: the Community Legal Service (CLS) and the Criminal Defence Service (CDS).

The CLS was required to build on the existing framework of services, such as CABx given that their network was “local”, but to improve upon delivery. Legal services are provided on the basis of contracts made between the CLS and various entities for funding. It is intended that only individuals (who satisfy means tests and other cost-benefit criteria) will be funded, although this does not extend to hearings for either coroners’ courts or tribunals. One of the objectives of the scheme is for agencies such as CABx to provide initial legal advice about how the law applies in certain circumstances. Partington claims that the “scheme funds the provision of services by lawyers (as did the former legal aid scheme) but also extends to

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65 Partington M, Note 62
certain services provided by non-lawyers” provided they meet a certain standard of quality. Partington also makes three important points about the scheme – all of which have positive implications for paralegals working in CABx or other service providers. Firstly, he indicates that the provision of advice at an early stage in any problem is likely to be cost-effective. Secondly, the recognition of a role for non-lawyer agencies is important. “There is much evidence to suggest” he writes, “that in important areas, levels of expertise on, for example, welfare rights or tribunal representation are actually much higher amongst those without a professional legal qualification.” Thirdly he applauds the structure of the new service which provides a more geographically diverse delivery (a network of local centres), thereby increasing access to justice to those who need it most, where they need it most. It seems that the new scheme greatly expands the opportunity for suitably qualified paralegals working in this sector.

Further change to the civil justice system relates to representation in courts and not just tribunals. This change was enabled by several pieces of legislation which were enacted during the 1990s and which were intended to open up advocacy to the layman. Reform started with section 11(1) of the Courts and Legal Services Act 1990 (CLSA), which provided that in certain limited categories of cases, where ordered by the Lord Chancellor, “there shall be no restriction on the persons who may exercise rights of audience.” Clearly “this seem[ed] to contemplate that, for example, those lay agencies that now provide representation in certain categories of welfare law before tribunals…are among those that who may be able to take advantage of the new rules.” The wording of the section is certainly wide and would suggest that there was to be a much expanded class of advocates. The lawyers (not just barristers), on the other hand were keen to “prevent the arrival of large numbers of barrack room lawyers in the courts…” By 1999 it was evident that there was not going to be quite such an “arrival”.

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66 Partington M, Note 62. See Partington’s Footnote 20, and Legal Services Commission, “Quality Mark.” http://www.legalservices.gov.uk/qmark/index.htm The types of services provided include legal services and mediation.

67 Partington M, Note 62


Instead the AJA combined to provide for a grant of rights of audience to a more contained class - certain legal executives - in the lower courts. Part II of the CLSA had been drafted in accordance with the findings of several government inquiries and states that it makes provision for “new and better ways of providing legal services and wider choices of persons providing them”. This is significant because it also provides that the criteria to be used to determine such a grant were to be by reference to educational and training qualifications, membership of a professional body and relevant rules of conduct. This left the way open for professional bodies (“authorised bodies”) other than the Law Society and the Bar Council to be included and to propose candidates. In 1999 the AJA amended section 28 of the CLSA to specifically include ILEX as an “authorised body” under the act, such that the Institute can now grant suitably qualified Fellows certain rights of advocacy in the lower courts of the U.K. To date, twenty-five Legal Executive Advocates have been qualified by studying and passing the Rules of Evidence Advocacy Scheme. They are allowed to appear in civil and family proceedings in Open Court in the County and Magistrates Courts. In the County Courts their rights are restricted to “matters within the jurisdiction of a District Judge and any matter in which the liberty of the subject may be at issue is excluded in the County and Magistrates Courts. There are also rights to appear before most tribunals and the option to obtain a further certificate in respect of coroners courts proceedings. These rights are additional to existing rights to appear in Chambers in the County Court and High Court.”

Thus the issue of the extension of rights of audience had been inextricably bound up with issues of government funding (the CLS scheme) and the proposed extension of rights of advocacy for solicitors. Understandably, it was the barristers who felt most threatened given that their monopoly on advocacy in the courts looked to be diluted by not only solicitors but others as well. The CLSA was passed in 1990 after which Partington wrote that, “Implicit in the statutory objective is the proposition that legal services, as opposed to lawyers services do

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73 Solicitors’ Managing Clerks apparently had the right of appearing before judges in chambers, masters and chief clerks in 1892 and other non-lawyer advocates have had rights of audience in various tribunals for several decades.
75 Partington M, Note 70, p706
not necessarily have to be performed by lawyers...It opens up the possibility not only that there will be greater competition between the two branches of the legal profession, but also that other professional groups will find it easier to compete in this sector of the service market.”

At the time of his writing, no other professional group had taken up the opportunity. This was to change.

The appointment of what the legal profession calls “lay advocates” is not without controversy. During the 1980s, the Lord Chancellor’s Department generated several discussion papers (Green Papers) about the work and organisation of the legal profession. Reform of the legal profession appears to never stand still. Following the passing of the CLSA, there was further discussion about the rights of audience in yet another consultation paper, which followed the CLSA, and again the issue of solicitor advocates was the hot topic. With only twenty-five appointments of ILEX advocates to date, it remains to be seen if this area of practice will expand greatly in the UK.

**WORKING CONDITIONS, SALARIES AND GENDER ISSUES**

At the beginning of the twentieth century in England and Wales it is estimated that there were some 16,000 practising solicitors in a population of 32.5 million. Entry to the profession was limited to the sons of those wealthy enough to pay master solicitors for articles. They were not paid a wage, but expected to subsist on their parents’ generosity. Further, “In 1903, female secretaries were a novelty, with probably slightly more than 100 female clerks in solicitors offices; non-legally qualified staff were predominantly male clerks who might over time gradually acquire many of the skills of a solicitor without the commensurate risk and reward.” Very experienced managing clerks could command high salaries of between £100 and £150 a year, but these were not the norm. Nor were women admitted to articles until the passing of the *Sex (Disqualification) Removal Act 1919.*

Over the twentieth century, payment for articles ceased as more and more solicitors obtained qualifying degrees. The salaries of the non-admitted and managing clerks also rose (in line

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79 Partington M, Note 70, p707
80 See comment Smith R, Note 78, p535
82 Cruikshank E, Note 53
83 Cruikshank E, Note 53
with general salary rises) and the gender balance in legal offices swung from one side to the other as women replaced the predominantly male secretaries and clerks and a handful of women were admitted to practice. Indeed, Rose indicates that, in 2003, the perception that law “may be…a profession dominated by white men “flies in the face of reality””.

Importantly for paralegals, salaries would appear to be more than just a living wage although exact figures are hard to come by. The TMP Worldwide Lawyer Salary Survey 2002 reveals a disparity between those paralegals working in the city of London and those in regional law firms. Both Trainees and paralegals earned on average £27,000 if they were working in London, as opposed to £17,000 and £14,500 respectively if they were working in the regions. Neilson reports that “things have never been so good for non-solicitor fee earners at law firms…. most of whom enjoy salaries ranging from £17,000 to £26,000, while US firms in London pay their paralegals around 15% more. Top UK paralegals can even demand between £40,000 and £50,000.” Just what part has been played by the entry of the big US firms into the market is not possible to assess, but it is the view of this writer that it is significant. The Taylor Root Survey, for instance, found that paralegals working for London based US firms were paid more, were more likely to receive bonuses and were more likely to progress their careers.

A real problem, however, would appear to be that unlike Trainees, who are protected by their professional association, the Law Society, most paralegals only have the protection of the general law. This is even though they may be doing the same work as Trainee Solicitors and subjected to the same amount of pressure and stress. They are considered by many employers to be “cheap labour”. The Trainee Solicitors Group has been active in support of paralegals who they see as being vulnerable. They claim to provide “pastoral care”, training support and

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84 Cruikshank, in her article “In the shadow of war.” (2003) 100:29 Law Society Gazette 24, claims that by 1944 there were 164 female solicitors. By 1980 the number had risen to 27.6% of all new solicitors; there were 55.6% of 111,372 solicitors on the roll in 2003. See also Cruikshank E, “Under the spotlight.” (2003) 100:36 Law Society Gazette 28
85 Rose N, “Hungry for change- women and ethnic minority solicitors are challenging the bastions of the profession.”(2003) 100:34 Law Society Gazette 20
87 Described as “High Street” practices
88 Neilson S, “Executive Stress – as legal executives aim for parity with solicitors, paralegals are having a harder time.” (2003) 100:3 Law Society Gazette 24
90 Neilson S, Note 88 and see also “Paralegals: opportunity or exploitation” http://www.thelawyer.com (accessed 14 November 2003)
guidance as well as lobbying for salary increases.\textsuperscript{91} Those that have followed the alternative route and are members of ILEX, rely on that association. However, unlike in the US where there are many active professional organisations, the most appropriate (and specific) professional organisation available to protect paralegal interests and to lobby on their behalf is the National Association for Paralegals. According to their website,\textsuperscript{92} they are the only organisation which “caters solely for the career paralegal” and that since 1987, 6,700 members have sat for the qualification of Associate Member. It is also worth noting that the objectives of the organisation which are:

- to provide for the qualification of its Student Members as Paralegals
- to provide for the career development of its qualified Members,
- to regulate the Paralegal profession,
- to disseminate information on matters of professional interest,
- to represent, promote and express the collective interests of its Members,
- to act as a consultative body on all things concerned with Paralegalism,
- to provide a forum for all matters affecting the interests of its Members,
- to provide opportunities for social contacts amongst Paralegals”\textsuperscript{93}

THE EDUCATION OF PARALEGALS IN ENGLAND AND WALES

Given the prominent role that paralegals continue to play in the delivery of legal services in England and Wales, the education of paralegals assumes great importance. A most important provider of paralegal education is ILEX, which has a great number of members and has provided quality education and established ethical guidelines for its members under the auspices of its parent body – the Law Society. ILEX has been so successful, in fact, that it is now recognised as being on an equal footing with the General Council of the Bar and the Law Society. It was only because of its strength that ILEX was specifically included in the AJA legislation. The “criteria’ that have been used to determine whether a professional body could be included as an “authorised body” includes their education and ethical regulation through ILEX.

\textsuperscript{91} See Legalweekjobs.com, \url{http://www.legalweek.net} (accessed 14 November 2003)
\textsuperscript{92} National Association of Paralegals (NAofP) \url{http://www.nationalparalegals.com/0_Strategic_Plan_for_National_Association_of_Paralegals.htm} (accessed 11 August 2005)
The study conducted by Sidaway and Punt has provided data by way of a survey of all types of paralegal staff, including legal executives, in private practice firms in England and Wales. It is a narrow but valuable focus and pays particular attention to the education and qualifications of the paralegals who were the subject of their survey. According to their survey, “40 per cent of the paralegals interviewed finished their full-time education aged 16. Only 13 per cent attended higher education.” Further “In…1996…a panel study of solicitor firms asked whether, since January 1995, they had recruited as paralegals any graduates who had completed the Legal Practice Course (LPC) or the Law Society’s finals. Only 10 per cent had done so.”\textsuperscript{94} The author of the article from The Lawyer.com claims that the situation has changed radically since 1995, such that the majority of applicants for paralegal positions in the city of London are now “post-graduate LPC students who hope to procure a training contract or gain experience.”\textsuperscript{95} This is certainly one training/education route available to paralegals.

As in the US, the provision of training courses for paralegals is competitive. Clearly ILEX is a major provider. As already detailed, there had been an association of managing clerks since 1892 (Solicitor’s Managing Clerks Association or SMCA) and in 1963, ILEX was created under the auspices of the Law Society replacing the older SMCA. As a professional body, ILEX claims representation of some 22,000 Legal Executives\textsuperscript{96}. It has also developed an educational and training scheme, which it administers through Further and Higher Educational facilities throughout the country\textsuperscript{97} or by distance education. Associated with this institution is the ILEX (Paralegal Training) Ltd (ILEX (PT)) program, which “extends the opportunity for legal training qualifications to all people employed, or seeking employment, in a variety of areas, where knowledge of law is required - not just for those employed in solicitor’s offices.”\textsuperscript{98} This is vocational training for non-lawyers but it is a feature that training through the ILEX or ILEX(PT) courses also provides opportunity for students to progress into the study of law.

The claim by ILEX that they are the biggest provider of paralegal programs in England and Wales would seem well founded given their association with the Law Society (which is the

\textsuperscript{94} See “Getting real”, Note 32,(accessed 14 November 2003) In-Depth Analysis dated 14 May 2001
\textsuperscript{95} See “Getting real”, Note 32, (accessed 14 November 2003) In-Depth Analysis dated 14 May 2001
\textsuperscript{96} See Nielson S, Note 88, for confirmation of these figures.
\textsuperscript{97} ILEX Brochure, such information is also available at their website, http://www.ilex.org.uk
\textsuperscript{98} See earlier discussion on page 4 of this article, and Zander M, Note 25.
professional body for solicitors) and if we include all of the membership grades.\(^ {99}\) The Sidaway and Punt study, for instance, indicated that 83% of the firms surveyed had a policy to encourage and subsidise study for ILEX examinations, although at the time of the survey 46% of the paralegals did not have ILEX qualifications.\(^ {100}\) Typically a student would be required to complete study of both theoretical law subjects as well as practice oriented subjects over a period of two years (part-time). The ILEX qualification is supported by the Qualification Curriculum Authority and the Further Education Funding Council and in 1995 Fellows of ILEX became qualified to act as Commissioners for Oaths.\(^ {101}\) The ILEX courses are regulated by the Teaching and Higher Education Act 1998 (U.K.) and its associated delegated legislation, Statutory Instrument 1999 No.163 (The Education (Inspection of Vocational Training)(Prescribed Persons or Bodies Awarding or Authenticating Vocational Qualifications) Regulations 1999. This further assures the delivery of quality educational courses. The courses offered by the Institute of Paralegal Training are also regulated under this Instrument, however, this institute would appear to be a far less significant provider of paralegal education with very little mention being made of them in the literature. There may be several reasons for this but chief among them must be that ILEX is well established and better known.

Not all paralegals are seeking articulation into a course of study which would lead to qualifications as a legal practitioner. Such a lengthy course of study is often unnecessary to fulfil career aspirations, adding years of study and much expense. Accordingly, an alternative is offered by the National Association for Paralegals\(^ {102}\) which was established in 1987. This organisation provides various levels of training - Higher Certificate in Paralegal Studies, Advanced Award in Paralegal Studies for the Voluntary and Community Sector, Fellowship Award, Post Graduate Diploma in Paralegal Practice, or, Legal Secretaries Diploma. Students are assessed through the National Open College Network. Qualifications can also be obtained by distance learning. The National Association for Paralegals does not, however, provide an

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99 There are 3 grades. Fellows of ILEX have completed their membership examination, have 5 years experience in a legal office and are at least 25 years old. Members of ILEX have completed the examination but have neither the experience and/or attained the age of 25. Students of ILEX have enrolled but have not completed their examination.
100 Sidaway J\& Punt T, Note 23, pxiii
101 These are people who are appointed by the chief judicial officer (Lord Chancellor) to administer oaths. A client may, for instance, need to swear that a document is true and accordingly a Commissioner for Oaths will advise that client of the importance of the document and of the consequences if the statement is untrue. The Commissioner would then witness the signature of the client. Formally this was a role only for solicitors.
102 See National Association for Paralegals (NAofP), http://www.nationalparalegals.com (accessed 19 November 2003) for further details of this association.
educational stepping-stone to becoming qualified as a solicitor, which is in contrast to the ILEX courses.

Content of the courses on offer appear to be both practical and rigorous. The Higher Certificate in Paralegals Studies, for instance, requires that the student complete five units of general principles of the law (including The English Legal System, contracts and torts law) and a further five “procedural” law units (including conveyancing and matrimonial law). The Post Graduate Diploma in Paralegal Practice (PPC) is designed specifically for those graduates who cannot obtain Training Contracts and who decide to seek employment as a paralegal instead. The PPC is advertised as a practical course which includes study of the skills of interviewing, advocacy, drafting and negotiating. It is worth noting that the Advanced Award in Paralegal Studies for the Voluntary and Community Sector includes the unit, Civil Litigation and Employment and Welfare Tribunal Practice and Advocacy, in its course curriculum.

There are also many other private providers,\textsuperscript{103} whose courses appear to be closer to on-the-job training than recognisable qualifications.

Sidaway and Punt believed that younger and newer paralegals are more highly qualified than previously. This is chiefly because the numbers were skewed by the trend to employ graduate lawyers as paralegals.\textsuperscript{104} Of the other non-graduates, 54\% had qualifications from ILEX, which features as the prominent professional body and the main provider of courses. Membership of other associations or professional bodies was recorded as being very low\textsuperscript{105} at the time of their survey.

\textbf{SOME CONCLUSIONS}

Although non-admitted legal professionals have been a part of legal practice in England and Wales for far longer than in US, the number of paralegals in proportion to legal practitioners did not appear to grow throughout the twentieth century. Indeed it is most likely that their numbers declined. The most likely explanation for this would appear to be twofold. First is the change in technology - the old-fashioned clerk is no longer laboriously copying the

\textsuperscript{103} See, for instance, the ten-percent co.uk. courses at \url{http://www.ten-percent.co.uk}
\textsuperscript{104}Sidaway J& Punt T, Note 23, p13. According to their report, 1/10th of the 423 firms surveyed had employed graduate lawyers, and of the larger firms this number increased to ¼.
documents while perched on a high stool. These clerks were replaced by a mostly female cohort of secretaries using typewriters. The widespread use of computers in all offices (including legal offices) further reduced the need for clerical personnel. The second explanation relates to the increasing numbers of qualified personnel and the use of both trainee and newly admitted solicitors to perform the work traditionally reserved to the clerks, such as appearing in magistrates courts, filing court documents or collecting debts, for instance.

However, it would seem that although the raw numbers of paralegals may have declined, the nature of their work has expanded. Accordingly, in the twenty-first century we may find a renaissance of paralegalism. It remains to be seen. The nature of legal work and the manner of its delivery is changing. First, there is confusion between the roles of Trainee Solicitors and paralegals, and evidence suggests that the economic times seem to favour paralegals who are now seen as a fiscally responsible alternative to a new solicitor by employers who are keen to deliver cost-efficient legal services. Further, paralegalism is being promoted as the “third arm of the legal profession” and both work and educational opportunities are evident. As stated earlier, it is not possible to determine the importance of the role that has been played by the large US legal firms who have entered into the UK market. Such firms undoubtedly brought with them a culture of using paralegals and of using them in a particular way – based upon paralegals’ experience and education. The proportion of paralegals employed to qualified personnel may also be significant but is unknown by this writer and is well beyond the scope of this work.

Recent developments may also increase the visibility of paralegals and provide potential for growth of the profession in England and Wales. The first is the expansion of educational programs specifically tailored to paralegal needs. The second development involves the changes to the civil justice system and to the attempts by government to increase access to justice. Such changes opened up advocacy in the courts, changed the system of legal aid and provided for greater involvement of non-lawyers in the community legal sector. The

105 Sidaway J & Punt T, Note 23, p15
106 This general presumption, that paralegal services are considerably cheaper, may be unfounded. See Moorhead R, Sherr A & Paterson A, “Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales” (2003) 37:4 Law and Society 765
“vibrancy” of paralegal involvement in the community sector would appear to be in contrast to the US.\textsuperscript{108}

There is recognition of a broadening of the profession. A great many paralegals now work outside of the law firms. They are working in a legal environment (but not in a legal office) and are seeking knowledge of law underpinned by appropriate qualifications. The courses on offer by the National Association of Paralegals and ILEX(PT) reflect this. The opportunities for work for paralegals abound, as a recent search by this writer revealed.\textsuperscript{109} They are varied and disparate. The challenge appears to be that they are viewed as cheap labour in some quarters with all the attendant problems that this brings. However, paralegals in England and Wales, like their counterparts in the US, are part of an identifiable profession, and their strength needs to be maintained and nurtured by their professional associations and the quality of the educational programs on offer.

\textsuperscript{108} This may be because, as Abel suggests “the institutions of civil society are relatively underdeveloped” in the US with little commitment by government to welfare and legal aid. Abel R, “Big Lies and Small Steps: A Critique of Deborah Rhode’s Too Much Law, Too Little Justice: Too Much Rhetoric, Too Little Reform.”(1998) 11 Geo J Legal Ethics 1019, p1024

\textsuperscript{109} A search using Google with the strategy of <UK paralegal law> dated 11 November 2003, returned over 30,000 hits
CHAPTER 4
PARALEGALS IN AUSTRALIA

This chapter examines the roles that paralegals play in the delivery of legal services in Australia and the education available to support such roles. Chapter Two described paralegalism in the US, where it is vibrant and growing in both number and importance, although given the huge differences as between the various states, it is trite to describe paralegalism in that country as monolithic. It is anything but. Comparisons and similarities were then drawn with paralegals in England and Wales, in Chapter Three, where law offices have made extensive use of them for several centuries—for a much longer period of time than in the US.¹

This chapter focuses on Australia, which is another common law country but a smaller and newer jurisdiction than both of those previously discussed. The structure and regulation of the legal profession have an impact in determining who is a paralegal in Australia. Accordingly an explanation of these is necessary. Moreover, the structure and regulation of the legal profession has been underpinned by the Australian political structure, which again invites a brief summary.

Unlike the US and England, paralegals in Australia do not form part of an easily identifiable profession. Paralegalism in Australia could best be described as nascent, with no national professional association and no specific acknowledgement or classification of paralegals as a class in government employment and scant recognition in other labour laws.

Further, although there has been an acknowledgement of the need to provide greater access to justice for economically disadvantaged Australians,² there are fewer opportunities for education and training for Australian paralegals to enable that participation.

LEGAL PROFESSIONALS IN AUSTRALIA - STRUCTURE AND REGULATION

The Australian Constitution is an act of the British Parliament\(^3\) which divides legislative power between the Federal (or Commonwealth) Government and the governments of the six States and two Territories (the Australian Capital Territory (ACT) and the Northern Territory (NT)) which have law-making powers. There are also minor territories of Australia, including part of Antarctica (the Australian Antarctic Territory) as well as: Ashmore and Cartier Islands, Christmas Island, Cocos (Keeling) Islands, Coral Sea Islands, Jervis Bay Territory, Norfolk Island, and the Territory of Heard Island and McDonald Islands. It is a politically eclectic system, borrowing from both the UK and US.

The regulation and organisation of the legal profession, including the structure of the profession, is the province of the States and Territories and this accounts for some differences. For unlike in England and Wales, where it is easy to pronounce that the legal profession is split into the two distinct branches – solicitors and barristers – the picture is not quite so clear in Australia.\(^4\) The rigid professional division has been adopted in some parts of Australia but not in others. In New South Wales (NSW) and Queensland (Q) lawyers are admitted as either solicitors or barristers. In the other States, and in the Territories, they are admitted as both solicitors and barristers, although lawyers in these jurisdictions usually choose to practice as either a solicitor or barrister.

Precise definition of the two styles of legal work is difficult to achieve in Australia – more difficult than in England, where the demarcation is relatively clear. A barrister is generally an advocate, however, he or she will also advise on questions of law and will settle certain documents as required by solicitors. Solicitors instruct barristers, who in most circumstances do not deal directly with the clients. It is the solicitor’s role to assist the barrister’s advocacy by preparing the documentation and collecting evidence. However, Australian solicitors are also advocates and unlike in England, they have rights of audience in any court, including the High Court of Australia, which is the highest court in the Australian hierarchy. In practice,

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\(^3\) The Commonwealth of Australia Act 1900 (Imperial).

\(^4\) See the discussion by Ross Y, Ethics in Law. Lawyers Responsibility and Accountability in Australia, Butterworths, Australia, 2001, pp 75-79
however, only a few solicitors choose to work exclusively as advocates, given the time restraints presented by case preparation and client consultation.

Thus the distinction between the two branches of the profession is more a matter of history and is not solely based on the style of work adopted, but on other matters. It is underpinned by ethical rules that historically precluded a barrister from accepting work directly from a client. Solicitors, on the other hand, deal directly with clients and their money. They are required to keep trust accounts for the administration of clients’ money and such administration is closely supervised by their professional bodies. They are also required to take out professional indemnity insurance for the benefit of their clients in cases of negligence. In some jurisdictions, also, barristers are prohibited from forming partnerships. Clearly “[t]he differences between the functions of barristers and solicitors are not the product of rational planning or professional organization...”5 because the assigned functions are more a matter of history than regulation. It is a structure inherited from England along with the common law, but developed within an Australian legal system.

In Australia, as elsewhere in the common law world, the legal profession has maintained an effective monopoly over legal practice6 (rights of advocacy in most courts and the provision of “legal services” for a fee) and are protected against unqualified persons who might hold themselves out to be lawyers.7 The monopoly hinges upon the eligibility for admission (to the profession and as an Officer of the Court), which is acquired by prescribed education, and the corollary of a right of appearance in court. It is also based on the ethical requirement for a practitioner to be of good fame and character, which is prerequisite for practice in every Australian jurisdiction.8

Each State, the Australian Capital Territory and the Northern Territory have passed legislation regulating legal practitioners.9 Lawyers must be qualified, attaining certain specified

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6 For a discussion of the extent of the monopoly see Disney J et al, Note 5, p527 onwards. As to advocacy, it should be noted that courts (in states except for Tasmania, South Australia and Western Australia) have the discretion to allow paralegals to appear in court, although in practice they will refuse where lawyers are available. See Campbell E, Rules of Court: A Study of Rule-Making Powers and Procedures, Law Book Co, Sydney, 1985, p97
7 Note that this is not a monopoly on the giving of advice – just in the holding out that the advice is being given by a qualified legal practitioner for which a fee is charged. See Disney J et al, Note 5, pp529 -540
8 See the discussion in Ross Y, Note 4, Chapter 6
9 Legal Practitioners Act 1970 (ACT), Legal Profession Act 1987 (NSW), Legal Practitioners Act (NT), Legal Profession Act 2004 (Q), Legal Practitioners Act 1981 (SA), Legal Profession Act 1993 (Tas), Legal Practice Act 1996 (Vic), Legal Practitioners Act 1893 (WA).
academic qualifications and practical training which lead to admission to the profession and as an Officer of the Court. Such a lawyer is then issued with a Practicing Certificate by the professional organisation in his or her jurisdiction. This is a three-step process. Armed with such qualifications, admission and certificate, each lawyer is then able to carry out legal work for payment. Without the appropriate qualifications, admission and certificate, a person cannot charge for “legal” work. In New South Wales (NSW), which is the most populous state in Australia, a legal practitioner is defined as a “person enrolled in the Supreme Court as a legal practitioner.”10 Such a person may practice as either a solicitor or barrister (but not both).11 Further, a solicitor must hold a “current practising certificate” which is granted at the discretion of the Law Society of NSW. Unqualified persons are precluded from practicing law for reward.12 It is not the equivalent of unauthorised practice of law in the sense known in the US, but the “holding out” to be a practitioner that is unauthorised.

Australia, with a population in excess of 20 million13, has a large number of practising lawyers per head of population. NSW is the biggest state with a population of 6,686,60014 and there are currently 18,092 practising solicitors15, and 1913 practising barristers.16 Accordingly there is nearly one practising lawyer to every 300 residents of NSW. This figure would suggest that the legal profession in NSW has more than tripled in size since 1985.17

WHO IS A PARALEGAL IN AUSTRALIA?

As already noted, the literal meaning of the word *paralegal* is taken from the Greek prefix “para” (meaning “beside” or “near”), hence the meaning “beside the legal” and from the literature it seems that the term *paralegal* has been used in Australia for several decades, albeit tentatively and interchangeably with other terms.

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10 *Legal Profession Act 1987* (NSW) s3.
11 Because solicitors deal with clients directly, they are required to establish trust accounts to handle clients’ money. Barristers are not required to establish a trust account because they deal with the solicitor – not the client. Accordingly, under NSW law, a legal practitioner must choose between the two arms of the profession.
12 *Legal Profession Act 1987* (NSW) s 48B.
17 Disney J et al, Note 5, p47. These authors quote a figure of 5385 practising lawyers in NSW, with a ratio of 1 : 840 practising lawyers to population (based on figures supplied for the *Australian Legal Directory, 1985* and the Australian Bureau of Statistics, *Year Book Australia*, No 68, 1984.)
In 1976, Robinson\textsuperscript{18} had grappled with a definition and terminology, beginning at the same point that most writers in the area do, with the notion that it is far easier to define a legal practitioner (whose role is regulated by legislation) and then to distance the paralegal from the legal professional. So, effectively, we could know what a paralegal was not - a paralegal was not a lawyer admitted to the legal profession as a practitioner. Robinson suggested, for the purposes of her report, that “a legal paraprofessional is 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.”\textsuperscript{19} This was perfectly consistent both with the times and the terms of her brief. In 1990 Noone defined paralegals as workers who “work beside lawyers, in the stead of lawyers be supplementary to lawyers.”\textsuperscript{20} Goldring on the other hand, merely described the “word ‘paralegal’ as very trendy…. [and that it could] 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.”\textsuperscript{21} In their 1992 study, the Office of Legal Aid and Family Services (an aspect of the Commonwealth Attorney-General’s Department) felt that it was “almost a pointless exercise to attempt a definition which encompasses all possible types of paralegal… a definition depends on the area in which a paralegal works…” and, accordingly they “approached a definition in terms of what tasks a paralegal performs.”\textsuperscript{22}

A workable definition for Australian paralegals, more suited to the new century, needs to acknowledge that paralegals are not necessarily restricted to “work beside lawyers” in a legal office but are employed in a wide variety of law-related roles, without attempting to describe each of those roles. Thus an Australian paralegal is more adequately described by Harris as “a person who is employed, usually for reward, in a legal environment, who possesses legal knowledge, but also has organisational, communication, and interpersonal skills which are utilised in providing a service to the community.”\textsuperscript{23}

\textsuperscript{18}Robinson J, \textit{The Need for and Training of Legal Paraprofessionals in New South Wales Solicitor’s Offices}, Law Foundation of NSW, Sydney, 1976
\textsuperscript{19}Robinson J, Note 18, p1
\textsuperscript{21}Goldring J, “Professions and Paraprofessionals.” in Vernon J & Regan F (eds), Note 20, p7
\textsuperscript{22}Office of Legal Aid and Family Services Attorney-General’s Department (OLAIFS), \textit{Paralegals and Legal Aid. Discussion Paper}, Canberra,1992, p7
IS THERE AN IDENTIFIABLE PARALEGAL PROFESSION IN AUSTRALIA?

Amongst the main objectives of this study is the aim to determine whether paralegals, like lawyers, are part of a distinct profession. The *New Shorter Oxford English Dictionary* \(^{24}\) provides the following definition for *Profession* (amongst others):

“3. A vocation, a calling, *esp* one requiring advanced knowledge or training in some branch of learning or science, *spec.* law, theology or medicine, *gen.* Any occupation as means of earning a living.”

This definition could suggest that membership of any occupation is sufficient. However, for most other writers, particularly those concerned with the nature of legal professionalism, professions of any kind are tight-knit, specialised groups, not just occupations or vocations. Indeed, as indicated in Chapter 1, for Goldring\(^{25}\) “some community of purpose, personnel and knowledge distinguishes a “profession” from other associations...This community extends to language, values, role definitions, and selection of future members.”\(^{26}\) Members of the professional community profess common aims, which in Goldring’s view include increasing and maintaining wealth and power and a tight hold on the collective and exclusive knowledge of the group. “Any attempt to reduce or redistribute the class’s monopoly of culture or knowledge is therefore to be resisted.”\(^{27}\) The exclusivity of membership and ownership of esoteric knowledge are, therefore, according to Goldring, the hallmarks of a profession.

For Ross, the criteria which would appear to determine whether an occupational group deserves elevation to a *profession* are unsettled. He cites the works of Millerson who determined that there are certain traits which are identified with professionalism. These are:-

- "Skill based on theoretical knowledge"
- The provision of training and education
- Testing the competence of members
- Organisation

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Note also the previous references to *Legal Practitioners Act 1987* (NSW) s3, definitions of both a barrister and solicitor and Part3 (s25 and s48B)
\(^{25}\) Goldring J, Note 21, p5
\(^{26}\) Goldring J, Note 21 , p5
\(^{27}\) Goldring J, Note 21 , p5
• An ethical code of conduct, and altruistic service.”

This “traits” approach, which importantly includes a “service” aspect”, however, only provides an indication. Later sociologists were more inclined to associate professionalism with “resources of power”. For Cramton, “Under modern usage.., “profession” usually refers to a social construct consisting of a set of ideas that give a group of workers in the special community in which they work a collective identity.”

If we assume that a profession is merely an occupation, then there is no hesitation in including paralegals in Australia as professionals. If, however, a more restrictive view is taken as to the nature of professionalism, then it is necessary to consider some of the “traits”, characteristics or “set of ideas” that might point to cohesion or exclusivity for paralegalism in Australia and this is difficult to find as the following discussion demonstrates.

AN HISTORICAL PERSPECTIVE - THE NEED FOR THE PROVISION OF ALTERNATIVE LEGAL SERVICES AND EDUCATION?

As is evident in the literature, several decades ago, there had been a recognition by some of the role that paralegals have played within the workforce and the need to extend the provision of legal education beyond the elite group of students being educated for admission to the profession. The Law Foundation of New South Wales commissioned a Report, which was published in 1976. The title alone is of significance - The Need for and Training of Legal Paraprofessionals in New South Wales Solicitor’s Offices. A further Report issued in 1977.

In 1979, at the Second Seminar on Australian Lawyers and Social Change, Hanks boldly called for an end to the monopoly of the legal profession in the provision of legal services to the community, arguing that appropriately trained paralegals could provide more sensitive

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29 Ross Y, Note 4, p57
31 Robinson J, Note 18,
33 Hanks P, Note 2
and cost-effective legal services to people in the lower socio-economic groups in society. In recognition of that important role he wrote that the “most significant contribution toward opening up the legal process to the bulk of our community will be made by non-lawyers working outside the framework of conventional legal services as advisers, counsellors, negotiators and advocates, within a wide variety of community information, advice and support agencies." Presenters and commentators at the forum persistently identified deficiencies within the justice system and called for greater participation by non-lawyers in the legal process to alleviate the deficiencies.

Throughout the 1980s there was much discussion and various publications appeared in support of the increased use of paralegals to “[expand] the number of access points to the justice system.” It was a recurring theme of writers noting the growth of legal aid in response to community needs and suggesting the necessity to address issues of “licensure and certification, adequate remuneration, status within the profession, training and education” for paralegals. Noone’s comments are consistent with others of the 1980s when she further made prediction that “[r]ecent developments suggest it is inevitable that the use of paralegals in Australia will grow both in legal aid agencies and the private profession.”

It is not surprising, then, that the theme of the 1979 (Access to Law) conference was continued in 1990. Professor Goldring (then Dean of the Faculty of Law at Wollongong University) was amongst the more prominent members of the legal profession, who spoke at the conference and proposed an increased use of “paralegal professionals” with the aim of improving access to justice. The paper he delivered at the conference is deserving of greater scrutiny. Firstly he notes the hierarchical structure of the legal profession, which he suggests is analogous with the medical profession. That such a hierarchical structure is not necessarily the best and most efficient model to deliver either health or legal services is argued keenly. He identifies paralegals as a group already performing valuable functions within the justice system.

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34 There are important gender and equity implications here given that, in Australian society, women and children account for the greatest numbers of persons living below the poverty line and it is this group of persons who could make most advantage of increased access to legal services. There is some discussion later.
35 Hanks P, Note 2, p267
38 Noone M, Note 36, p255
39 Noone M, Note 36, p255
40 Goldring J, Note 21
system and again proposes that they are ideally placed to improve access. He then promotes the desirability of providing specialised paralegal education.

However, the reality was that by 1990 a profession of paralegals, if it existed at all, was only a fledgling - in stark contrast to the experience of the US and England. For many writers “the blame for the failure to develop a paralegal profession in Australia lies with the private profession.” Regan, for instance, stated that “In this country they exist as a shadow-supporting the work of the profession in crucial ways but with strict limits on what they can do, receiving no formal training, no kudos, having no associations, and being poorly paid.”

As already discussed, for several decades paralegals have been an integral part of the legal system and established as a profession in their own right in the US, where they had the support of both the legal practitioners and educators as well as the endorsement of the American Bar Association. Johnstone and Flood had noted the seminal role played by the ABA and the involvement of professional associations in the early history of the paralegal profession in the US, when they wrote,

“Some of these more significant landmark events are a professional ethics opinion in 1967 by the American Bar Association (ABA) clarifying and legitimating use of paralegals by lawyers; formation in 1968 of an ABA Special Committee on Legal Assistants for Lawyers, made a standing committee in 1975; initiation in 1968 and 1969 of training courses for paralegals by educational institutions; accrediting of paralegal schools begun by the ABA in 1974; formation of what are now major national paralegal associations, the National Federation of Paralegal Associations (NFPA) in 1974 and the National Association of Legal Assistants (NALA) in 1975; a NALA administered examination and certification program for individual paralegals started in 1976; and a four day national conference of a large and diverse group of paralegals and lay advocates held in 1981 that explored common interests of those present and could lead to closer research, educational, and political collaboration by paralegals and their allies.”

(footnotes omitted)

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41 Harris R, Note 23, p59
42 Regan F, Note 37, p195
The above quotation summarises an early and continued nurturing of paralegals by the legal profession and the support that they also received from their professional associations. Johnstone and Flood also noted that there is an even longer history of reliance on paralegals (as narrowly defined by them\textsuperscript{44}) in England and that in 1982 there were proportionally even more paralegals to lawyers in English law offices than there were in American law offices.\textsuperscript{45} As discussed previously, in England there was also obvious support by the legal profession for paralegals.

In stark contrast, paralegalism in Australia, in the last decades of the twentieth century, was a long way behind its overseas counterparts in the US and England and Wales. Scarce funds were still being channelled into the teaching of law students despite the statistics which indicated that there had been a massive increase in the numbers of enrolled law students “both in absolute and relative terms”\textsuperscript{46} and despite the various state law societies having raised serious doubts about prospective employment for such graduates in the private sector.\textsuperscript{47}

THE SCOPE OF PARALEGAL WORK – WHERE DO THEY WORK?

It is still very difficult to establish a clear picture of paralegal practice in Australia. This is largely because there is very little research on the subject and secondly because of the apparent disparate nature of their work. It would appear that most paralegals work in either private law firms, government departments, Legal Aid Agencies, Aboriginal Legal Services, Community Legal Centres or in private industry. There are also paralegals that could be best described as “independent” – for example, working as real estate conveyancers or as advocates in various tribunals.\textsuperscript{48}

In a survey conducted by this writer in 2000 - 2001\textsuperscript{49} of the graduates of Southern Cross University (SCU), 53.8% of the graduate paralegals that responded work in the private

\textsuperscript{44} “law office employees who have not qualified as lawyers but who perform legal tasks also performed by lawyers and who are under the general supervision or control of lawyers.” Johnstone Q & Flood J, Note 43, p153
\textsuperscript{45} Johnstone Q & Flood J, Note 43 , p153
\textsuperscript{46} Harris R, Note 23, p62. See also earlier quoted statistics as to the number of practising lawyers in NSW and the ratio as to population.
\textsuperscript{49} Walsh H & Cowley J, Southern Cross University, School of Law and Justice, Graduate Destination and Satisfaction Study. (December. 2001,On file with Author), reproduced at Appendix B Walsh H & Cowley J,
profession. The second biggest cohort is the public sector (government departments or instrumentalities) at 14.4%, with community based legal services and private industry (commercial or financial) the next biggest categories.\textsuperscript{50}

The figures obtained from the SCU study confirm the work of Palisi,\textsuperscript{51} and indicate that in Australia, the majority of paralegals are employed in the private legal profession. Indeed, paralegals have been working in legal offices in Australia since the establishment of the very first law offices in the infant colony of New South Wales. They were just not called paralegals. Consistent with the English law that was adopted they were \textit{clerks}. Accordingly, this category covers all the paralegals (clerks and other legal assistants) who work within legal offices,\textsuperscript{52} no matter what they have been called.

The first two groups of paralegals who work in private practices and who should be considered briefly here are the fledgling lawyers and \textit{articled clerks} (still students of law\textsuperscript{53}) respectively. Both of these are unadmitted lawyers who are “aspiring practitioners of law in the fullest sense, not career assistants.”\textsuperscript{54} Their claim to paralegal status is only temporary and yet it is a valid claim and falls within our definition. It is a valid claim also because it would seem that Australian lawyers enthusiastically rely on their services given that they can undertake legal research or perform other necessary tasks which will free the solicitor to concentrate on other, more lucrative, tasks.\textsuperscript{55}

The third group of paralegals working in private practices are \textit{Senior Clerks} or \textit{Legal Executives}. In England and Wales, the term, \textit{Legal Executive}, commonly covers those staff or clerks working in solicitors’ offices who are engaged in fee-earning work but not admitted as lawyers. As already noted, law offices in England have made extensive use of such unadmitted personnel – far more than in either Australia or the US.\textsuperscript{56} The Australian writer,
Jones, referred to legal executives as “substitutes for solicitors”\textsuperscript{57} again excepting that they cannot appear in court. At present only the state of Victoria has a professional body for Legal Executives, which in 2002 had some 650 members and approximately 400 senior law clerks (legal executives),\textsuperscript{58} although the Institute claims to have “members in most States and Territories.”\textsuperscript{59} No other state or territory has adopted this model.

There are, however, many other paralegals, also working in private practices, whose work varies according to expertise and experience. They are almost all women, most of whom had formerly been employed as secretaries. According to the SCU Study of paralegal graduates,\textsuperscript{60} such paralegals are most commonly performing work in areas of conveyancing of real estate, wills and estates, family law and civil litigation. This broadly accords with the 1976 study of Robinson\textsuperscript{61} who divided work into probate, conveyancing and litigation. Here again, numbers of such paralegals are generally unavailable.

A group of solicitors from nineteen firms from over eastern Australia, were asked to complete a short questionnaire about the use of paralegals in their practices in December of 2001.\textsuperscript{62} All eleven of the firms who provided written responses indicated that they employed paralegals. The largest firm surveyed (with eight partners and fifteen employed solicitors) employed more than twenty paralegals. Clearly this was a small inquiry and accordingly it is unsafe to draw substantive conclusions, but as these were practitioners from New South Wales, Victoria, Queensland and the Australian Capital Territory, one would have expected that in a group such as this that there would have been one or more firms that did not employ paralegals, and yet this was not the case. Clearly for this group at least, paralegals play an important role in the functioning of their offices. These employers indicated that they valued the paralegals’ knowledge of the area of law in which they were working. They also valued good problem solving and communication skills.\textsuperscript{63}

Many other paralegals are employed outside of private legal practices in the public sector, including at all levels of government (local, state and federal). For instance, they are known to

\textsuperscript{58}Such numbers were obtained by this writer in a telephone interview with the executive officer of The Institute of Legal Executives in Victoria, January 2002. See the Institute of Legal Executives (Victoria) website at http://www.liv.asn.au/legalexecutives/index.html (accessed 12 December 2003)
\textsuperscript{60}See Appendix C, Table 21.
\textsuperscript{61}Robinson J, Note 18,p39.
\textsuperscript{62}Cowley J, Employers’ Survey: Paralegals in Legal Firms, reproduced at Appendix D.
work in local government planning departments, Crown Solicitor’s Offices (in all states) in the Department of Veterans’ Affairs and in the Australian Tax Office (Child Support Agency) where they provide advice about the scheme and assist with applications for parental financial support. They are also serving in the Armed Forces, the various Police Forces and Correctional Service Departments.64

A study of the role of paralegals within the Legal Aid system (OLAFS’ Paper)65 from 1992, concluded that “paralegals currently perform a wide range of tasks which previously have been performed by lawyers”66 - especially when working in community organisations or in the public sector. Many paralegals work in the various Legal Aid Commissions, which are state-run organisations which assist those in the community at the lowest economic stratum to resolve legal problems by funding certain litigation. As such, all the Commissions are keen to achieve economic efficiencies. The main roles for paralegals in the various legal aid offices throughout the country are in assessing applications for legal assistance, by applying the means tests and sometimes the merit tests in those jurisdictions where this is allowed. Once a grant of aid has been made, and referred to a practitioner, paralegals oversee the assignments and management of the case. “Increasingly paralegals are being used to provide advice. In most states there is a statutory bar on non-lawyers charging a fee for the provision of legal advice.”67 Accordingly this advice is called legal information which consists more of explaining legal options and processes without the additional recommendation of “the rightness or the wrongness of a case or giving specific advice as to the best course of action.”68

Other paralegals are indigenous Australians who work for Aboriginal Legal Services as Field Officers. These Services are state-run and funded with the intention of addressing the specific legal needs of Australia’s indigenous population. The role of the field officers is to enable communication, and to foster good relationships, between Indigenous clients and their lawyers.69 Indigenous Australians are overly represented in the criminal justice system in

63 See Question 3.1 of Appendix D, which invited a qualitative response.
64 Evident from student enrolment at SCU
65 Office of Legal Aid and Family Services Attorney-General’s Department (OLAFS), Note 22
66 Office of Legal Aid and Family Services Attorney-General’s Department (OLAFS), Note 22, p3.
67 Office of Legal Aid and Family Services Attorney-General’s Department (OLAFS), Note 22, p14
68 Office of Legal Aid and Family Services Attorney-General’s Department (OLAFS), Note 22, p14
69 Office of Legal Aid and Family Services Attorney-General’s Department (OLAFS), Note 22, p16
Australia\textsuperscript{70} and also have special housing and other welfare needs. The field officers will routinely conduct interviews, arrange bail and/or provide advice as needed by clients.

Community Legal Centres (CLC) are non-profit, government-funded, organisations which have been established as a means of providing legal assistance to the poorest in the community particularly in areas such as consumer credit law, tenancy, and welfare law. They also offer alternative ways of resolving disputes. Paralegals play a role in all aspects of these centres. They do more than provide routine administration. They also provide expertise in Alternative Dispute Resolution, particularly mediation. They also give preliminary legal advice in jurisdictions where this is allowed. The Australian Law Reform Commission Report No 89 makes special note of the use of non-lawyers (paralegals and law students) as being “particularly successful in CLCs. In the context of legal aid there are a number of CLCs (such as Springvale Legal Service in Melbourne and Kingsford Legal Centre in Sydney) which function cooperatively with a university clinical legal education program.”\textsuperscript{71} There is very little hard data available, however, as to numbers of paralegals or the capacity in which they work in CLCs.\textsuperscript{72}

In Victoria, the Magistrates Court has “responded to the changing needs of the community by implementing various programs”\textsuperscript{73} including appointing paralegals as Aboriginal Liaison Officers and Juvenile Justice Liaison officers.

Further, in some states, paralegals who have qualified, carry out work which would ordinarily be performed by solicitors, such as conveying real property.\textsuperscript{74} They are variously called land brokers, settlement agents or conveyancers, but whatever their name they are, in effect, independent paralegals.

\textsuperscript{70} “There were 4,818 Indigenous prisoners in Australia (20% of the prisoner population) at 30 June 2003. Over the past decade, Indigenous prisoners have accounted for an increasing proportion of the total prisoner population. The proportion of prisoners who were Indigenous has risen from 15% in 1993 to 20% in 2003…. With an imprisonment rate of 1,888 prisoners per 100,000 adult Indigenous population (a 5% increase on the 2002 rate), Indigenous persons were 16 times more likely than non-Indigenous persons to be in prison (15 times more likely in 2002).” Australian Bureau of Statistics, \url{http://www.abs.gov.au} figures released 22 January 2004 (accessed 23 January 2004)

\textsuperscript{71} Australian Law Reform Commission, \textit{Managing Justice: A review of the federal civil justice system}, Report No 89, Canberra, 1999, Part 5 Legal Assistance, paragraph 5.023

\textsuperscript{72} The OLAFS Paper refers to the “limited response received from …CLCs” as having a significant limitation on the preparation of their report.

\textsuperscript{73} Popovic J, “At Your Service – A guide to the Magistrates’ Court services and programs.” (2003) 77:8 \textit{Law Institute Journal} 33, p33
There is also a limited role for paralegal advocates and adjudicators. In the OLAFS’ Paper\(^\text{75}\) it is claimed that there is a small but increasing role for paralegals as lay advocates. As has already been outlined, in some jurisdictions, the court has the discretion to allow a non-lawyer to appear before it although it is a rare occurrence. In the context of family law, while representation does not usually occur, “parties are sometimes assisted or supported by friends or family members as ‘McKenzie friends’.”\(^\text{76}\) However, in Australia as in other parts of the common law world there is a growth in adjudication by forums other than courts – Boards and Tribunals. Many of these bodies allow for both lawyers and non-lawyers to appear before them. Importantly some even preclude lawyers. The Veterans’ Review Board, for instance, does not allow legal representation but will allow paralegal advocates. Paralegals are expert as industrial advocates or as advocates before the Administrative Appeals Tribunal, “Veterans Review Board (VRB), the Social Security Appeals Tribunal (SSAT), Small Claims Courts, Residential Tenancy Tribunals and Motor Accident Boards”\(^\text{77}\) for instance. The proliferation of such Boards and Tribunals means a proliferation in work for paralegals.

Furthermore, in some jurisdictions, police prosecutors, many of whom are non-lawyers and in receipt of very limited legal training, are responsible for prosecuting in the lowest level courts. Police prosecutors, for instance, would prosecute a motorist who has been charged with driving while under the influence of alcohol.

As to adjudication, in New South Wales administrative officers of the lowest court (often called Chamber Magistrates) conduct Pre-Hearing Conferences of certain civil matters, such as claims for compensation for damage to motor vehicles from at-fault motorists. They also conduct coronial enquiries, where they seek to find out the manner and cause of death of a person, where the circumstances of the death are unknown or inexplicable.

Finally, there is evidence of a trend\(^\text{78}\) for paralegals to be employed in industry, both commercial and financial. Banks or insurance companies, for instance, utilise paralegals

\(^{74}\) See Conveyancers Licensing Act 2003 (NSW) (repealing the 1995 act of the same name), Conveyancers Act 1994 (SA), Settlement Agents Act 1981 (WA), Agents Licensing Act (NT), Legal Practice Act 1996 (Vic) (Pt13)

\(^{75}\) Office of Legal Aid and Family Services Attorney-General’s Department (OLAFS), Note 22, p16.

\(^{76}\) See Appendix C. Also Jacklyn Abbott noted the growth of corporate legal departments, who employ paralegals in Abbott J, Note 32, p60
because knowledge of the law, and use of that knowledge is advantageous, but admission to practice is unnecessary.

THE SCOPE OF PARALEGAL WORK - THE NATURE OF PARALEGAL DUTIES & WORKING CONDITIONS

As already discussed, there are statutory bars to non-lawyers performing specified legal tasks and advocacy in most courts for reward. Nevertheless paralegals, undertake many of the tasks that have traditionally been reserved to legal practitioners. For many of these tasks, and given the nature of a lawyer’s monopoly in Australia, there would appear to be some concurrency with lawyers’ work – eg interviewing clients and witnesses, providing legal advice and undertaking legal research etc. As stated in the OLAFS’ Paper,

“What needs to [be] established, and what the literature on the subject has not adequately addressed, is what tasks require the skills of a lawyer. There appears to be no definitive demarcation between lawyers and paralegals. However, the potential overlap is in the area of less complex legal tasks and the administration of matters. More complex matters remain the province of qualified practitioners.”\(^79\)

This is because a lawyer’s craft resides in his or her ability to exercise judgment and apply legal knowledge to complex circumstances. Accordingly, the tasks performed by paralegals would appear to be limited more by the complexity or difficulty of the matter, other things (such as breadth of knowledge) being equal.

As with the information obtained for the US, to large extent, such Australian information as is available about the nature of a paralegal’s work and the wages and conditions for such work is obtained from disparate sources. Such data can be found from the various Law Societies, Government websites and, to a lesser extent, literature on the subject. Unlike the US, however, the wealth of information is lacking.

A search under the term *Paralegal* in the website for the Australian Government’s Department of Employment and Workplace Relations, “Australian Jobsearch” is unhelpful\(^80\).

\(^79\) Office of Legal Aid and Family Services Attorney-General’s Department (OLAFS), Note 22, p19
The preferred term is *law clerk*. Under a “Related Occupations” link to Paralegals and Legal Assistants, the following information is provided as to the tasks that this group of workers are expected to carry out.\(^{81}\)

<table>
<thead>
<tr>
<th>Task</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assist lawyers by researching legal precedent, investigating facts, or preparing legal documents.</td>
</tr>
<tr>
<td>Conduct research to support a legal proceeding, to formulate a defense, or to initiate legal action.</td>
</tr>
<tr>
<td>Gathers and analyses research data, such as statutes, decisions, and legal articles, codes, and documents.</td>
</tr>
<tr>
<td>Prepares legal documents, including briefs, pleadings, appeals, wills, contracts, and real estate closing statements.</td>
</tr>
<tr>
<td>Prepares affidavits or other documents, maintains document file, and files pleadings with court clerk.</td>
</tr>
<tr>
<td>Arbitrates disputes between parties and assists in real estate closing process.</td>
</tr>
<tr>
<td>Answers questions regarding legal issues pertaining to civil service hearings.</td>
</tr>
<tr>
<td>Presents arguments and evidence to support appeal at appeal hearing.</td>
</tr>
<tr>
<td>Keeps and monitors legal volumes to ensure that law library is up-to-date.</td>
</tr>
<tr>
<td>Directs and coordinates law office activity, including delivery of subpoenas.</td>
</tr>
<tr>
<td>Calls upon witnesses to testify at hearing.</td>
</tr>
<tr>
<td>Appraises and inventories real and personal property for estate planning.</td>
</tr>
<tr>
<td>Investigates facts and law of cases to determine causes of action and to prepare cases.</td>
</tr>
</tbody>
</table>

The tasks described suggest the need for high order clerical and administration skills and an understanding of the legal system in which they work. Interestingly the third and fifth descriptors for the position refer to “real estate closing” and describe activities more appropriate for a paralegal in the US. (eg “Arbitrates disputes between parties and assists in real estate closing process.”)\(^{82}\) Also, it may be indicative of discomfort in the use of the term, *paralegal*, and a lack of appreciation of their role in the Australian legal system.

The 2003 Job Guide – from the Department of Education, Science and Training\(^{83}\) – prefers the term *Legal Executive*. However, even though it does not contemplate employment outside of the private profession or court system, it more accurately describes the tasks most generally undertaken by that group of paralegals in Australia when it says that,

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\(^{82}\) The information for this site has been incompletely translated from the US O*Net Database (US Department of Labor, Employment and Training Administration). The task descriptions and the use of the US spelling for the word “defense” would suggest this.

“Legal executives perform a variety of legal tasks under the supervision of solicitors, barristers or clerks of court.

Legal executives may assist their employers in all areas of law, including probate (proving the validity of wills), conveyancing (dealings in land and property), criminal law, family law, company law and civil litigation.

Legal executives may perform the following tasks:

• search land titles to check details such as property boundaries and ownership of the property
• attend settlements for the purchase or sale of land
• examine contracts and obtain information about contracts so that solicitors can proceed with finalisation
• fill out legal forms and lodge them with government offices, interview clients and draft clauses for contracts
• undertake company, business name, bankruptcy and other searches
• help maintain bookkeeping records
• prepare statements of evidence by witnesses and briefing papers for use by barristers (this happens when a solicitor’s client has to go to court)
• assist clients by providing information on legal processes
• assist prosecuting or defence lawyers in court and arrange for the attendance of witnesses at court
• brief witnesses and take notes of evidence
• assist barristers and senior counsel with case management.”

Many of the above tasks can be and are performed by lawyers as well. In her 1976 study of paralegals working in solicitors’ offices, Robinson interviewed twenty four solicitors both from country and city practices. Her objective was to determine whether there was a need for paralegals’ services in NSW solicitors’ offices and if so, to make recommendations as to appropriate training. It was a small sample. The questions asked of the interviewees revealed that in many of those offices there was a delegation to paralegals to perform many tasks, including drafting correspondence and certain documents, attending to the stamping and registration of documents and conducting searches.

84 Australian Government, Department of education and Training, “Job Guide”, Note 83, (accessed 12 December 2003) Note also the reference to supervision by a barrister and it should be noted that in some states a legal practitioner is admitted as both solicitor and barrister. In those states a paralegal could be performing tasks of a legal nature and hence come under the definition.

85 Robinson J, Note 18
“While generalisations are dangerous, in that they are distorting, it is necessary to make one generalisation as to the nature of the delegation which is shown to be occurring. Excluding those whom this report calls paralegals, the tasks given to support staff are mechanical, and not usually performed by solicitors…It is however, the specialist clerk – the managing clerk, the conveyancing, probate, company, litigation (including Workers Compensation) and costing clerk - who performs work under supervision, requiring legal knowledge and responsibility, which otherwise would be performed by solicitors. This work does have mechanical aspects included, but it contrasts with the support staff’s tasks which are exclusively mechanical.”

A paralegal is generally paid less than all but the newest legal practitioner. For instance a paralegal working in private practice in NSW is covered by the Clerical and Administrative Employees Legal Industry Consolidated (State) Award (NSW). In 2003/2004, an adult at this level can expect to be paid $644.50 per week or $20.36 / hour if casual. Classed as a Grade 5, Legal Clerical and Administrative Officer/Paralegal such position is described as follows,

“(a) The employee may be supervised by professional staff and may be responsible for the planning and management of the work of others.

(b) An employee at this grade applies knowledge with substantial depth in some areas, and a range of skills which may be varied or highly specific. The employee may receive assistance with specific problems.

(c) An employee at this grade applies knowledge and skills independently and non-routinely. Judgement and initiative are required.”

By way of comparison, the Victorian award does not refer to paralegals but merely to Legal Clerical and Administrative Officers (Grade 5), who can also expect to paid $644.90 per week under the Victorian Legal Professional, Clerical and Administrative Employees Award 1993. Such a clerk is expected to have the following skills, knowledge and training,

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86 Robinson J, Note 18, pp58-59
88 Clerical and Administrative Employees Legal Industry Consolidated (State) Award (NSW), Note 87 (accessed 16 December 2003) See also Appendix E
“GENERAL

• Work is under broad guidance. The work of others may be supervised or teams guided.
• Responsibility for the planning and management of the work of others may be involved.
• Competency at this level involves the self-directed application of knowledge with substantial depth in some areas and a range of technical and other skills to tasks, roles and functions in both varied and highly specific contexts.
• Competencies are normally used independently and both routinely and non-routinely.
• Judgement is required in planning and selecting appropriate equipment, services, techniques and work organisation for self and others.
• Employees will be graded at the level where the principal functions of their employment, as determined by the employer, require the exercise of skills at the level set out in the respective grade.”

Accordingly both awards describe a specialised position for a paralegal dependent upon the acquisition and demonstration of high level technological, clerical and communication skills and legal knowledge. The tasks described suggest an overlap with lawyers of routine, administrative but not entirely “mechanical” matters. There is, however, no contemplation of a paralegal performing more complex legal tasks – even under guidance – and the wages reflect this.

Responses from the SCU study, which is reproduced at Appendix C, confirm the above data. As stated earlier, the majority of graduates are working in private legal practices, however, the information applies to both the public and private sectors. Part 5 of the Study was concerned with the nature of the graduates’ employment. Question 5.4 had asked graduates to indicate their salary range. Of the 105 paralegal graduates who responded to this question, the largest percentage of paralegal graduates (55.1%) were earning between $25,000 and $44,999, only 8.5% earned between $55,000 and $64,000 and an even smaller percentage (4.7%) earned over $65,000.00. Generally male paralegals are earning slightly higher incomes than females. Thirty percent of males are earning in the top three categories as

90 Victorian Legal Professional, Clerical and Administrative Employees Award 1993 (AW801883) Note 89 (accessed 6 January 2004) See also Appendix E
91 See Appendix C, Table 12
compared to 25.7% females. Seventy percent of males earn in the lowest three categories (between $15,000 and $44,999) compared with 73.3% of females.\textsuperscript{92}

The SCU study also sought information about the nature of a paralegal’s duties in the workforce. Specifically, to evaluate how well their SCU courses prepared them for the workplace and to gain a greater understanding of their duties, in Question 6 we asked graduates to remember their experiences when they first commenced work after completing their course and to indicate on a scale of 1-5 to what extent their job required application of knowledge and skills. These included knowledge of substantive law, practice and procedure, evidence, policy and trust accounting; application of legal and professional standards and understanding of the social context of law. The results are scattered and reproduced as Table 22 in Appendix C. Twenty point eight percent of the Bachelor of Legal and Justice Studies (BLJS) graduates, for instance, indicated that they needed “a lot” of knowledge of substantive law as well practical and procedural knowledge.

Further, to evaluate what graduates were required to do in the workplace we asked them to indicate to what extent they are required to carry out certain activities,\textsuperscript{93} including how to research substantive law, apply legal problem solving methods, read and apply legislation, interpret case law, complete forms and applications, interview clients, draft legal documents, prepare a brief to counsel, deal with ethical dilemmas, analyse and reason, research, investigate and organise, provide legal advice, provide financial advice, provide advice on course of action, resolve disputes- using ADR, resolve disputes- using litigation, negotiate- using formal procedures, negotiate- using informal procedures and use word processing software. Not surprisingly, 58.7% of Associate Degree (ADL) graduates indicated that they needed to complete forms and applications, 44.7% routinely interviewed clients and 42.6% drafted legal documents. Very few were involved in either negotiation or dispute resolution, but, surprisingly, 48.9% indicated that they routinely handled clients’ money. As to other “legal” tasks which would ordinarily be reserved for lawyers, only 12.8% (ADL) and 3.8% (BLJS) graduates needed to interpret case law, with only slightly higher numbers needing to read and apply legislation.

According to the OLAFS’ Paper, paralegals working in the public sector are paid under awards for clerks or administrative officers, whereas lawyers are paid under different pay

\textsuperscript{92} See Appendix C, Table 14
\textsuperscript{93} See Appendix C, Table 23
scales - for professionals. There is significant difference between the salaries offered to both
groups. “The Professional Officer scales usually have larger increments whereas the pay rises
for Administrative Officers are dependant on promotion. Therefore a paralegal with specialist
and expert experience in a particular field is not rewarded in the same way as a lawyer can be.
In most cases the only way for a paralegal to receive a pay rise is to be promoted out of the
area of expertise to an administrative position.” The implications for this are that in both the
private and public sectors, paralegals in Australia have very limited career paths, and they will
need to become further (professionally) qualified in order to progress beyond middle level
management.

Ethics and Paralegal Work
While there is no legislation which sets ethical and educational standards for paralegal work
in Australia, there is sufficient caselaw to suggest that they are bound to work within ethical
confines, similar to legal practitioners. The decisions show that paralegals owe duties of
competence and care and must be alert to issues of confidentiality and conflicts of interests.

The decision of McMillan v McMillan dealt specifically with the conflict of interest caused
by the employment by a legal firm of a paralegal (who had previously been employed in an
opposing firm) in a family law matter and the issues of confidentiality which arise from this.
Given that the case involved a paralegal and not a legal practitioner, the decision has wider
implications for legal firms and paralegals in Australia. The judiciary is also prepared to
consider persuasive authority from the US and elsewhere. In T v L, for instance, which also
examined issues of conflict of interest raised by other personnel working in legal firms,
Justice Chisolm said, at [92],

“Although most of the cases deal with solicitors who are partners, in my view it is
obvious that the same or similar principles would apply to others engaged in
professional work within a firm: it is no answer to the father's complaint that the
former judge is not a partner in the firm, and I do not think that argument was raised”

Then at footnote 33 he indicated that the,

“United States [was the] authority for the rather obvious point that the problem is not

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94 Office of Legal Aid and Family Services Attorney-General’s Department (OLAFS), Note22 , p21
95 [2000] Fam CA 1046 (2000) 159 FLR 1 (2000) 26 FamLR 653). See also a duty to avoid conflicts of interest
905)
confined to communications between partners: Re Complex Asbestos Litigation (1991) 283 Cal Reptr 237 (paralegal); Allen v Academic Games Leagues of America Inc 831 F Supp 785 (1993) (newly qualified lawyer who had worked for a party while a law student).

Further, other decisions have found that paralegals owe a duty of care and competence at a level on par with legal practitioners. The case of Creative Typographics Pty Ltd and Ors v Glade-Wright concerned a law clerk of many years standing and it was said, at [24], that “Certainly the degree of care required of him in the circumstances of the case is identical to that required of a legal practitioner. It matters not that he possessed no formal qualifications, nor that the plaintiffs believed him to possess such qualifications.”

The above cases suggest that paralegals owe duties of competence and care equal to legal practitioners and that they must be alert to issues of confidentiality and conflicts of interests. Breaches of these standards, however, affect not only the paralegal, given that the consequences flow to the legal professional. Accordingly, lawyers have more than just a vicarious interest in ensuring that paralegals attain and maintain ethical standards. Failure to adequately supervise the activities of unqualified staff can constitute professional misconduct.

What is effective supervision of paralegals in the workplace? This was discussed at some length by Mahoney J (as he then was) at 249 and 250 of the Law Society of New South Wales v Foreman, “It is not in question but that the responsibilities of a solicitor for the proper conduct of the practice of which he is a part extend beyond his own actions and the work that he does. The obligations placed upon a solicitor by the regulatory legislation to which he is subject involve that he, to a proper extent, take steps to ensure that the statutory obligations in respect, to take one example, of the maintenance of a trust account, are complied with… And a solicitor has also responsibilities in respect of staff employed by him or his practice in the conduct of legal matters.

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97 Paralegals in Australia have been found to owe a duty of care and competence (in Creative Typographics Pty Ltd and Ors v Glade-Wright [1999]TASSC 20)
98 Creative Typographics Pty Ltd and Ors v Glade-Wright [1999]TASSC 20, at [24]
It is not necessary or desirable that the court attempt to formulate in
detail the principles on which such obligations rest or the application of
them, in general terms, to the practice of law. The kinds of practices now
carried on vary considerably and the managerial and other structures within
legal practices vary and will, no doubt, vary further to meet the needs of a
changing profession. What will be proper in one kind of practice may not be
proper in another. It is therefore proper to confine what is said in this case
to the responsibilities of a sole practitioner in respect of a non-qualified
person who has been given the duty of conducting matters involving the
application of the law and requiring the observance of proper standards of
conduct…

What will be required for the discharge of a solicitor's responsibilities in a
case such as the present must, even within such confines, be affected by the
circumstances of the case. It will, for example, be affected by the solicitor's
knowledge on a continuing basis of the competence and integrity of the
clerk. It will be affected also by the nature of the transactions taking place or
apt to take place within the clerk's scope of activities. But, without seeking to
be definitive or exhaustive, it will be of assistance to see as involved in the
conduct of a solicitor's practice, inter alia, five things: (1) a knowledge of the
law to be applied; (2) the proper application of the law to the individual
transactions carried out by the clerk; (3) the efficient and effective
processing of those transactions from their commencement to the
completion of them; (4) the observance of the statutory and other
requirements in respect of the dealing with moneys received into the
practice; and (5) the observance of the general obligations of those involved
in the conduct of a legal practice, relating to, for example, conflict of interest,
the conduct of fiduciaries, and the general ethics and etiquette of lawyers
and those associated with them.”

Clearly, in the interest of paralegals and legal practitioners, there is a need for some national
accreditation/qualifications system and the establishment of ethical guidelines for paralegal
practice.
THE EDUCATION OF PARALEGALS IN AUSTRALIA

As indicated earlier, the teaching of law in Australia has traditionally been centred on the education of students to enter the legal profession, primarily, as either solicitor or barrister or in the fused systems favoured in some jurisdictions as solicitor and barrister combined. The legal profession has maintained an effective monopoly over legal practice.

“Government policies on education introduced throughout the late 1980s and 1990s sought to align the higher education sector with broader economic aims and to move universities to more of a market footing. The Relative Funding Model introduced in 1991 placed ‘Law and Legal Studies’ in the lowest funding cluster. Law schools were seen as cheap to fund compared with other faculties within the university while demand from students for law school places was high and still continues to exceed supply. Law became a disproportionately popular course with universities in need of additional funds, creating a blow out in the number of universities offering law (from eight to twenty nine) and consequent increase in the number of students graduating with law degrees.”

Inherent in the above quotation is the suggestion that legal education is in need of further review. Further, it is clear from other sources that the traditional model has not encompassed paralegal education in Australia.

In 1990, Professor Goldring had posed questions for further discussion at the end of his paper entitled “Professions and Paraprofessionals”, which was delivered to the conference, Improving Access to Justice: The Future of Paralegal Professionals. He was concerned with the nature and provision of education and training and these two questions assumed great importance as he moved the debate along from the desirability of using paralegals to provide alternative, lateral, legal services to the poor and disadvantaged in our community to issues surrounding training, education and “credentialling” of paralegals when he said,

“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. The academic foundation should give the graduate a broad perspective on the operation of law in society, coupled with sufficient knowledge of the main areas

101 Goldring J, Note 21, p15
102 Goldring J, Note 21, p12
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 judgement 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…most law students are overtrained. It may not be necessary to replicate the general or broader aspects of university 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.”103

Implicit in this argument is the notion that a general legal education is desirable (in “pedagogical and social terms”) for many, if not all, paralegals. Logically this also places the education of paralegals (as non-lawyers) in the law school. There are other pedagogical considerations too, given that “as the paralegal profession matures, new and evolving roles in the legal field require education for change rather than education for a specific career.”104 Accordingly, institutions which adopt an integrative or multidisciplinary approach and courses “clearly enhance the effectiveness of …paralegal programs. They enrich the experience of the students and augment the career possibilities of graduates.”105

Further he argued that the content of paralegal education should be determined by “the sort of task they will be called upon to perform” and that the manner of delivery of such education would need to be flexible. Goldring used the words “part-time and co-operative”106 in that regard. In contrast to the traditional makeup of law school teaching staff, however, Goldring also recognised that legal practitioners should be involved in the teaching, noting that, “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.”107

It is worth repeating here that there has been significant difference in the development of paralegal education in Australia as compared to both England and the US. The importance of initial, and continuing, support by the legal profession, their professional bodies and

103 Goldring J, Note 21, p13
105 Tayler M, Note 104 , p85
106 Goldring J, Note 21,p14
academics is not to be underestimated. Paralegal education has been facilitated and nurtured by the very group who have stood most to lose by a challenge to their monopoly in both the US and England. One might assume a certain vested interest in the supervision of the paraprofession. Secondly, paralegal education, it seems, was able to slip naturally into the college curricula in the US (and also into the institutions of Further and Higher Education in the UK) and flourish. In Australia the task was largely taken up by the state-based TAFE (Technical and Further Education) system, which has no exact US equivalence.

In Australia there was a perceived need for some recognition and regulation of paralegals working in Australia some thirty years ago. In 1976 and 1977, two important reports of the Law Foundation of New South Wales were published, looking specifically at the role of paralegals in the legal system of Australia’s most populous state. These reports called for appropriate training and education, but did not specify by whom or how this could be done. “[I]t would be prudent for any proposed course to be run on pilot basis” wrote Robinson. She then further noted that “…the planning, siting, control, and recognition of courses are of great consequence…”

The discussion continued at many conferences throughout the following decades. And yet no substantial training or education programs emerged. Why? There are many possible answers. The lack of support by the legal profession was significant. Despite the emerging literature, the Reports to the Law Foundation of NSW and a further Report undertaken by the Office of Legal Aid and OLAFS’ Paper, none of the Australian legal professional bodies (representative of barristers or solicitors) were supportive in the way that the American Bar Association or the Law Society for England and Wales were. The picture one gets of paralegal education prior to the early 1990s is, therefore, abstract with somewhat disparate and sporadic brush strokes.

University education of non-lawyers, including paralegals, has generally been outside of the law school - mostly located in schools of business or commerce. There were a few notable exceptions such as the Legal Studies degrees offered through the Universities of Newcastle and La Trobe. However, these programs were not particularly designed for paralegals, so that prior to 1991, and the introduction of the programs at SCU, there was very little university

107 Goldring J, Note 21, p15
108 Robinson J, Note 18, and Abbott J, Note 32
109 Robinson J, Note 18, p77.
education on offer specifically to paralegals. This is despite some evidence that paralegals were beginning to play an important role in the delivery of legal services in Australia.

The Legal Aid Commissions of the States and Territories, variously, provided their workers with internal, on-the-job training. The extent and manner of provision of the training, however, differed according to the jurisdiction. Queensland, for instance provided a five-week, intensive, training course. The New South Wales Commission, on the other hand “expressed a preference for an accredited external training course.”

Such other training as existed was predominated by the Technical and Further Education (TAFE) system in most states, including courses for legal secretaries and in real estate. TAFE in South Australia was perhaps the most responsive to industry requests by offering a Certificate in Justice Studies. There were other approaches too, however, there was nothing substantial. Nor was there wide acceptance of anything embracing of the notion that those that worked in a legal environment (but were not admitted to practice, nor desiring to be admitted to practice) could benefit from specific legal education.

Research conducted by this writer (via internet and telephone) reveals that there are still few providers of paralegal education in Australia. The Job Guide 2003, provided by the Australian Department of Education, Science and Training supplies Territory and State specific information as to education and training opportunities available for “Legal Executives”.

- For NSW and the Australian Capital Territory (ACT) only SCU is nominated as a provider at both Associate Degree and Degree level.
- There are no suitable courses available in the Northern Territory.
- In Queensland, Bond University offers a Bachelor of Jurisprudence (3 years full time or equivalent); the Queensland University of Technology (Kelvin Grove Campus) offers a Bachelor of Justice (3 years fulltime or equivalent); Griffith University (Mount Gravatt Campus) offers a Bachelor of Arts (Criminology and Criminal Justice) (3 years full time or equivalent); SCU (located close to the NSW/Queensland border) is also nominated.

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110 Office of Legal Aid and Family Services Attorney-General’s Department (OLA/PS), Note 22
111 Office of Legal Aid and Family Services Attorney-General’s Department (OLA/PS), Note 22, p8
112 See Terry J, Note 36
• In South Australia (SA) Flinders University offers a Bachelor of Arts (Legal Studies) (3 years full time or equivalent).
• There are no relevant courses available in Tasmania.
• Victoria has the largest choice. Diploma courses of Advanced Diploma of Business (Legal Practice) (2 years full time or equivalent) are offered through Chisholm Institute of TAFE, Holmesglen Institute of TAFE, Kangan Batman Institute of TAFE, North Melbourne Institute of TAFE, RMIT University (TAFE Division); Swinbourne University of Technology (TAFE Division); University of Ballarat (TAFE Division); Victoria University (Melton Campus). A Bachelor of Legal Studies (3 years full time or equivalent) is available through La Trobe University (Bundoora Campus).
• Western Australia (WA) has no suitable diploma courses, but there are 2 degree courses available (3 years full time or equivalent). A Bachelor of Arts (Justice Studies) is offered at Edith Cowan University and a Bachelor of Legal Studies is available through Murdoch University.

Details of other TAFE courses are difficult to obtain, and despite JobSearch’s seemingly exclusive list, it is this writer’s belief that TAFE is still an important provider, although the courses available appear to be specific to certain aspects of paralegal practice (eg criminal justice or business studies) rather than providing “global” preparation. TAFE NSW, for instance offers a Business (Legal Services) Diploma (16 hours per week for 1 year) through some institutions. This course is for people who want to work in the paralegal area as an officer/clerk and is offered at four metropolitan centres. Also TAFE South Australia offers a Certificate IV in Business (Legal Services) over 18 months full time attendance or its equivalence. “Skills covered include communication, customer service, OH&S, receipt and dispatch of information, search of public records, maintaining trust accounts, providing support in a variety of law matters, advanced document production on a computer, and preparation and execution of legal documents.”

114 There are very real difficulties in obtaining information about paralegal courses offered through TAFE. Courses differ from state to state and within the states themselves, with each Institute (or administrative organisation) offering different courses. The offer of courses is dependent on funding, which would appear to be sporadic.
115 See the TAFE NSW site at http://www.tafensw.edu.au for further details (last accessed 12 January 2004)
There are also several smaller, private colleges offering certificate and diploma courses – more akin to the “weekend wonders” so aptly described by Robert Le Clair, former president of the American Association for Paralegal Education, to fellow AAFPE members.\textsuperscript{117}

**Paralegal Courses offered by Southern Cross University**

The research indicates that the most comprehensive paralegal education on offer in Australia is that which is offered by SCU. It is also the only university based education which has been specifically tailored to the needs of paralegals and which is offered at undergraduate degree level. Accordingly, a comprehensive examination of those courses on offer at SCU is warranted.

The School of Law and Justice at SCU provides opportunities for the study of law at different levels and leading to different awards, being, Bachelor of Laws, Bachelor of Legal and Justice Studies, and Associate Degree in Law (Paralegal Studies) In conjunction with Southern Cross University’s College of Indigenous Australian Peoples, the Law School also jointly developed the Associate Degree in Law (Aboriginal Paralegal Studies). The Law School also entered into several industry partnerships which led to justice studies relevant to Police and Correctional Services.

In 1991, following research in the US and in Australia,\textsuperscript{118} SCU (then part of the University of New England) introduced a new degree - the Associate Degree of Business (Paralegal Studies). It was a two-year full-time course based on a model from the United States and begun at a time when the Australian legal system was being subjected to inquiry and criticism as to the very high cost of providing legal services. Perhaps it was timely. A small survey of local solicitor’s firms elicited a very positive response. The philosophy of the course structure was to provide students with the theoretical background to the different legal subjects and at the same time present the subjects in practical manner so that students could be quickly assimilated into the workforce. It was tailored to the needs of those employed in legal firms in a sub-legal capacity - in tune with a definition of *paralegal* as someone who worked beside a lawyer. Much of the course reflected its business name with compulsory subjects in accounting, computing and marketing. From the beginning it was well received by both


\textsuperscript{118} Harris R, Note 23, p49
students and prospective employers alike. Graduates were of assistance to legal practitioners and capable of making a considerable contribution to the running of a legal practice.

However, it was soon realised that the demand for paralegal education was much wider than had been thought. Paralegals, it appeared, were employed in government (public prosecutions, legal aid, welfare, courts administration and other government departments) as well as in finance, banking, insurance and the corporate sector generally. This was a much greater field than had been anticipated. Accordingly, in 1993, changes were made to the course to accommodate the greater needs of students and employers. The name change to Associate Degree in Law (Paralegal Studies) also reflected the changed curriculum and emphasis. This was education for paralegals who were not necessarily working beside a lawyer, offering more subject choice and looking to a much wider audience.

The degrees on offer now provide a broad perspective of the Australian legal system, a specificity of knowledge within certain identified subject areas and a firm foundation for a career in law. The offer of the degrees is an example of lateral thinking in a small, regional law school - placing the education of non-lawyers in the law school and providing much-needed education and training for them. It is also a feature of the School of Law and Justice at SCU that many of the academics on staff, have been (or still are) private practitioners, thus ensuring the “decidedly practical kind of training” that Goldring saw as an essential prerequisite to the appropriate training and education of paralegals.

**The Associate Degree in Law (Paralegal Studies)**

The course consists of sixteen subjects to be studied over two years on a full-time basis or four years on a part-time basis and it is possible for students to vary their enrolment - from internal to external, part-time to full-time and vice versa - from semester to semester. This provides the maximum flexibility possible, so that students can make allowances for their work and other commitments. An optional strand in Licensed Conveyancing has been accredited by the NSW Licensed Conveyancing Committee. Students who wish to complete this option and satisfy the academic requirements for registration must include *Conveyancing Law; Legal and Conveyancing Practice, Wills and Estates; Company Law; Commercial Law; and Conveyancers Professional Practice* in their curriculum.

119 Goldring J, Note 21 p15
**Bachelor of Legal and Justice Studies**

The Associate Degree has been designed to allow for the full articulation into the Bachelor of Legal and Justice Studies, which provides an even greater scope for specialisation than the Associate Degree courses. But like the Associate Degree, the Bachelor of Legal and Justice Studies is not a qualification for practice as either a solicitor or barrister even though it is a full degree course. Again, this degree is tailored to the needs of paralegal students and provides specific vocational majors directed at prospective areas of employment. Students are able to complete majors in one or two of the following areas; Criminal Justice, Practice Management, Commerce, Dispute Resolution, Indigenous Australians, Local Government, Social Justice, Licensed Conveyancing, Employment and Industrial Relations, and International Studies This award consists of twenty four subjects, eight of which are core law subjects.

**Course Delivery**

Starting with the premise that good teaching *does* make a difference to the way in which students learn,120 and that the facilitation of “deep learning”121 is the goal, then it is essential to consider the manner of delivery of that learning, because not all higher education is conducted in “face-to-face” manner.

Australia has a long tradition of distance based delivery of education at primary and secondary levels. Such a tradition is based upon the need to overcome constraints of funding and access. The sheer size of Australia and the disparate nature of the population have imposed a method of education delivery. City based universities have been less inclined to reach out, however, an expansion in the numbers of universities effected in the early 1980s and changes in technology have seen the development of a different culture in the delivery of education. Increasingly, universities rely upon some form of distance education, which involves either geographical or temporal separation (or both). Such education is accommodated by access to the internet or the provision of hard-copy materials (perhaps in combination) and may, therefore, be synchronous or asynchronous. The modern educator (legal or otherwise) must be multi-dimensional.

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120 There is far too much authority for this to mention more than just a few, but see Ramsden P, “Evaluating and Improving Teaching in Higher Education.” (1990-1) 2 Legal Education Review 149; Biggs J, “Teaching for Better Learning.” (1990-1) 2 Legal Education Review 133; Johnstone R,” Rethinking the Teaching of Law.” (1992) 3 Legal Education Review 17

121 See Biggs J, Note 120, pp138 - 140
Gender Issues

By far the biggest group of SCU students are those who have chosen to study externally, either because they live and work at a distance from the campus or because this is their preferred mode of study. It is interesting to note that “women dominate distance education enrolments.”\(^{122}\) It was always seen that any improvement in access to the justice system that could be effected by the provision of education for paralegals would have very important gender implications. Firstly, it needs to be acknowledged that women have traditionally had the least access to legal services, so that any improvement would be of benefit to women. Secondly, those identified as paralegals in the early 1990s were almost all female and they were in receipt of no formal training, had no associations and were poorly paid.\(^{123}\) They existed “as a shadow – supporting the work of the profession but with strict limits…”\(^{124}\) To a large extent there has been little progress made.

CONCLUSIONS AND RECOMMENDATIONS

Paralegals are not an easily identifiable group of legal workers in Australia and the establishment of a national, representative, professional association would go some way to redress this. The professionalism of paralegals flounders for lack of co-ordination. A professional association could also work actively to improve the wages and career structures of paralegals in both the private and public sectors – without impinging upon their value as “cost-effective” workers.

The experience in Australia has differed markedly from both England and the US, where the professional associations in both those countries were instrumental in moulding and progressing paralegalism. “Patronage” by the legal professional associations (law societies for instance) would be mutually beneficial given that paralegals are not the only legal workers facing challenges in the twenty-first century. The Law Council of Australia has identified challenges for the legal profession generally when it wrote that,

“The 21st century promises to be a time of significant change,

\(^{122}\)Davidson T “Distance learning and information technology: Problems and solutions in balancing caring, access and success for students.” (1996) 17:1 *Distance Education* 145, p149. According to Professor J Jackson (Head of the School of Law and Justice from inception until 1998), at Southern Cross the typical external paralegal student is a female, mature aged student (aged between 20 and 35) and living in a large city. A snapshot of distance study was contained in a newspaper article - Richardson J, “Remote Study at your convenience” *The Australian* March 22 2000, p46

\(^{123}\)Regan F, Note 37, p195

\(^{124}\)Regan F, Note 37, p195
driven by five key factors:

- Advances in information technology;
- The effects of globalisation;
- Changes in the competition and government regulation;
- Changes in demographics and social attitudes; and
- Advances in science.”125

There are many possible effects that will flow from these, some of which will have greater consequences for the paralegals than others. Legal firms will need to become more flexible and cost-effective to meet greater competition from other lawyers and non-lawyers. They will need to develop

“human resources policies reflecting an appropriate work-life balance for staff at all stages of their careers, issues such as expanded leave categories, flexible part time work policies and telecommuting [as well as] ensuring all staff have career development opportunities, access to training opportunities and variety of work [and] consider how to use technology to free up time, including using changes to the role of paralegals and legal secretaries.”126

The implications are that educated, efficient paralegals workers are likely to benefit from such competition and change. Lawyers and paralegals need to work together.

The lawyers themselves may need to be educated as to the value of their paralegal workers, when former students and graduates report the following:-

“Law firms on the North Coast and other country areas do not seem to recognise the qualification I have. They only want people with experience.”

“I loved the course. Fantastic for my personal development. I found that local law firms (Lismore area) did not recognise the course and failed to provide appropriate salary for a paralegal. It was disappointing.”

“Need to educate industry – legal secretaries are cheaper which causes problems for over-skilled paralegals.”127

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125 Law Council of Australia, Note 100
126 Law Council of Australia, Note 100
127 See Table 20, Appendix C
What are the implications for paralegals in Australia? Clearly greater access to and more comprehensive and appropriate education would help to elevate them to a profession. Not all paralegals work in the private profession and if they are to fully participate in the legal system, helping to improve access to justice by providing cost-effective legal services in a variety ways, then their education needs to match their expectations. The aim would be to ensure that paralegals are in a position to offer alternative legal services, within the existing system, providing consumers with greater choice and cheaper services.

Further, in the interest of paralegals and legal practitioners, there is a need for some national accreditation/qualifications system and the establishment of ethical guidelines for paralegal practice. As indicated earlier, Australian caselaw suggests this. Not all paralegals work under direct supervision (as in private practice). There are those that working more autonomously, such as the conveyancers. However, no matter where they work, all paralegals and lawyers would benefit from Australia-wide qualifications (or accreditation procedures) and ethical guidelines (or restraints). These would help not only to define and promote the profession as a profession in Australia but also might obviate claims for professional misconduct.

The last Chapter of this work will consider these conclusions for Australian paralegals at greater depth and place them into a wider perspective. It will also be argued that the Australian experience has meaning for many developing jurisdictions.
“The challenge before the legal profession in Australia today is to resolve the basic paradoxes which it faces. To adapt to changing social values and revolutionary technology. To reorganise itself in a such a way as to provide more effective, real and affordable access to legal advice and representation by ordinary citizens….”  

The primary purpose of this research has been to investigate the role that paralegals play in the delivery of legal services in Australia and to place Australian paralegalism in context. Accordingly, in this chapter I will

1. Address the research questions posed in the Introduction and test the hypothesis.
2. Make recommendations which flow from the results of the research given that the legal landscape in Australia, and elsewhere, is changing.

Echoing Justice Kirby’s thoughts, as cited above, the Law Council of Australia has identified five key challenges for the twenty-first century for the legal profession. They are advances in information technology; the effects of globalisation; changes in the competition and government regulation; changes in demographics and social attitudes; and, advances in science. All of these features have had and will continue to have an impact on the Australian legal landscape.

There is need to note two aspects of these features here. First, while the significant advances in information technology have been of great benefit to the legal community they have also seen public access to and use of legal information change enormously. Legal consumers and their expectations are vastly different as a result. For instance, the establishment and

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maintenance of the Australasian Legal Information Institute (AustLII),\(^3\) which is a freely available legal database, has ensured that everyone (lawyers and non-lawyers) has access to both primary and secondary sources of laws. All they need are basic computer skills and access to the internet. The availability of information is, accordingly, more public than in many other countries. This particularly so of the US where all major databases are available only for a price, which precludes the average lay person from obtaining such information. The notion of a public site of the ilk of AustLII is anathema to a society such as the US. For many Australian legal consumers, however, the ability to retrieve legal information has created an impression that “the law” is monolithic and no longer mysterious. The perception is that legal advice should, therefore, be a very cheap, accessible commodity. The problem-solving process of expertly applying legal knowledge to a factual situation, which is the real skill of the lawyer and the essence justifying the fee, is largely hidden.

A second reason for change is not the product of technology, but a by-product of our democratic system of government and change in societal attitudes. It also presents the lawyers’ conundrum, for while many legal consumers believe that that they should be able to resolve their own legal problems because “the law” is freely available, simultaneously there has been an “increase in the reach and volume of law [reflecting] broader cultural trends….as patterns of life become more complex and interdependent, the perceived need for law becomes corre-spondingly [sic] greater.”\(^4\) Concerned to respond to an increased expectation of their role, legislatures in all jurisdictions in Australia are passing more statutes, many of which compound others, ensuring a legal complexity unknown even fifty years ago.\(^5\) Australian taxation laws, which are a mélange of state and federal taxes, including income tax, capital gains tax, goods and services tax, land tax, and a myriad of levies are fine examples of this.

This research has concerned the role of paralegals in the delivery of legal services in Australia, and any objective reading would have to assume that paralegals, as part of the legal service industry, are affected by the changes outlined above as well. Their role must thus be read in that context. Consumers are wanting cheaper and/or alternative legal services and there is a role here for paralegals provided that economy and efficiency are not privileged

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\(^3\) http://www.austlii.edu.au


\(^5\) This is not a purely Australian phenomenum. See Rhode D, Note 4, p999 and particularly her footnote 83.
over quality and effectiveness. This danger was outlined by Justice Spigelman, in regards to the role of the courts, when he said,

“Perhaps the most definitive characteristic of the “new public management” is the greater salience that is given to what has been called the “three Es” -- economy, efficiency, and effectiveness -- in competition with other values of government activity such as accessibility, openness, fairness, impartiality, legitimacy, participation, honesty and rationality.” 6

THE RESEARCH QUESTIONS

In the Introduction, research questions were posed, concerning the role of paralegals in the delivery of legal services in Australia. To this end it has been necessary to inquire:-

1. Who is a paralegal in Australia?
2. Is paralegalism a profession?

The ALRC, in their Issues Paper No 21, had raised the following:-

Q.4.2 Are paralegals and lay advocates likely to play a greater role in future proceedings before courts and tribunals? If so, what sort of training do paralegals and lay advocates require and who should provide such training?

Q.4.3 Should paralegals and lay advocates be subject to any ethical rules, minimum standards or system of accreditation or regulation? If so, what should these ethical rules and minimum standards cover and who should oversee accreditation and/or regulation?”7

These three further questions were posed in order to address the ALRC concerns.

3. Are paralegals helping to meet the need for legal services and providing greater access to justice? Is their role likely to expand?
4. What Education and Training opportunities are available to them?
5. Is there a need for regulation?

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To assist in answering these questions it has also been valuable to compare the state of paralegalism in two other common law jurisdictions. Paralegals play an important role in the delivery of legal services in the US, where many of the states have bigger populations and constitute bigger jurisdictions than the whole of Australia. American paralegalism has a twenty year “headstart” on that of Australia and it is reasonable to anticipate that their challenges will mirror ours in the future. England, on the other hand, has a legal system very close to our own and the examination of paralegals in both England and Wales has revealed both similarities and differences to our Australian experience, both of which inform the research.

RESEARCH QUESTION NUMBER 1 - WHO IS A PARALEGAL IN AUSTRALIA?

This research reveals that paralegal in Australia is not a narrow concept and while it would be easy to merely distinguish paralegals from qualified legal professionals, and to state that a paralegal is not a lawyer but a person who works “beside a lawyer”, this is neither useful nor functional. It is, however, still not possible to point with any certainty to qualifications, market position or function to provide a definition and to determine the parameters of the profession. Paralegals work in a variety of legal environments which include, but are not limited to, working in private legal practices where they are supervised by lawyers. Moreover, even when working in such positions in the private sector, the type of work they perform is often concurrently performed by lawyers. The point at which there is no longer concurrency would appear to be arbitrarily set at a subjective measure of legal complexity. As indicated in the ALRC Report No 89,

“[The] policy on the reservation of legal work to lawyers is changing. In December 1998 the Law Council issued its policy on the reservation of legal work, defining core areas of business which should be reserved for lawyers. These core areas included court appearances, advice regarding contentious matters and litigation, wills and probate and conveyancing.”

This is a limited list, not only leaving a vast residue, but also, interestingly claiming conveyancing over which the legal profession no longer has a monopoly, because there are

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also independent conveyancing paralegals such as the Licensed Conveyancers in NSW, South Australia, Western Australia, Victoria, ACT and the Northern Territory.\textsuperscript{9} As to advocacy, there are also specialist (tribunal) advocates who are independent paralegals and if \textit{court} is the significant word in the above quotation, there is evidence that in some limited circumstances paralegals can and do make court appearances.\textsuperscript{10} This leaves only \textit{contentious} matters and litigation, wills and probate” of which I emphasise \textit{contentious} as the operative word.

Research Question Number 1 asks, “Who is a paralegal?” in Australia and relates to that part of the Hypothesis which describes a paralegal as being part of an \textit{undefined} professional group. Paralegalism in Australia is undefined. In answer, therefore, I propose that a definition of a paralegal in Australia needs to be both functional and expansive. I would endorse the definition proposed by Harris, who describes a \textit{paralegal} as:

“a person who is employed, usually for reward, in a legal environment who possesses legal knowledge, but also has organisational, communication and interpersonal skills which are utilised in providing a service to the community.”\textsuperscript{11}

RESEARCH QUESTION NUMBER 2 - DO PARALEGALS BELONG TO A PROFESSION?

The issue of whether there is a paralegal \textit{profession} was raised in the Introduction and in Chapter Four. For Goldring, it may be recalled, the prerequisite exists of a need for “community of purpose” extending to “language, values, role definitions, and selection of future members.”\textsuperscript{12} As described by Cramton, writing from a US perspective,

“[t]he terms “profession” and “professionalism” are elastic terms that are hard to define. Under modern usage, “profession” usually refers to a social construct consisting of a set of ideas that give a group of workers in the special community in which they work a collective identity. A profession involves work that is done

\textsuperscript{9} See Conveyancers Licensing Act 2003 (NSW) (repealing the 1995 act of the same name), Conveyancers Act 1994 (SA), Settlement Agents Act 1981 (WA), Agents Licensing Act (NT), Legal Practice Act 1996 (Vic) (Pt13)


for a living and that involves serious and longterm commitment. Its practice requires the possession and application of esoteric knowledge and the making of complex judgments. The required basic knowledge is acquired over time and with difficulty during a period of preparation that normally involves a certification by professional elders. The common bonds of language, preparation, and group association create a sense of group self-identity.”

Implicit in this are several basic elements. The first is that it is a social construct wherein a set of common ideas and bonds, forged by language, preparation and association, all help to impart a sense of identity. Second is that it is a career which demands education and training (and, perhaps, certification) and that consequently each member is in the possession of specialised knowledge.

Paralegals have been described as being part of a profession throughout this work. The core elements of professionalism sit well with paralegalism – particularly in the US and England where there are more professional associations which provide recognition and status. In Australia there is no “collective identity”, “group self-identity” or “association”. However, they share language and possess esoteric knowledge which they need to apply in their daily work. Missing is the exclusivity which could only really come from recognised qualifications and, arguably, from the establishment of a national professional association. Such an association could draw together the disparate strands to create identity, role definition and status as a full profession. Such an association would also be ideally placed to set education and training standards leading to accreditation and to establish ethical guidelines for paralegal practice.

The Institute of Legal Executives (Victoria) appears to have too narrow a base both in terms of job description and representation of paralegals outside of Victoria. The Australian Institute of Conveyancers, which has membership in South Australia, Western Australia, New South Wales, Victoria and Northern Territory is an association which represents only a specific class of paralegal – the Conveyancer – and is also inappropriate to represent all paralegals.

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A new association would need to be representative of all Australian paralegals, from both the private and public sectors and from each jurisdiction. The objectives of the English National Association for Paralegals are worth repeating here,

- “to provide for the qualification of its Student Members as Paralegals
- to provide for the career development of its qualified Members,
- to regulate the Paralegal profession,
- to disseminate information on matters of professional interest,
- to represent, promote and express the collective interests of its Members,
- to act as a consultative body on all things concerned with Paralegalism,
- to provide a forum for all matters affecting the interests of its Members,
- to provide opportunities for social contacts amongst Paralegals”  

In the US both of the major national associations seek to promote the professionalism of their members. NALA, for instance, identifies its goals and programs and seeks to,

- “increase the professional standing of legal assistants throughout the nation
- provide uniformity in the identification of legal assistants
- establish national standards of professional competence for legal assistants”

To have an effective role in the growth and development of paralegalism as a profession, paralegals will need to work together. Without a formal organisation, there are limited opportunities for paralegals to participate in decisions that directly affect them. It is important, also, to note that the two biggest professional associations in the US have developed codes of conduct to “delineate the principles for ethics and conduct to which every paralegal should aspire.” It is argued that the development and adoption of a similar set of guidelines by a professional association is an essential prerequisite to the growth of the paralegal profession in Australia.

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14 This is not intended to be a pejorative term.
15 The Sackville Report proposes the establishment of a national advisory council to advise on the training, accreditation and regulation for non-lawyers and moots the possibility of establishing an independent statutory body to oversee all legal services. Sackville R, *Access to Justice an Action Plan*, Access to Justice Advisory Committee, Canberra, 1994, pp120-123
It has already been noted that the growth in paralegalism was enhanced in both the US and England and Wales by association with the relevant legal professional bodies – the ABA in the US and the English Law Society. Such association appears to be positive, allowing for growth of the nascent profession and maintaining appropriate links with the legal fraternity. It is not the opinion of this writer that this has led to the unhealthy control of paralegals in either the US or England, although I note the arguments of Tow and Flaherty\textsuperscript{19} (in relation to the US) and of Noone\textsuperscript{20} (in relation to Australia). For Australian paralegals some nurturing by association with, but not necessarily control by, the already established legal professional bodies would be far more beneficial than detrimental. Paralegals are not, and should not be seen as, mere competitors to lawyers and it was the initial association with the legal professional associations in both the US and England which contributed to growth of paralegalism in those countries.

The Second Research Question is, therefore, answered by saying that paralegals in Australia are not yet part of an identifiable and distinct profession as compared to their peers in both the US and England and Wales. It is contended that the exclusivity and the recognisable qualifications, which are necessary elements of professionalism, are missing. Further, these could only really come from an accreditation process which establishes qualifications and from the establishment of a national professional association.

This Second Research Question relates to that part of the Hypothesis which posited that a paralegal in Australia is part of an undefined professional group. This is, therefore, answered in the negative. Paralegals in Australia are not yet part of a distinct professional group given that they lack the exclusivity and the recognisable qualifications, assuming we accept that these are necessary elements of professionalism. In finding this, however, there is no suggestion as to an inferior quality of their work. It is argued that the work of paralegals in Australia is not only comparable to their peers in the US and England, but that they meet the exacting standards required by the legal profession in this country – hence the increased reliance on their services.

RESEARCH QUESTION NUMBER 3 - ARE PARALEGALS HELPING TO MEET THE NEED FOR LEGAL SERVICES AND PROVIDING GREATER ACCESS TO JUSTICE? IS THEIR ROLE LIKELY TO EXPAND?

“Access to justice can have many meanings, depending on the scope of the definition of justice. But in...[this] context..., the definition of justice is limited to ‘the exercise of authority in the maintenance of right’ (The Oxford Reference Dictionary 1989, p448); and the ‘judgment of persons or causes by judicial process’ (The Macquarie Dictionary 1981, p961). Consequently the following discussion about access to justice is really about access to the legal system.”

The issue of inadequate access to justice, brought about by “geographical factors; institutional limitations; racial, class and gender biases” and disabilities (both mental and physical) is a prevailing theme in all of the jurisdictions examined in this work. But it is particularly so when economic factors restrict access for the impecunious or otherwise deserving. Indeed, for many US writers, “America suffers from a perpetual crisis of “legal hypochondria” which overwhelms the legal system and seemingly makes access to justice unrealistic for poorer Americans. As Johnson writes, “The difficulty poor clients experience in their efforts to access justice should be seen as the canary in the coal mine for the justice system as a whole – the poor are affected first because they are more vulnerable, but their difficulties are symptomatic of larger problems that ultimately will affect everyone.” It may well be the tip of the iceberg - to use another metaphor.

During the 1970s and 1980s in England, there was much debate on the unmet need for legal services and to how to improve access to justice. It was claimed that “too many people had legal problems, which they were unable to do anything about.” This lead to a concentration on the scope of legal aid, the adequacy of government resources and an exploration of

21 Noone M, Note 20, p25
22 Noone M, Note 20, p25
23 For Australia, see here Sackville R, Note 15
24 Rhode D, Note 4, p993
27 Partington M, Note 26
alternative methods of delivery. The findings of several government inquiries in turn lead to a raft of legislative measures – the *Administration of Justice Act 1985*, the *Courts and Legal Services Act 1990* and the *Access to Justice Act 1999*. Part II of the *Courts and Legal Services Act 1990*, for instance, had been drafted with the intention of providing for “new and better ways of providing legal services and wider choices of persons providing them.” The legislation opened the way for an expanded role for particular paralegals in England, chipping away at the lawyers’ monopoly. As already stated, paralegals now consider themselves to be the third arm of the law in that country.

There has been no shortage of ideas about how to remedy the problem of unmet legal needs and inadequate access to justice in any of the three jurisdictions considered in this research. There has, however, been little agreement as to the best ways forward. The only commonality is the understanding that none of the governments, in the US, England or Australia, are inclined to allocate vast amounts of money to ensure equity across the systems. Indeed, the trend to allocate less funding is not likely to be reversed, particularly by politically conservative governments. The issue, therefore, is how to maximise the monies that are available by re-ordering those resources and changing the means of delivery of legal services. This has implications for both the public and private sectors. The challenge is to become more cost-efficient without sacrificing standards.

The literature is divided at this point, with some writers advocating a greater emphasis on *pro bono* work by the legal profession. Other writers such as Cramton in the US see benefits in “rejuvenating” legal assistance schemes or by streamlining the courts’ system. However, as already indicated, a predominant theme suggests an expansion in non-lawyer (paralegal)

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29 Partington M, Note 26, p706
31 See Block-Lieb S, “A Comparison of ProBono Representation Programs for Consumer Debtors.” (1994) 2 AmBankrInstLRev 37, Lock M, “Increasing Access to Justice: Expanding the Role of Nonlawyers in the Delivery of Legal Services to Low-Income Coloradans.”(2001) 72 UColoLR 459, p474 and following, Cramton R, Note 13, pp578 – 579. Note also that in NSW the Law Society operates a Pro Bono Scheme which refers approximately 200 cases a year to practitioners throughout NSW on either a no fee or substantially reduced fee basis with access to the Pro Bono Disbursement Trust Fund. The scheme aims to provide legal advice etc to those who are in need but who have been refused Legal Aid.
32 Cramton R, Note 13 , pp587 -590
participation.\textsuperscript{34} In the US where there are still very real barriers to paralegal practice by virtue of the unauthorised legal practice laws in each state, many writers maintain that “the monopoly lawyers hold on the justice system has become an unacceptable barrier to change.”\textsuperscript{35} For Johnson the increasing use of paralegals, especially where they are competently assisting clients to fill in procedural forms, is highly desirable. As Rhode notes, when it comes to filling out forms, “retaining a lawyer is like hiring a surgeon to pierce an ear.”\textsuperscript{36}

In Australia, the Access to Justice Advisory Committee (the Sackville Report) issued its report in May 1994.\textsuperscript{37} The committee’s brief was to consider ways in which the legal system could be reformed to enhance access to justice and to make the legal system fairer. They noted that a range of work, commonly considered to be of a “legal” nature, is performed by paralegals and that they are employed in legal offices, Community Legal Centres and Legal Aid Commissions. In those jobs they were, inter alia, conducting research, drafting documents and appearing as advocates.\textsuperscript{38} Further, they wrote that,

“Tasks with a legal component, but that are largely administrative or require repetitive application of settled principles, appear to be well performed by paralegals. The use of supervised paralegals for such work frees lawyers to work on matters that require their higher level of legal skills. This appears to be well-accepted practice in the legal services market and one that we expect will be encouraged by the effects of increased competition and consequent pressures to lower prices and deliver legal services more efficiently.”\textsuperscript{39}

Similarly, Goldring has argued that,

“The employment of paralegals is a way of changing 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

\textsuperscript{35} Johnson Hon D, Note25, p485
\textsuperscript{36} Rhode D, Note 4 , p1015, citing Lancaster H, “Rating Lawyers: If Your Legal Problems are Complex, a Clinic May not be the Answer.” \textit{Wall St Journal}, 31 July 1980, p8 (quoting Robert Ellikson)
\textsuperscript{37} Sackville R, Note 15
\textsuperscript{38} Sackville R, Note 15, p72
\textsuperscript{39} Sackville R, Note 15, p105
least in the short run, but there is a question whether or not the quality of those services will change."\(^{40}\)

Accordingly, the first limb of Goldring’s argument is that paralegals can and should provide greater access to justice by providing cheaper services, allowing for a change of resources and reallocation of funds. This is particularly pertinent to Legal Aid Services where the study of the role of paralegals within the Legal Aid system (OLAFS’ Paper)\(^{41}\) concluded that “paralegals currently perform a wide range of tasks which previously have been performed by lawyers.”\(^{42}\) As indicated in Chapter Four, the main roles for paralegals in the various legal aid offices throughout the country are in assessing applications for legal assistance, applying the means tests, and sometimes merit tests in those jurisdictions where paralegals are allowed to do so. Once a grant of aid has been made, and referred to a practitioner, paralegals oversee the assignments and management of the case. There was also the suggestion that, increasingly, paralegals are being used to provide information or advice. Substantial savings can be made by freeing up lawyers from tasks that could and should be performed by paralegals – those tasks that do not require complex legal knowledge and skills. Indeed, the OLAFS Paper found that “State [Crown Solicitors Offices] have found paralegals to be very cost-effective”\(^{43}\) given that their wage rarely exceeds that of a junior lawyer and is often well below it. The increased employment and role expansion of competent paralegals within Legal Aid Services would allow for the more efficient use of sparse government resources. The barriers to this would appear to be that in some jurisdictions the giving of advice is statute-barred and that there is no career advancement offered to paralegals within the public service, suggesting that highly competent and motivated paralegals are less likely to choose this as a career option. Both of these barriers could be lowered or eliminated.

In the private sector, paralegals can and do provide for legal services to be delivered more cheaply.\(^{44}\) In these circumstances they are working as adjuncts to the legal profession with their specialised work being charged out to clients at a rate below that of the supervising lawyer. Critics of this process argue that, given that the demand for legal services is not

\(^{40}\) Goldring J, Note 12, p10  
\(^{41}\) Office of Legal Aid and Family Services Attorney-General’s Department (OLAFS), Paralegals and Legal Aid. Discussion Paper, Canberra, 1992.  
\(^{42}\) Office of Legal Aid and Family Services Attorney-General’s Department (OLAFS),Note 41, p3.  
\(^{43}\) Office of Legal Aid and Family Services Attorney-General’s Department (OLAFS), Note 41,p23.  
\(^{44}\) I note here, however, the work of Moorhead R, Sherr A & Paterson, “Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales” (2003) 37:4 Law and Society 765, which suggests that the presumption that nonlawyer services are considerably cheaper ( in the Legal Aid context) is not borne out in practice. Their services were, however, of a higher quality according to the study.
boundless, it will have a negative impact on the employment of solicitors, particularly those newly qualified. In the long term, however, it is likely to be of benefit to practitioners by making the business of the law firm more cost-effective and productive thus allowing for more employment across the board. To a large extent, it is a function of market forces and good business practice. “If a ...[paralegal] is able to function competently...then one can assume that market forces would prefer the lower cost legal assistant to the higher cost lawyer, all other factors being equal.” One of the challenges for the legal profession identified by Justice Kirby was that the legal profession needed to reorganise itself in such a way as to provide “more... affordable access to legal advice and representation by ordinary citizens.” A reallocation of work within the practice to utilise the education and skills of paralegals allows for just that.

The second limb of Goldring’s argument is that such employment could provide greater choice to consumers by opening up the market to alternative providers. In 1985, in England, the Administration of Justice Act ended solicitors’ monopoly on conveyancing by creating a new type of legal professional – the Licensed Conveyancer. As indicated by Ray, the fears by solicitors in that jurisdiction that their practices would no longer be lucrative (or even viable) proved to be unfounded. “Solicitors were certain that licensed conveyancers would spell the end for them, but instead, market forces took over. High rents and other business expenses made it difficult for licensed conveyancers to compete, and solicitors added still more pressure by lowering prices. A 1992 study showed that even though licensed conveyancers charged much less than solicitors, the licensed conveyancers’ market share was one percent or less.” The experience was similar for solicitors in NSW after the passing of the Conveyancers Licensing Act in 1995.

There is also a strong argument that competent and specialised paralegals could serve as community advocates in matters such as debt collection, welfare, landlord and tenant disputes, small civil claims, minor traffic disputes, and immigration. These are areas of unmet need where the costs to both court and client for full-scale adjudication cannot always be

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45 As has already been discussed, this has been the case in England.
47 Kirby Hon Justice M, Note 1, p13
49 A contact list provided by the NSW Law Society ((1995) 33 (9) LSJ 14)) reveals that there are less than 50 Licensed Conveyancers in NSW http://www.lawsociety.com.au/ This page was last updated on 16 June 2002 (accessed 30 January 2004)
justified. It is often work which private practitioners find monetarily unrewarding and unattractive. Such advocacy should be confined to the lowest courts (magistrates’ courts) and tribunals.

In Australia as in the US and England, the incidence of self-representation has increased.50 As Chief Justice Nicholson of the Family Court of Australia states,

“There has been in recent years a reported increase in the number of self-represented litigants…. The causes of this increase are not simple. Certainly the diminution in availability of legal aid from public funds has been a significant contributing factor. The nature of the jurisdiction may also be causative. An example of this is seen in the vast increase in self-represented litigants contesting adverse tribunal decisions in relation to refugee status….“51

The costs to the court system are enormous, for while the scope of the duty of the court to each unrepresented litigant is determined by the circumstances of each case, the court must tread a fine line between providing advice and assistance so that justice is done and also avoid the appearance of, or actual, partiality. This takes time and money and inevitably leads to court delays and often dissatisfaction with the justice system.52 “Specialist” paralegals could play a role here - at least in the magistrates’ courts and tribunals - for while it is not possible to argue that all of those who choose not to retain a lawyer (the self-represented litigants) would necessarily be happy to retain a paralegal, it is possible to argue that at least in some discrete areas of law (as already outlined) that a specialist, and cheaper, advocate may well be a popular choice. A resolution in a lower court or tribunal where the client has had the benefit of advice and representation of specialist paralegal may well obviate the need to appeal to a higher court, because of the perception that “justice has been done”. These advocates would be ideally placed in Community Legal Centres and would provide greater access to justice for the disadvantaged, particularly women.

50 Note that this is called pro se litigation in the US.
52 Banham C, “Court suffers the irrelevant and incomprehensible from the lawyerless.” Sydney Morning Herald, Mon 8 September, 2003, p3
As indicated earlier, all relevant statistics indicate that indigenous Australians are overly represented in criminal justice system in all states and territories.\textsuperscript{53} As some of the poorest members of Australian society, there is also evidence that many Indigenous communities are beset with conflict and domestic violence.\textsuperscript{54} Their situation is compounded by geographical, language and cultural barriers and a paucity of lawyers available to represent and advise them.\textsuperscript{55} There are already Aboriginal Field Officers working for the Aboriginal Legal Services in the various states and territories,\textsuperscript{56} however, paralegals could play an even greater role as officers liaising between Indigenous communities and the wider community. In the absence of Indigenous lawyers (or, indeed, any lawyers at all in many instances) they could work as a link between communities and lawyers, not just between individual clients and lawyers. With proper education and training this would be an educative and problem-solving role, helping to inform the community as to their rights, resolve disputes if possible and perhaps even train others in the role. With individual clients they would help to prepare the client by explaining the legal process. The role depends upon appropriate paralegal education and, for remote communities, fluency in the relevant Indigenous language. It would also be aided by skills in Alternative Dispute Resolution, particularly mediation.

It is more difficult to draw comparisons with either England or the US here. More relevant, perhaps is the South African experience where paralegals working in Community Advice Offices use their knowledge and experience to “help people with their legal, human rights, administrative, constitutional and developmental problems, while at that same time empowering them to tackle these matters on their own in future.”\textsuperscript{57} Such a role assumes basic knowledge of law and its procedures, skills in alternative dispute resolution and the motivation to work in, and be accountable to, their communities.

\textsuperscript{53} According to the Australian Bureau of Statistics, “Indigenous persons were 16 times more likely than non-Indigenous persons to be in prison (15 times more likely in 2002).” Australian Bureau of Statistics, http://www.abs.gov.au figures released 22 January 2004,(accessed 23 January 2004); Also “After a comparison was made of adult Aboriginal and non-Aboriginal participation rates in non-custodial corrections, Research Paper No.19 found that Aboriginals were over-represented by a factor of 8.3 for Australia as a whole in Western Australia the figure was 8.2 This was compared with a level of overrepresentation in prison populations of 15.1 (WA 26.3) (National Prison Census) and 23.4 (WA 61.6) for sentenced prison receptions in April 1989.Royal Commission on Aboriginal Deaths in Custody, \textit{Regional Report of Inquiry into Individual Deaths in Custody In Western Australia}. Volume1, Note 10,( accessed 23 January 2004)


\textsuperscript{55} The work of the Aboriginal Legal Services in each state and territory is acknowledged as being underfunded.

\textsuperscript{56} See Office of Legal Aid and Family Services Attorney-General’s Department (OLAFS), Note 41, p15

There may be immediate resource implications here, but ultimately the creation and strengthening of paralegal roles within Aboriginal communities would be both cost-effective and highly desirable.

The above expansion of employment, both proposed and actual, is premised on the need to ensure quality of service. Ray’s argument, for instance is that if market forces were allowed to have free rein then clients “would prefer the lower cost legal assistant to the higher cost lawyer, all other factors being equal.” (emphasis added)\textsuperscript{58} This is surely the point. Cheaper services will only be used if they are as good as those offered by the “higher cost lawyer”. They are only a bargain if they are equal or better.

Goldring’s rider is that the paralegals’ services need to be of a standard that does not privilege cost over effectiveness or excellence. Again, critics of expanded paralegal practice contend that it will impoverish the legal system.

“Although market forces can encourage the emergence of paraprofessionals it cannot ensure the quality of them. Even the strongest proponents of deprofessionalization worry that it relegates clients to second-class justice, prompted by a passion for parsimony rather than dedication to better quality, Given a choice unrestrained by resources, how many of those seeking a vindication of a right would choose a paralegal over a lawyer or a legally untrained mediator over a judge?”\textsuperscript{59}

It may be true that, given unlimited resources, clients would choose lawyers to act for them, but very few clients, either corporate or private, are in such a privileged position. Nor do all writers agree with Abel’s proposition. The Sackville Report, for instance, was clear in its support for paralegals who they saw as delivering service that was not necessarily of a lower quality. Indeed, they cite Noone as authority that, “[p]aralegals expert in particular fields can deliver legal advice and other services at a high standard, equal or even higher than many lawyers given that lawyers inevitably cannot maintain an expertise in all the areas of law in which they are licensed to practice.”\textsuperscript{60} Further, the study conducted by Moorhead, Sherr and Paterson into Legal Aid and paralegals in England and Wales,\textsuperscript{61} lends weight to the view that

\textsuperscript{58} Ray D, Note 46, p261
\textsuperscript{59} Abel R, Note 30, pp1025-1026
\textsuperscript{60} Sackville R, Note 15, p106
\textsuperscript{61} Moorhead R, Sherr A & Paterson, Note 44
services provided by non-lawyers are, in many instances, superior to lawyers in terms of client satisfaction and assessment of outcomes.

The “inevitable impoverishment” argument is analogous to that which was traditionally aimed at alternative dispute resolution services (such as mediation) - that they provide poor-man’s justice - and has been debated elsewhere. 62 If the services offered are of the same quality as the “high cost lawyer” model, then consumers will use the cost-efficient services in preference. Many commentators, as well as the Sackville Report, support this notion pointing to the competitive effect of paralegal services driving down prices for legal services (and making them more “client-orientated”) to the benefit of the consumer. 63 Competency attained by education and training is surely the key to ensuring quality.

The answer to Research Question 3 is that paralegals in Australia are helping to meet the need for legal services and providing greater access to justice in this country, but that there are ways in which paralegal practice could be expanded to improve access to legal services. Further, paralegals, as part of the legal service industry, are affected by the same political, social and economic pressures that affect legal practitioners. Their role must, thus, be read in that context. Consumers are wanting cheaper and (perhaps) alternative legal services and there is an expanded role here for paralegals provided that economy and efficiency are not privileged over quality and effectiveness. This question relates to that part of the Hypothesis which asserts that the existence of paralegalism in Australia is fundamental to meeting the need for legal services in Australia, and is answered in the affirmative.

62 See, for instance, the argument put in Rhode D, Note 4, “If any single lesson emerges from the burgeoning research on dispute resolution, it is that no single method is uniformly superior.” (p1011) and her footnotes 147, 149, 151. See also Mistelis L, “ADR in England and Wales” (2001) 12 Am Rev Int’l Arb 167; Mnookin R & Kornhauser L, “Bargaining in the Shadow of the Law: the Case of Divorce” (1979) 88 Yale LJ 851; and Delgado R et al, “Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution” (1985) Wis. L. Rev. 1359 Compare these to Scutt’s argument re mediation and the creation of a second class system (to cut costs) by removing justice from the public eye and thereby adding to the powerlessness of the poor. Scutt, J “The Privatisation of Justice: Power Differentials, Inequality and the Palliative of Counselling and Mediation” in Mugford (ed), Alternative Dispute Resolution, Canberra, 1986, AIC Seminar Proceedings No 15 185, p203
63 Sackville R, Note 15, p106
RESEARCH QUESTION NUMBER 4 - WHAT EDUCATION AND TRAINING OPPORTUNITIES ARE AVAILABLE TO PARALEGALS? ARE THEY APPROPRIATE?

The research has revealed that unlike in either England or the US there are only limited opportunities for paralegals to gain specialised education and training in Australia. Indeed there are some states and territories where there is nothing appropriate on offer. The list of institutions that do provide educational opportunities is available in Chapter Four and is spread between the state TAFE systems and a few universities offering courses in legal studies. Accordingly, SCU would appear to be a most significant provider offering degrees at associate and full bachelor levels specifically tailored to provide education for paralegals.

Paralegals are part of the service industry of law and it is appropriate to place the education of paralegals at university level and allied to law schools for several reasons. Firstly, it is part of the “new pluralism” in the study of law. This was identified by Twining when he wrote that, “many recent developments [in legal education] mandate a broader vision of legal education as an enterprise…. [T]he contemporary agenda of issues in legal education is expanding our perceptions of the scope of the enterprise and requires rethinking of the role of law schools…. The new agenda includes not only legal education and judicial education, but also law in schools, paraprofessional training, and increasing legal awareness in society as a whole. That this is not merely a peripheral extra for “outreach programmes”, “service teaching” and token exercises in public relations is illustrated by recent trends…. [L]aw schools, as the core institutions of any national system of legal education, need to move beyond the “primary school model” to be redesigned as multifunctional resource centres for providing and assisting legal education at all levels of society.”

Accordingly, Twining sees the location of “paraprofessional” education in universities (and in law schools, not under the auspices of other schools) because law schools are the “core institutions” for legal education. He anticipates mutual benefit. For the law schools it creates greater responsiveness to community needs where, as “multifunctional” centres of learning, they are in a position to provide legal education to “all levels of society”. Law is no longer purely academic which leads to an enhancement of the learning experience of law students.

65 Twining W, Note 64, pp 6-7
This is achieved, amongst other ways, by the offering of a greater range of subjects, many with a practical bent or application. This has been the experience of SCU law students.\(^{66}\)

For paralegal students their education is enhanced by what has also been described as an “integrative - or multidisciplinary – approach.”\(^{67}\) Tayler’s argument is that education for paralegals needs to be flexible and more broad-based.

“As the paralegal profession matures, new and evolving roles in the legal field require education for change rather than education for a specific career. Traditional jobs have become more defined and require diverse preparation…. Education institutions preparing students for a flexible marketplace use integrative – or multidisciplinary – approaches to enhance education. Over the past decade, there has been a marked shift in the relationship of paralegal programs to other disciplines in their institutions.”\(^{68}\)

Tayler sees huge benefit in the association with other disciplines such as liberal arts and notes that in the US, “Market demands for more well-rounded graduates help drive the development of programs that provide students broader-based backgrounds.”\(^{69}\) The association proposed with other faculties within undergraduate institutions in the US is entirely fitting. The teaching of law in that country is at graduate level, so that full integration into a law school is not an option for paralegal education. This is not the case, however, for England or Australia.

In Australia, we have the opportunity to provide paralegal education at university and through the law schools, as shown by SCU. The chance therefore exists to provide for a wider education with links to many other disciplines – business, information technology, Indigenous studies or the social sciences, for instance – while still maintaining close association with the law schools. The experience of educators surveyed by Tayler indicates that the multidisciplinary courses offered in the US are successful and enhance their paralegal programs. The programs “enrich the experience of students and augment the career possibilities of students.”\(^{70}\) Such “enrichment” is not possible outside of the universities in

\(^{66}\) This is information obtained anecdotally by the writer in relation to units such as Family Law Practice and Interviewing, Negotiation and Ethics.


\(^{68}\) Tayler M, Note 67, p65

\(^{69}\) Tayler M, Note 67, p65

\(^{70}\) Tayler M, Note 67, p85
Australia. The TAFE system, for instance, is appropriately more technically orientated, with emphasis on vocational training rather than broad-based education.

A further benefit for paralegal students relates to issues of equity in access to legal education. A paralegal degree program designed to articulate into a Bachelor of Laws offers an opportunity for students who might not have had the resources or educational background to become fully qualified. Many mature aged students – particularly women – fall into this category. As Twining notes,

“in systems where there is strong competition for places in law school, the criteria for admission have very little to do with suitability for legal practice…. [S]ystems with multiple routes of entry (via degrees other than law, external degrees, apprenticeship, conversion course, overseas qualifications etc) tend to present far fewer barriers to access than those that require a full-time law degree as a necessary qualification for practice.”

In Australia there is very strong competition for places in law schools. A paralegal degree which articulates to a Bachelor of Laws, however, provides one way of lowering the barrier and can provide opportunity for many suitable, experienced and motivated people to become fully qualified in the law.

If paralegal education is best seated in universities, a question remains as to what form education should take. The places of employment, and the tasks that they undertake in their work suggest the need for specific education and training. It is not possible, nor desirable, however, to be overly definitive. As Tayler commented, “new and evolving roles in the legal field require education for change….” The results of the SCU study and the literature can only provide guidelines not goalposts.

However, based on the available evidence, it is argued that at this time the majority of paralegals in Australia work in private solicitors’ firms. As indicated in Chapter Four, in the research survey of SCU graduates from 2000 – 2001, 53.8% of the graduate paralegals who

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71 Twining W, Note 64, p10
72 A larger, more comprehensive study of places of employment and the types of work undertaken would be beneficial, as identified in the Introduction.
73 Tayler M, Note 67, p65
74 Walsh H & Cowley J, Southern Cross University, School of Law and Justice, Graduate Destination and Satisfaction Study. (December. 2001,On file with Author), reproduced at Appendix B Walsh H & Cowley J,
responded work in the private profession. The second biggest cohort was from the public sector (government departments from all levels, Legal Aid etc) at 14.4%, with community based legal services and private industry (commercial or financial) the next most popular categories. These findings accord with other research, notably that of Paul Palisi. Any education, therefore, needs to be informed by this and include subjects and skills training as appropriate for paralegals working in private practice as well as other niche areas.

Nor is it possible to draw up a definitive list of the tasks that paralegals perform. The SCU study had inquired about the work practices of graduates and sought indication as to the extent to which they were required to carry out certain activities. This included whether they needed to research substantive law, apply legal problem solving methodology, read and apply legislation, interpret case law, complete forms and applications, interview clients, draft legal documents, prepare briefs to counsel, deal with ethical dilemmas, analyse and reason, investigate and organise, provide legal advice, provide financial advice, provide advice as to the best course of action, resolve disputes (using ADR techniques or by litigating), negotiate (using formal or informal procedures), and use word processing software. Of Associate Degree (ADL) graduates, 58.7% had indicated that they needed to complete forms and applications, 44.7% routinely interviewed clients and 42.6% drafted legal documents. Very few were involved in either negotiation or dispute resolution, but 48.9% indicated that they routinely handled clients’ money. As to other “legal” tasks which would ordinarily be reserved for lawyers, only 12.8% (ADL) and 3.8% (BLJS) graduates needed to interpret case law, with only slightly higher numbers needing to read and apply legislation.

According to the American Association for Paralegal Education,

“…In order to be a successful paralegal, an individual should possess not only a common core of legal knowledge, but also must have acquired vital critical thinking, organizational, research, writing, oral communication, and interpersonal skills. All paralegal education programs, regardless of the specialty areas they

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Southern Cross University, School of Law and Justice, Report on Graduate Destination and Satisfaction Study: Paralegal Responses, reproduced at Appendix C

75 See Appendix C, Table 15 – 2.11 Types of Employment
77 See Appendix C, Table 23 See also the description of skills, knowledge and training required under the Administrative Employees Award 1993(Vic) and Clerical and Administrative Employees Legal Industry Consolidated (State) Award (NSW) as outlined in Chapter 4.
choose to emphasize, should provide an integrated set of core courses that develop...[those] competencies.”

The specific skills and competencies as recommended by AAfPE are: critical thinking, organisational skills, general communication, legal research, legal writing, computer skills, law office management skills, and paralegal professional ethics and obligations. In addition to this, the common “core of legal knowledge” necessary for paralegal practice in the US includes real property law; civil procedure/litigation; business and corporate law; wills, trusts and estate planning; family law; torts; and contracts. Other areas of specialisation are then incorporated into the curriculum. It is worth noting that the professional associations such as NFPA support the inclusion of such skills and competencies into curricula.

The Australian research suggests a slightly different emphasis. Even though the “core competencies” as outlined by the AAfPE accord with the SCU findings, the areas of substantive law in which paralegals need a foundation understanding would appear to be a little different. Graduates were asked to indicate on a scale 1 – 5 (1= not at all, 5 = a lot) to what extent they performed in various areas of law. Table 21 of Appendix C details the breakdown of the responses according to the course of study undertaken by the student. Overwhelmingly SCU graduates of the BLJS worked in the area of property/conveyancing (if those two are combined), with office management and wills and estates also frequent areas. The next most frequently identified areas are contract and criminal law, followed by litigation and family law, whereas personal injuries and torts were areas in which very few of the respondents worked. The essential difference between the work of an Australian paralegal and his or her US counterpart, is the work performed by Australians in the area of criminal law, which is not considered a “core” area of legal knowledge in the US. In Australia, however, the SCU study indicates that a knowledge of criminal law and procedure should be included as “core” because of the numbers of paralegals working in that area.

The devise of a model curriculum should reflect the above information with an incorporation of the required paralegal skills and competencies with legal theory as the essential ingredients.

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79 University College of Tulane in New Orleans, Louisiana, (US), for instance, offers a paralegal program at 3 levels –Bachelor, Associate Degrees and Post-Baccalaureate Certificate – ABA approved since 1981. The Bachelor degree requires a study of humanities, science or social science (12 credit points); 2 English subjects; mathematics or Critical Thinking or Business Studies; a choice of 1 out of 2 oral communications subjects;
of each practically orientated subject. A degree in paralegal studies needs to include as foundation a study of the legal system and processes of Australia, as well as a solid grounding in the methods of legal research and writing. Other areas to include are criminal law and procedure; contract law; property law; family law; civil law and procedure; wills and estates; and torts. Skills in interviewing and, most particularly, an understanding of paralegal ethics are also basic needs. Depending on the structure of any program and the nature of a paralegal’s employment other substantive courses will also be of value (such as advocacy, Alternative Dispute Resolution, welfare law and administrative law).

One of the AAFPE “core competencies” is an understanding of paralegal ethics. “Knowledge and information relating to the role of the paralegal in the delivery of legal services, ethics and professional values is vital to paralegal competence.”\(^80\) In line with this, a paralegal education program in Australia should offer a course in paralegal ethical practice, which should include (but is not limited to) consideration of:-

- confidentiality and legal professional privilege;
- conflicts of interest;
- how to handle client monies;
- courtroom etiquette,
- honesty.
- Aspects of competence and care, including an understanding of contractual liability, tort liability and immunity and professional indemnity insurance.

It would clearly also be advantageous for graduates to be able to demonstrate the ability to identify and resolve ethical dilemmas that may be confronted in the workplace.

In Chapter Four it was noted that Australia has a long history of delivery of education at a distance and that increasingly Australian universities rely upon some form of distance education and that the experience of SCU is that by far the biggest group of paralegal students are those who have chosen to study externally. Further, it was noted that distance education is most favoured by women who “dominate distance education enrolments.”\(^81\) The implication is that paralegal education in Australia should be offered externally to cater for obvious need.
As to the length of any course, the NFPA in the US supports a two-year program as the minimum criterion acceptable for individuals to enter the paralegal profession in that country, but notes that in some jurisdictions employers are wanting four-year degrees as a minimum. The Australian situation is quite different. The absence of a paralegal classification in government employment has already been noted in Chapter Four and while recent statistics indicate that during “the year ended June 2002, 81% of all Australian employers provided some training for their employees”, this was mostly of an “unstructured” nature – akin to “in house” or “on-the-job training”. The results of the SCU study indicate that employers of paralegal graduates do not always recognise or understand the qualifications. The following comments were collated and included in Table 20:-

- “Generally good but industry lacks confidence that students have skills.”
- “Need to educate industry – legal secretaries are cheaper which causes problems for over-skilled paralegals”
- “Law firms on the North Coast and other country areas do not seem to recognise the qualification I have. They only want people with experience.”
- “Employers do not have an understanding of what the course involved.”

In her 1976 study, Robinson had sought the views of the solicitors that she interviewed concerning paralegal training. Almost all of the practitioners indicated that they provided some form of in-house training, often as supplement to secretarial training. As to further training, very few considered that there was a real need and one solicitor indicated that he would be unwilling to pay higher wages in recognition of further training. The 1977 study of lawyers and paralegals working outside of private practice returned equally disparate responses to the same inquiry, some organisations being positive and others negative. It is interesting to note that these studies were conducted in the mid 1970s and yet some employer attitudes to paralegal education and training do not appear to have altered markedly.

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85 Note, however, that the Law Council of Australia identified the following for legal firms in the new century as a challenge to be addressed, “Ensuring all staff have career development opportunities, access to training
Education for employers as well as paralegals would seem appropriate in the circumstances. For many practitioners, paralegals represent an unwelcome challenge and the spectre of an educated and experienced paralegal is very threatening indeed. Paralegals, however, are not working in direct competition to all areas of a lawyer’s work. As Brezniak said, “it is worth remembering, despite the intimate relationship between paralegal professionals and lawyers, the important difference between the professional groups.” Their roles are essentially different and present and proposed education and training supports this. It is true that lawyers and paralegals can, and do, share some tasks, however, lawyers retain (and will continue to retain) the more contentious, specialised and esoteric legal work. As has already been suggested, there is evidence that practitioners in the private profession are already using skilled paralegals to offer more cost-effective services to their clients. This is a trend that it more likely to increase. Further, it is posited that competition from well educated paralegals will open new markets rather than close down the old.

The Sackville Report recognised the benefits to consumers and the need for “specialist training courses as areas of law are opened up to paralegal practice.” A model curriculum as outlined above, which has a practical orientation and which provides for the acquisition of a “common core of legal knowledge… [and] vital critical thinking, organizational, research, writing, oral communication, and interpersonal skills” and which is underpinned by an understanding of ethical paralegal behaviour, would appear to satisfy this need. Bearing in mind that even though this is not a degree designed to qualify a graduate for admission to legal practice such a course would require no less than the equivalence of two years full time study for full qualification.

There is benefit for the legal profession, the paralegal profession and consumers of legal services in such expansion of paralegal education and training.

The Fourth Research Question inquired as to the education and training opportunities available to paralegals. Further it was asked whether such education as identified is

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87 Sackville R, Note 15, p109
88 See AAIPE, “Core Competencies for Paralegal Programs”, Note 78 ( accessed 4 September 2003)
appropriately designed and who should provide it. In answer to this three-part question it is argued as follows:-

1. That there are relatively few opportunities available for paralegal education and training, but that such opportunities should be made available through universities and offered through law schools as the “core institutions” of legal education. The most significant and appropriate provider of paralegal education in Australia is Southern Cross University.

2. That a curriculum which provides for the acquisition of a “common core of legal knowledge… [and] vital critical thinking, organizational, research, writing, oral communication, and interpersonal skills”, underpinned by an understanding of ethical behaviour, be promoted. Further, that given the disparate nature of paralegal employment that such education and training should be offered externally to accommodate the needs of the student.

3. That, given the breadth of knowledge and the requisite skills needed for competency, the degree on offer should be no less than the equivalence of two years full-time study to support full qualifications.

This fourth question relates to that part of the Hypothesis which states that paralegals, as a group, are poorly educated and is answered by saying that with the exception of those few in receipt of university based education, in degree programs designed specifically for paralegals, that this part of the Hypothesis is proven correct - they are poorly educated. Further it was posited that they lack recognised qualifications. Again, this is answered in the affirmative. There is no understanding or standardisation of educational paralegal credentials in Australia in the same way as there is in the US or even in England given that there is no professional association to establish standards and provide ongoing supervision.

RESEARCH QUESTION NUMBER 5 - IS THERE A NEED FOR REGULATION?

The issue of whether to regulate or not is vexed. Indeed, regulation is the biggest challenge to the paralegal profession in the US today, but, again, there is argument as to whether it is beneficial or detrimental to paralegal practice. In the US Chapter, it was noted that the
AAfPE, NFPA and LAMA are in favour of some form of regulation, whereas NALA is opposed. The NFPA endorses the mandatory regulation of paralegals (on a state-by-state basis) as long as it provides for an expansion of their role. This would be provided by a two-stage licensing process, standardisation of ethics and education, a method to assess advanced competency, a disciplinary process and a definition of tasks. LAMA does not favour mandatory regulation. NALA opposes regulation, reasoning that there has been no demonstrated public need and that it will increase costs and inhibit the growth of paralegal activities. California has already passed legislation to regulate paralegals in that state and as Therese Cannon says, this is

“major legislation that defines the occupational title “paralegal”, sets standards for persons to use “paralegal” and comparable job titles, and defines and limits the functions that paralegals can perform. The new law makes it unlawful for persons to identify themselves as paralegals unless they meet the qualifications set forth in the statute and work under lawyer supervision. Other key provisions establish mandatory continuing education and the paralegal’s duty of confidentiality.”

The argument for regulation or licensing is far more compelling in the US than either England or Australia. In the US, paralegals tread the precarious line of unauthorised practice of law. Any definition or clarity for their role and status would seem appropriate in the circumstances. For some professional associations and many educators, however, statutory regulation presents an unwarranted intrusion and limitation on paralegal practice. In Australia, the Sackville Report indicated that, while it recognised the growing need for specialist training courses for non-lawyers,

“we would be concerned if the reservation of legal work to lawyers were simply replaced by a series of areas reserved to lawyers and licensed paralegals. Ideally where the market would be opened to competition, service providers should be entitled to offer their services and advertise their qualifications, leaving

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90 http://www.paralegals.org/Reporter/August96/statement.html (accessed 8 September 2003), Paralegal Regulation
91 This argument would appear to be largely based on the fact that legal assistants work under the supervision of lawyers – ignoring the circumstances where this is not so and failing to appreciate that any expansion of role inevitably takes them out from under the lawyer’s supervision and malpractice insurance.
93 California Business and Professions Code (2003), Division 3. Professions and Vocations Generally, Chapter 5.6 Paralegals, paragraphs 6450 –6456
consumers to choose the level of services they require. In particular we would be concerned if the work presently being performed by paralegals such as in community legal centres, were to become subject to onerous licensing regimes that could have the effect of excluding existing experienced paralegals.”

There are many commentators, however, who recognise that “paralegal professionals require a portable designation, not only for reasons of economic opportunity, but also for job and personal satisfaction.”95 Such “portable designation” can only come from a formal process of recognition, based on accreditation. The question is whether such formal recognition requires a full statutory, regulatory regime to augment, or supplant the duties already found to be owed by paralegals under the common law.96 Accordingly, any proposal to regulate paralegal practice in Australia needs to consider the triangulated interests of the public, legal practitioners and paralegals.

The Public Interest

Traditional arguments for the maintenance of a legal monopoly have often been couched in terms of the need to protect the public from harm from incompetent or unethical behaviour from those not qualified to provide legal work. Competence is accrued by education (and the award of qualifications) and by experience. Ethical behaviour, on the other hand, is a matter of personal morality and an understanding of legal ethical standards (in the handling of clients’ money, for instance).

There is, however, some difficulty with the traditional arguments. Firstly, the requirements for appropriate legal qualifications and admittance to the profession do not “guarantee a competent or ethical lawyer.”97 Rather they mask what is often perceived to be the marking of a boundary around practitioners’ work that guarantees them a livelihood. The legal professionals in all three countries in this study are, and have been, keen to hold on to their domain and their esoteric knowledge to the exclusion of others. In the US, legal work, though defined differently in all state jurisdictions, is, nevertheless, “authorised” only to attorneys in that country. In England and Australia there is no equivalence of authorised or unauthorised practice of law. An Australian or English practitioner’s scope of practice is confined to

95 Brezniak D, Note 86 , p41
96 Paralegals in Australia have been found to owe a duty of care and competence (in Creative Typographics Pty Ltd and Ors v Glade-Wright [1999]TASSC 20) a duty not to disclose confidential information (in McMillan v McMillan (2000) 159 FLR 1 (2000) 26 FamLR 653) and a duty to avoid conflicts of interest (in T v L (2000) 160 FLR 63; [2000]FamCA 351 and in PhotoCure ASA v Queens University at Kingston [2002]FCA 905)
advocacy in the courts, and the preparation of certain legal documents and supported by a prohibition on non-lawyers carrying out legal work for reward or holding themselves out to be qualified as legal practitioners for reward. Therefore the extent of work specifically reserved for legal practitioners in Australia is not clearly defined. Public protection is a matter of risk management and if the boundary of work reserved to lawyers is to be shifted then the vehicle that provides the protection – the professional indemnity insurance - needs to be shifted along with the boundary. In these circumstances, adequate professional insurance needs to underpin paralegal qualifications attained by an appropriate standard of education and training.

The essence is to strike a balance between public protection and freedom of choice, preserving the standards and integrity of the legal services and allowing consumers to decide. Again, there is no suggestion inherent in this argument that paralegals could, or should, supplant legal practitioners. This is not an argument for free competition for all legal services (“the quintessential liberal solution for all difficult problems”)99 and the removal of the entire legal monopoly. This is an argument for allowing an informed public to choose service providers and products in those areas where there is already a concurrence of work or where there are needs unmet by lawyers’ services. For some consumers, particularly the disadvantaged, this would provide access to services where it has not been available before, due to cost or other factors. However, it is salient to note,

“Choices are never free. How can we be sure that clients have the resources and information to maximize their autonomy? How do we address the problem of false consciousness and socially constructed preferences?…We know that lawyer’s clients are profoundly affected by such qualities as courtesy (returning phone calls, keeping them informed) and the ability to listen. If we are queasy about allowing patients to “choose” between doctors and alternative medicine, what about choices between lawyers and paralegals? Milton Friedman has argued that professional self-regulation increases cost, thereby lowering the average quality by depriving those who would have chosen lower quality paraprofessional services. What of the concern that allowing the poor to purchase inferior services lets the profession and the state evade responsibility for providing superior services?”100

97 Ray D, Note 46, p254
98 See Sackville R, Note 15, p70
99 Abel R, Note 30, p1026
100 Abel R, Note 30, pp1026 -1027
Few would question the notion that choices are not free. The centrality of this argument, however, would seem to be that choice becomes illusory if it is a “choice” between “lower quality paraprofessional services” and no services at all, to the detriment of the public, the legal profession and the paralegal profession. The word quality, emotively modified by notions of inferior and superior, becomes fundamental. The suggestion of this writer is that paralegal services need not be inferior. They can be cheaper, more accessible and of good quality if the paralegal in question is appropriately educated and qualified. Further, law is a public service industry where a practitioner’s knowledge and expertise needs to be communicated to the client. Good interpersonal relationships do matter. Qualities “such as courtesy… and the ability to listen” are part of that communication process and only a “problem” if that process fails. A good bedside manner of a lawyer (or paralegal) is persuasive and even if it creates “false consciousness” or a “socially constructed preference” it is not a problem but an asset in a service industry. The further consideration of government and the legal profession being able to “evade” responsibility for providing adequate and accessible (“superior”) legal services is noted. ¹⁰¹

The public interest is best served by striking a balance between public protection and freedom of choice. Under the circumstances statutory regulation of paralegalism in Australia would only be appropriate if it provides that balance, and if it does not serve to increase costs to the consumer of legal services and reduce access to justice in the process. Appropriate regulation would be to define a paralegal, based on attainment of appropriate education and adherence to an ethical code, and provide for sanctions for those who hold themselves out as paralegals or offend against the ethical code. The necessity to regulate more tightly for independent paralegals who handle clients’ monies and require both a trust account and professional indemnity insurance is, however, acknowledged.

**The Legal Profession**

“...The practice of law has become a business with client satisfaction and retention, overhead, margins, public relations and increasing the client base, but a few of the priorities to be monitored daily. To alleviate some of the stresses associated with the practice of law, more and more attorneys are realizing that utilizing paralegals

¹⁰¹ This becomes a question of political belief and not one that can be adequately addressed in this work.
to perform substantive legal tasks affords them the opportunity to meet the ever growing demands on their time and practice.”

Legal practitioners have a vested interest in the work of paralegals. In the US and England the legal professional associations of those countries – the American Bar Association and the Law Society respectively – realised many decades ago that there was advantage to practitioners if they took an active interest in the emerging paralegal profession. In the US the ABA created the Special Committee on Lay Assistants for Lawyers in 1968 with the aim of “developing, encouraging, and increasing the training and utilization” of legal assistants. In England, the Institute of Legal Executives was transformed from the older Solicitors’ Managing Clerks’ Association under the auspices of the Law Society. Their motives were not wholly altruistic. Tow writes that “a major objective of lawyers is to increase their profits by the use of paralegals” and that in doing so, and creating a system of lawyer-controlled regulation, an inevitable conflict of interests arises. This may be so, however, it is clear that the assistance given by the professional bodies was instrumental in allowing for growth – albeit arguably in a direction “required” by the legal professions in both countries. By contrast paralegalism is still a disparate and undervalued profession in Australia. As Harris has noted, “the blame for the failure to develop a paralegal profession in Australia lies with the private profession”. And this is despite the extensive use made of paralegal services, especially by those in private practice.

As the result of the SCU study it was found that the majority of paralegal graduates were working in private practices performing any number of substantive legal tasks thereby relieving the workload of the practitioner. Many of these were conveyancing paralegals undertaking almost all aspects of the transaction for which specific legal skills are required. Since 1995, in NSW, their role has been significantly enhanced. The Conveyancers’ Licensing Act 1995 (NSW) was intended as a “step along the path of deregulating the conveyancing area in New South Wales”.

Competition from Licensed Conveyancers has

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103 Quoted in Rasmussen J & Sedlacek P, “Paralegals Changing the Practice of Law” (1999) 44 SDLRev 319 at p321 as from the ABA website (1999) (This quote no longer appears on the site although it was there when the site was accessed by this writer on 4 September 2003.) See ABA Standing Committee on Legal Assistants, http://www.abanet.org/legalservices/legalassistants/home.html for the current Mission statement.
104 Tow A, Note 19, p71 citing Statsky W, The Regulation of Paralegals: Ethics, Professional Responsibilities, and Other Forms of Control, West, Minneapolis/St Paul, 1988, p103
105 Harris R, Note 11, p59
106 Note that this act has now been repealed and replaced with an act of the same name but now dated 2003.
necessitated a reallocation of office work practices. The hourly costs of a solicitor cannot be justified within this area of practice, however, the costs of an experienced paralegal can. This is dependant upon the paralegal is being both trained and competent. Many solicitors might argue that the advent of Licensed Conveyancers has been detrimental to the industry. It effectively ended their legal monopoly and there are certainly unresolved issues about the standards required to be upheld by such Conveyancers.\textsuperscript{108} As indicated earlier, legal practitioners have not, however, lost their conveyancing work, they have merely needed to become more competitive.

The Sackville Report endorsed “the concept of active competition among lawyers….\cite{Sackville2003} there are real opportunities for competition to induce innovation and efficiency. The benefits of competition between lawyers, however, do not necessarily preclude consideration of the benefits of competition between lawyers and non-lawyers.”\textsuperscript{109} Two things flow from these developments. First, in order to achieve the efficiencies required to maintain market share, it is clearly to the advantage of the legal practitioner to employ qualified and experienced staff. Secondly, it is suggested that paralegals are more likely than not to play a bigger part in the delivery of legal services whether they work in the private or public sectors. Accordingly, it would be advantageous for lawyers and their professional associations to have, at least, an advisory role in the further development of a paralegal profession in Australia. The interests of the legal profession may be advanced by regulation of paralegals. Certainly, they would benefit from a more educated and experienced workforce.

\footnotesize{\textsuperscript{108} The issue of the standard of the duty of care of conveyancers was considered in \textit{Benson v MacLachlan t/as Sterling Conveyancers} [2001] NSWCA 263 (15 August 2001) where Meagher JA said, at 20, “The statutory provisions which deal with the matter are principally contained in the \textit{Conveyancers’ Licensing Act 1995}. It enables qualified conveyancers, in effect, to do any conveyancing work, not simply easy conveyancing work. This is the pronounced will of the Parliament as the culmination of a long and virulent campaign by conveyancers who asserted that solicitors were not needed in the area of conveyancing. They achieved this objective, they are now placed on an equal standing with solicitors in that area of legal practice, and they ought to have the same liability”. This is in contrast to Handley JA who said at 26, “It was said in an earlier age that if one were to take a watch to the village blacksmith to be repaired for reward one could not reasonably expect that he would have and be able to exercise the skills of a watchmaker. This principle was applied in \textit{Philips v Wm Whiteley Ltd} [1938] 1 All ER 566 where the plaintiff sued a jeweller who had pierced her ears. Goddard J said (569): “I do not think that a jeweller holds himself out as a surgeon … If a person wants to ensure that the operation of piercing her ears is going to be carried out with that proportion of skill … that a Fellow of the Royal College of Surgeons would use, she must go to a surgeon. If she goes to a jeweller she must expect that he will carry it out in the way one would expect a jeweller to carry it out”.

\textsuperscript{109} See Sackville R, Note 15, p107}
Paralegals

In 1988, Regan had written that, “In this country they exist as a shadow- supporting the work of the profession in crucial ways but with strict limits on what they can do, receiving no formal training, no kudos, having no associations, and being poorly paid.” The Sackville Report and two Australian Law Reform Commission inquiries had touched on the role and educational opportunities for paralegals during the 1990s. However, Regan’s comments still largely apply today.

It has already been argued that the establishment of a national professional association for paralegals would allow for the recognition and improvement in their status and assurance of the public and the lawyers of their professionalism and commitment to maintaining high standards of legal service. Among the association’s primary objectives would be the development of a code of ethics, a benchmarking of educational competencies and ongoing supervision of conduct and disciplinary action for violation of codes of conduct or incompetence. Whether this association would have formal links to the legal professional bodies is not a matter for this writer to determine, although the mutual benefit of such association has already been noted.

It is further argued that all paralegals would benefit from some form of regulation, defining a paralegal (based upon accreditation accruing from agreed qualifications and ongoing education and training) as well as the establishment of, and adherence to, a code of conduct. All of this would establish a standard of professional competence. It is further argued here that such regulation need not be onerous. Nor should it increase costs to the public.

Ray’s proposal of a simple registration system is worth considering, although it is premised on the involvement of the legal professional bodies. Supervised paralegals, working in private firms, legal aid or other supervised capacities are brought under the supervising practitioner’s indemnity insurance. The issue of professional indemnity insurance and the employment of paralegals is discussed in the OLAFS’ Paper, where it was said that a paralegal who gives legal advice is a potential candidate for a claim. However, if the advice is not dishonest (merely incorrect) the paralegal would be covered by the Commission’s insurance.

Insurance is a big issue for both the public and for paralegals.

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111 Australian Law Reform Commission, Notes 7 & 8
112 Ray D, Note 46
113 See Office of Legal Aid and Family Services Attorney-General’s Department (OLAFS), Note 41, pp19-20
For independent paralegals, however, there is a difference. Depending upon their role, and in the interests of protection of the public, they require professional indemnity insurance and often a trust account as well.\textsuperscript{114} For independent paralegals, therefore, a regime of regulation/licensing is required, and Ray’s simple registration system is insufficient.

The First Step: Accreditation

First, it is argued that there is a need to establish minimum levels of education and training leading to accreditation as paralegal. Many courses of study are available through several tertiary institutions in Australia.\textsuperscript{115} All of these courses should be examined and considered as programs which could provide paralegal accreditation to their graduates. However, at present it is argued that very few of these programs provide specialist paralegal education and training as referred to above. Most of the programs are limited to the acquisition of clerical or secretarial skills or are generalist “Legal Studies” courses and are geared to careers in criminal justice only.

The criteria which should be used to determine suitability are that the course has sufficient practical orientation and allows for the acquisition of a “common core of legal knowledge… [and] vital critical thinking, organizational, research, writing, oral communication, and interpersonal skills”, underpinned by an understanding of ethical paralegal behaviour. Programs which do not address these specific criteria are not, and should not be, considered as suitable to offer paralegal qualifications. It is further argued that the accrediting body should be the proposed paralegal professional association,\textsuperscript{116} who would be charged with examination of the courses on offer and determination as to the inclusion or exclusion of each course.

At present, not all paralegals have tertiary qualifications. In the US, in recognition of those who have acquired competency through experience of several years and training, both NALA and NFPA provide for membership of their associations and the opportunity to upgrade their credentials.\textsuperscript{117} It is argued that it is entirely appropriate to recognise the prior learning and

\textsuperscript{114} Licensed Conveyancers in NSW are independent paralegals. They are subject to statutory recognition and regulation.
\textsuperscript{115} See the list provided earlier in Chapter 4, under the subheading - The Education of Paralegals in Australia.
\textsuperscript{116} Whether or not this body would be an adjunct of the various legal professional bodies throughout Australia (or of the Law Council of Australia) is a separate question and not one that this writer can determine.
\textsuperscript{117} The NFPA requires four years “substantive paralegal experience” to take their Paralegal Advanced Competency Exam (PACE). NALA requires seven years experience plus “evidence of a minimum of twenty(20)
experience as a basis for inclusion in the profession and criterion for advancement and that this system should be adopted in Australia. Both associations also provide for continuing paralegal education to support their registration or certification credentials. This would also be highly desirable. What such a scheme suggests is that it would be appropriate to have several grades of accreditation, reflecting education and experience.

**The Second Step: A Code of Paralegal Conduct**

The second essential element is the establishment of a recognised uniform set of standards or ethics for paralegals working in Australia. This would support the paralegal credentials and again this is the province of a professional association. Both NALA and the NFPA in the US have adopted codes. NALA’s *Model Standards and Guidelines for Utilization of Legal Assistants* is a comprehensive document detailing “standards of performance and professional responsibility.”\(^{118}\) The NFPA has developed *Model Code of Ethics and Professional Responsibility and Guidelines for Enforcement* to “delineate the principles for ethics and conduct to which every paralegal should aspire.”\(^ {119}\) In England, the ILEX Code of Conduct\(^ {120}\) is as follows:-

A member, in his professional life and employment, shall so conduct himself and the matters of which he has conduct, in such a manner:

1. as to avoid any action or situation which may bring disrepute upon the Institute or its members;
2. as to avoid doubt being cast upon his own professional integrity;
3. as will assist the impartial administration of justice;
4. as will recognise that the interests of the client are paramount to those of all others, save that at all times and in all matters a member’s primary and overriding duty is to the court and shall observe and be bound by this Code of Conduct and the Guides to Good Practice issued from time to time by the Institute.

A member shall not:

1. misuse the trust reposed in him nor reveal confidential information other than to those entitled to receive it;
2. for the personal gain of himself or his family take advantage of information gained in the course of his conduct of any matter;

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(3) hold himself out as a Legal Executive nor display the distinguishing letters ‘F.Inst.L.Ex.’ after his name unless that member is in good standing as a fully paid up Fellow entered in the Register of Members of the Institute;
(4) discriminate against any person nor treat any person less favourably because of their ethnic or national origin, sex, sexual orientation, religion or political persuasion than he would treat others.
A member shall at all times work within the framework of the law and shall use his best endeavours to avoid any breach of the law by his employer or the client.

All of the above associations have developed and adopted codes of conduct relevant to their jurisdiction. Any Australian association could look to these organisations and their codes for guidance in the development of an Australian Paralegal Code of Ethics.

The Third Step: Regulation to Ensure Accreditation and Ethical Practice
The aim of any scheme of paralegal regulation should be to protect the public and improve rather than limit access to legal services; promote the profession; provide definition for paralegals, thus confirming their role in the delivery of legal services; and provide an accreditation scheme which promotes a standard of professional competence. It is argued that all paralegals will benefit from such regulation, which arguably should be self-regulation. It is easy to play semantics with a word such as “regulation” which implies a directive or authoritative imposition, but if that is the appropriate word to describe the process, then so be it. It is noted that statutory licensing/regulation for independent paralegals, such as the Conveyancers, already exists.

Are there benefits that would accrue for paralegals and the public in such regulation? Certainly they would both benefit from the establishment of a professional body and an accreditation scheme. The public would benefit also, being assured of a standard of competence if such regulation was similar to that advocated by the National Association of Paralegals in the UK which proposes the implementation of a self-regulation for the paralegal profession in that country as a means of verifying knowledge, competence, dedication, good character and continuing professional development. There would also be some protection to the public from incompetence or unscrupulous behaviour, given that regulation in these circumstances implies the holding of some supportive professional indemnity insurance, and
the ongoing supervision of conduct and disciplinary action for violation of codes of conduct or incompetence.

Accordingly, the answer to this Fifth Research Question is that there is a need for regulation of paralegals in Australia, and that such a scheme of paralegal self-regulation should be adopted to protect the public and improve rather than limit access to legal services. This would have a threefold function of promoting the profession, providing definition and confirmation for paralegals and their role in the delivery of legal services and, importantly, providing an accreditation scheme to promote a standard of professional competence.

This last Research Question related to that part of the hypothesis which proposed that the paralegal profession is unregulated and is answered by stating that, with the exception of the specialised class of independent paralegals – the Licensed Conveyancers- that the paralegal profession is unregulated. It is posited that there is a need for regulations to cover all paralegals to the benefit of the public, the legal profession and paralegals.

**CONCLUSION**

The questions posed in the Introduction and addressed in this Concluding Chapter, lead to the Hypothesis tested in this thesis that:

* A paralegal in Australia is part of an undefined, unregulated professional group, who are poorly educated, and lack recognised qualifications, but whose existence is fundamental to meeting the need for legal services in Australia.

With the exception of that element which describes paralegals in Australia as being part of a professional group, all parts of this Hypothesis have been answered in the affirmative. Paralegals in Australia are part of a group whose existence is integral to meeting the need for legal services. They are not, however, part of a distinct professional group given that they lack the exclusivity and the recognisable qualifications, which have been asserted are necessary elements of professionalism. They are, however, professional in the sense that there is no suggestion as to an inferior quality of work. In this respect it is argued that the

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work of paralegals in Australia is not only comparable to their peers in the US and England, but that they meet the exacting standards required by the legal profession in this country – hence the increased reliance on their services.

RECOMMENDATIONS

The recommendations that accrue from the above findings are as follows:-

Recommendation Arising from Research Question 1:
1. That the definition posited in answer to Research Question 1, be adopted into the Australian vernacular until such time as standardised qualifications allow for accreditation of paralegals to determine definition.

Recommendations Arising from Research Question 2:
2.1 That a national professional association be established to promote the professionalism of paralegals in Australia. As part of its mission it should seek to set standards for qualifications; provide for the career development of its qualified members; promote paralegalism within the legal profession generally; develop a code of conduct; provide ongoing supervision of conduct and disciplinary action for violation of codes of conduct or incompetence; disseminate information on matters of professional interest; represent, promote and express the collective interests of its members; act as a consultative body on all things concerned with paralegalism; provide a forum for all matters affecting the interests of its members; and, provide opportunities for social contacts amongst paralegals.
2.2 That the association which is formed endeavour to establish and maintain close ties with the relevant legal professional bodies in this country.

Recommendations Arising from Research Question 3:
3.1 That a career structure be created in the public service to attract suitably qualified and motivated paralegals to the service.
3.2 That rights of audience be extended to suitably qualified and competent paralegals in the lower courts and tribunals, to assist clients in areas of law where there are unmet legal needs and where costly adjudication cannot be justified.
3.3 That more Paralegal Aboriginal Field Officers be appointed and that their role be extended and strengthened to that of community liaison officers with both educative and problem-solving skills and functions.
Recommendations Arising from Research Question 4:

4.1 That paralegal education and training be taught at universities and offered through law schools/faculties as the “core institutions” of legal education.

4.2 That, given the breadth of knowledge and the requisite skills needed for competency, the degree on offer should be no less than the equivalence of two years full-time study to support full qualifications.

4.3 That given the disparate nature of paralegal employment that such education and training should be offered externally to accommodate the needs of the student.

4.4 That a curriculum which provides for the acquisition of a “common core of legal knowledge… [and] vital critical thinking, organizational, research, writing, oral communication, and interpersonal skills”, underpinned by an understanding of ethical behaviour, be promoted.

Recommendation Arising from Research Question 5:

5.1 That a scheme of paralegal regulation be adopted to protect the public and improve rather than limit access to legal services; to promote the profession; to provide definition for paralegals confirming their role in the delivery of legal services; and to provide an accreditation scheme which promotes a standard of professional competence.

FURTHER RECOMMENDATIONS: WHAT CAN WE TAKE FROM THIS?

This research has revealed that the role and potential for competent paralegals in many jurisdictions is enormous. Professional, educated and experienced paralegals play vital roles in the delivery of legal services in England, US and Australia. In all three jurisdictions it is evident that these roles have changed, and that they are expanding. These are all developed countries and yet there is evidence that there are unmet legal needs particularly for the poor and disadvantaged. Educated and experienced paralegals have a role to play here.

It would appear, also, that there are very real opportunities for paralegals to make a meaningful contribution to the development of legal services in nascent democracies. Paralegals could play a meaningful role in countries with developing legal systems, particularly where there are challenges to establishing or maintaining the rule of law – for whatever reason. Obvious examples in our region are East Timor, Papua New Guinea and the
Solomon Islands. There is need for specialised legal education and training but when time or lack of resources are in issue then the education of paralegals to assist lawyers and other personnel in the legal system would seem prudent, given that they can be trained more quickly and cheaply – at least initially.

Ogletree in his study examining and contrasting the challenges of providing legal representation in the US, China and South Africa, promotes a “Client Advisor Model” as being one way of ensuring representation for poor clients in circumstances where there is a commitment to the provision of representation but there is lack of resources and lawyers. The model promotes the use of paralegals and “calls into question whether lawyers are necessary to assist indigents through many of the criminal justice system proceedings and offers alternative, cost-efficient methods of assisting indigent clients.” South Africa, he notes, presents special difficulties and faces “an enormous task.” McQuoid-Mason records a similar sentiment in relation to South Africa and notes the emergence of Paralegal Advice Offices in the delivery of civil legal aid in that country. There are numerous bodies in South Africa involved in paralegal advice work, providing access to justice by educating the public as to their legal rights and training paralegals to give advice. McQuoid-Mason writes that,

“At the National Legal Aid Forum, it was suggested that paralegal advice offices should be incorporated into the legal aid system….The first stage would be to provide information and advice at the community level. The second should be to refer clients to legal services for representation.”

The first stage is of vital importance given that it enables the advice offices to provide education to their communities and to deal with preliminary issues and determine the necessity to refer the client for representation. He concludes by observing that,

“Paralegal advice offices are a useful adjunct to conventional lawyer-based legal aid services. Access to justice must be considered holistically, and paralegals are in the front line in the field when communities make their first contact with the law.”

123 Ogletree C, Note 122, pp73-74
125 McQuoid-Mason D, Note 125, p133
126 McQuoid-Mason D, Note 125, p135
The role of paralegals in South Africa is therefore as both educator and advisor – a model that could well be exported to other countries. The difficulties facing East Timor, for instance, have been documented in many places, one writer noting that “[a]s difficult as the situation was in Kosovo, the United Nations faced even greater challenges in East Timor….The preexisting judicial infrastructure in East Timor was virtually destroyed.”¹²⁸ There were no buildings, equipment, legal resources or legal personnel left and it became apparent that it was necessary to provide an initial emergency regulatory framework before any justice system could be rebuilt from the ashes. Prior to independence there had been no “legal-assistance sector”¹²⁹ and legal training needed to be conducted quickly, focusing on practical issues as well as imparting an appreciation of the crucial role of the rule of law in such circumstances.

It is argued here that well directed training courses for paralegals in East Timor (“quick impact” training courses¹³⁰) similar to those conducted for other professional personnel, would be economically and philosophically sound. Court personnel, for instance, would benefit. Such training would effect change at community level and allow for the natural growth of the legal profession to “catch up”. Nor need it be just a stop-gap measure.

As this research has already indicated, paralegals do, and continue to play, an important role in the delivery of legal services in developed nations, such as England, the US and Australia, and there is an equally important role for them to play in developing democracies. Well educated and professional paralegals can and should be a part of proposed strategies to provide increased “effective, real and affordable”¹³¹ access to justice.

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¹²⁹ Strohmeyer H, Note 128, p55
¹³⁰ Strohmeyer H, Note 128, p55
¹³¹ Kirby Hon Justice M, Note 1, p13
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NFPA’s Roles and Responsibilities Committee has been researching which federal agencies allow nonlawyer representation. What follows is a compilation of the Committee’s research to date. In future the committee will develop a list of specific paralegal tasks under each of these areas. If you or someone you know works in any of these areas, you can assist in this endeavor.

**Federal Agencies That Permit Nonlawyer Representation**

The statutory authority for each is shown after the name of the agency.

Board of Immigration Appeals

Immigration and Naturalization Service [8 CFR 292.1-3]

Bureau of Indian Affairs

Financial Assistance and Services Program [25 CFR 20]

Civil Aeronautics Board [14 CFR 300.1-6, 302.11]

Comptroller of the Currency [12 CFR 19.3]

Consumer Product Safety Commission [16 CFR 1025.61, et seq.]

Department of Agriculture

Food Stamps [7 CFR 273]

Marketing Service [7 CFR 50.27]

Department of Commerce


*Only registered practitioners are permitted to practice. Nonlawyers become registered by passing a character and fitness review and an examination. Nonlawyers who have served four years in the examining corps of the Patent and Trademark Office may waive the exam. See 57 CFR 1.341

Office of Secretary [5 CFR Part 1201]

Department of Health and Human Services

Food and Drug Administration [32 CFR 12.40, 12.45]
Public Health (Medicare, Part B) [42 CFR 405]
Welfare (Medicare, Aid to Families w/Dependent Children [45 CFR 205]
Department of Justice
Drug Enforcement Administration [21 CFR 1316.50]
Department of Labor
Benefits Review Board [20 CFR 802.201(b), 802.202]
Employees Compensation Appeals Board [20 CFR 501.11]
National Railroad Adjustment Board* [45 U.S.C. 3153]
*Only entities identified in 45 U.S.C. § 151 are allowed to practice. Almost 100% of nonlawyer representation is by industry employees.
Wage and Appeals Board [20 CFR 725.362(a), 725.365, 725.366(b)]
Department of Transportation
Maritime Administration* [46 CFR 201.21]
*Only registered nonlawyers are permitted to practice.
Department of Veterans Affairs
Veterans Administration [38 CFR 14]
Federal Deposit Insurance Corporation* [12 CFR 308.04]
*Only qualified nonlawyers are permitted to represent.
Federal Energy Regulatory Commission [18 CFR 385.2101]
Federal Maritime Administration* [46 CFR 502.30]
*Only registered nonlawyers are permitted to appear. Certificates of registration are issued on payment of processing fee and completion of application form indicating sufficient educational qualifications and recommendations. There is no testing or formal licensing.
Federal Mine Safety & Health Review Commission* [29 CFR 2700.3(b)]
*Appearances are made at trial hearings before administrative law judges and at appellate reviews before commissioners. A nonlawyer may practice only if the nonlawyer is a party, a representative of miners as described in 30 CFR § 10.1(b), or the owner, partner, full time [sic]officer or employee of the party-business entity; otherwise a nonlawyer is permitted to appear for limited purpose in special proceedings.
General Accounting Office* [31 U.S.C. 731-732; 4 CFR 11, 28; GAO Orders 2713.2, 2752.1 and 2777.1]
*Permitted in adverse actions, grievance proceedings and discrimination complaints.
*Nonlawyers must become enrolled agents by passing a character and fitness review and successfully completing a special enrollment examination testing on federal taxation and
related matters. A nonlawyer may also qualify based on former employment with the IRS, provided such duties qualify the individual.

Interstate Commerce Commission* [49 CFR 1103]

*Only registered nonlawyers are permitted to practice. To register, applicant must (1) meet educational and experience requirements, (2) undergo character and fitness review, (3) pass exam administered by the agency testing knowledge in the field of transportation, and (4) take an oath. See 49 CFR § 1103.3.

National Credit Union Administration [12 CFR 747]

National Mediation Board [agency governed by 29 CFR 1200]

National Transportation Safety Board* [49 CFR 821, 831, 845]

*Nonlawyer appearances are infrequent except at investigatory levels. Nonlawyer participation is discouraged because technical expertise is required.

Occupational Safety and Health Review Commission [29 CFR 2200.22]

Small Business Administration [13 CFR 121.11, 134.16]

Social Security Administration [42 U.S.C. 406(a); 29 CFR]

Supplemental Security Income (SSI) [20 CFR 416, subpart O]

U.S. Customs Service [no statute or regulation]

U.S. Environmental Protection Agency [40 CFR 124, 164.30, 22.10]

State Agencies That Permit Nonlawyer Representation

In addition to nonlawyer representation at federal agencies, the Committee also studied state and local agencies that allow nonlawyer representation. Below is an initial listing.

Alaska


Nonlawyer may appear at an administrative hearing.

California

Workers Compensation (California Bar Committee on Professional Responsibility formal opinion 1988-103)

A law firm can allow its paralegals to represent clients at workers compensation hearings if there is supervision and the client consents to nonlawyer representation.

California

Labor (California Labor Code, sections 5501, 5700)

Allows nonlawyer representation.

California

Unemployment (California Unemployment Insurance Code § 1957 (1956)
Nonlawyer may represent any individual claiming benefits in any proceedings before the Appeals Board.

Illinois
Department of Unemployment Security (820 ILCS 405/806)
A nonattorney may represent an individual or entity in any proceeding before the Director, referee or board of review.

Illinois
Workers Compensation (50 Ill. Admin Code Sec. 7020.40(b)
Nonlawyers may appear on routine matters such as agreed continuances or other agreed ministerial acts before the Industrial Commission for workers compensation matters.

Michigan
Unemployment Compensation
Allows nonlawyer representation.

Minnesota
Workers Compensation
Nonlawyers allowed to represent employers before workers compensation administrative law judge.

New York
70% of state agencies and 63% of New York City agencies allow some form of nonlawyer representation. [New York County Association, Committee on Legal Assistants, Committee Report (October 14, 1993)]

Ohio
Workers Compensation
Nonlawyers are allowed to represent parties before the Industrial Commission.

Washington - Seattle (King County)
Courts, King County Bar Association Opinion
Nonlawyers are allowed to present ex parte orders that have been agreed on.

Washington - Tacoma (Pierce County)
Courts, Pierce County Bar Association Opinion
Nonlawyers are allowed to present ex parte orders that have been agreed on.

Wisconsin
Workers Compensation
Allows nonlawyer representation.
Appendix B
School of Law & Justice
Graduate Destination & Satisfaction Study
An anonymous and confidential survey

1. PERSONAL DETAILS

1.1 Age:

<table>
<thead>
<tr>
<th>Age Range</th>
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</thead>
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<tr>
<td>17-21</td>
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<td>22-31</td>
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<tr>
<td>32-41</td>
<td>☐</td>
</tr>
<tr>
<td>42-51</td>
<td>☐</td>
</tr>
<tr>
<td>52-61</td>
<td>☐</td>
</tr>
<tr>
<td>62 and over</td>
<td>☐</td>
</tr>
</tbody>
</table>

1.2 Gender:

<table>
<thead>
<tr>
<th>Gender</th>
<th>Yes</th>
</tr>
</thead>
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<tr>
<td>Male</td>
<td>☐</td>
</tr>
<tr>
<td>Female</td>
<td>☐</td>
</tr>
</tbody>
</table>

2. COURSE DETAILS

2.1 What course/s did you complete with Southern Cross University, School of Law and Justice

- Associate Degree in Law (Paralegal Studies) ☐
- Associate Degree in Law (Aboriginal Paralegal Studies) ☐
- Bachelor of Legal and Justice Studies ☐
- Bachelor of Laws (graduate entry) ☐
- Combined Law Degree ☐

Please specify eg. Arts/Laws; Business/ Laws etc. .............................................................

2.2 Mode of Study: please indicate the method(s) of study you undertook.

<table>
<thead>
<tr>
<th>Study Method</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Internal</td>
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</tr>
<tr>
<td>Full-time</td>
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</tr>
<tr>
<td>External</td>
<td>☐</td>
</tr>
<tr>
<td>Part-Time</td>
<td>☐</td>
</tr>
<tr>
<td>Mixed (Internal &amp; External)</td>
<td>☐</td>
</tr>
<tr>
<td>Mixed (full &amp; part time)</td>
<td>☐</td>
</tr>
</tbody>
</table>
2.3 If you completed an LLB or Combined Law Degree, have you completed Practical Legal Training (eg College of Law) or Articles of Clerkship?

Yes ☐ No ☐ N/A ☐

3. REASONS FOR CHOOSING TO STUDY AT SOUTHERN CROSS UNIVERSITY, SCHOOL OF LAW AND JUSTICE

3.1 Why did you enrol in your course of study with the Law School?

- Proximity of Southern Cross University ☐
- Optional subjects available ☐
- Potential to go on to the Bachelor of Laws ☐
- The available choices of combined degrees ☐
- Ability to study externally ☐
- Other (please specify)

....................................................................................................................................
....................................................................................................................................

4. CHANGES TO EMPLOYMENT STATUS SINCE ENROLMENT AND GRADUATION

In this section we are trying to establish whether your study has improved your employment conditions and/or your ability to find work.

4.1 When enrolled were you working?

Yes ☐⇒ Please specify area of work...........................................................................................................

↓

Did you continue in this position after graduating? Yes ☐ No ☐

No ☐
4.2 Since graduating have you been employed?

Yes ☐ No ☐⇒ Go to question 7

4.3 Has your salary increased as a result of your study?

Yes ☐ No ☐

5. NATURE OF EMPLOYMENT SINCE GRADUATING

5.1 Are you currently employed

Yes ☐
No ☐⇒ Please answer the following question in respect of your last position of employment.

5.2 On what basis are you/were you employed?

Full time ☐ Part time ☐ Casual ☐

*The survey is seeking to establish if there is a significant variance in the salaries of graduates who work in metropolitan and regional areas.*

5.3 Which area do you/did you work in

Regional ☐ Metropolitan ☐

5.4 What is/was your approximate gross annual income?

$15,000 - $24,999 ☐ $35,000 - $44,999 ☐ $55,000 - $64,999 ☐
$25,000 - $34,999 ☐ $45,000 - $54,999 ☐ More than $65,000 ☐
5.5 What type of employment are you/were you engaged in?

- **Legal work in**
  - private legal profession
  - community based legal service organization
  - the public sector
  - private industry or commerce or finance

- **Non-legal work in**
  - community based legal service organization
  - the public sector
  - private industry or commerce or finance

- **Teaching law in an educational institution**

- **Other (please specify)**

5.6 Was this your first preference of employment?

Yes ☐ No ☐

5.7 To what extent do you/did you perform work in the following areas?

<table>
<thead>
<tr>
<th>Area</th>
<th>Not at all</th>
<th>A little</th>
<th>Some</th>
<th>Quite a bit</th>
<th>A lot</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal law and procedure</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Constitutional law</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Administrative law</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Torts</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Contracts</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Property</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Equity and trusts</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Company Law</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
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<tr>
<td>Family Law</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Commercial Law</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Litigation</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
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<tr>
<td>Wills and Estates</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Conveyancing</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Workers Compensation</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
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<tr>
<td>Personal Injuries</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Office Management</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>
6. APPLICATION OF KNOWLEDGE AND SKILLS TO THE WORKPLACE

We aim to evaluate how well your course prepared you for the workplace. We would appreciate it if you could try to remember your experiences when first working after finishing your course and answer the following questions.

6.1 When you first began work after your course to what extent did your job require...

<table>
<thead>
<tr>
<th>Knowledge of</th>
<th>Not at all</th>
<th>A little</th>
<th>Some</th>
<th>Quite a bit</th>
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</thead>
<tbody>
<tr>
<td>- substantive law</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>- legal practice and procedure</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>- law of evidence</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>- policy underlying the law</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>- trust accounting procedures</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>• Application of legal and professional standards</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>• Understanding of the social context of law</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

6.2 In your job, to what extent did you have to...

<table>
<thead>
<tr>
<th>Research substantive law</th>
<th>Not at all</th>
<th>A little</th>
<th>Some</th>
<th>Quite a bit</th>
<th>A lot</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apply the legal problem solving method</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Read and apply legislation</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Interpret case law</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Complete forms and applications</td>
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<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Interview clients</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Draft legal documents</td>
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<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Prepare a brief to counsel</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Deal with ethical dilemmas</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Analyse and reason in relation to legal problems</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Research, investigate and organise facts</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Provide:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- legal advice</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>- financial advice</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>- advice about courses of action</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Resolve disputes:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Please specify any other activities involving a substantial amount of time:

........................................................................................................................................

6.3 Please indicate how much you agree with the following statements.

When I began work after my course:

<table>
<thead>
<tr>
<th>Description</th>
<th>Not at all</th>
<th>A little</th>
<th>Some</th>
<th>Mostly</th>
<th>Completely</th>
</tr>
</thead>
<tbody>
<tr>
<td>I had the practical skills to do what was expected of me</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>My knowledge of substantive law was appropriate</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>I was comfortable dealing with procedural law</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>I was able to translate what I had learnt to the workplace.</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>I had the problem solving skills needed to work effectively</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>I found it easy to work as a member of a team</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>I was able to deal with ethical dilemmas effectively</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>I was able to plan my work to be completed effectively</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>I was confident dealing with clients</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

6.4 What aspects of your course do you believe have been of the most help to you in your work?

........................................................................................................................................

........................................................................................................................................

........................................................................................................................................
6.5 What could have been included in your course to help you in the workplace?

.......................................................................................................................................
.......................................................................................................................................
.......................................................................................................................................

6.6 Do you feel that your course prepared you for the workplace?

<table>
<thead>
<tr>
<th>Not at all</th>
<th>A little</th>
<th>Some</th>
<th>Mostly</th>
<th>Completely</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

7. SATISFACTION WITH THE COURSE OF STUDY

We would like to get some feedback from you regarding your level of satisfaction with your course.

7.1 To what extent do you agree with the following statements

<table>
<thead>
<tr>
<th>Statement</th>
<th>Not at all</th>
<th>A little</th>
<th>Some</th>
<th>Mostly</th>
<th>Completely</th>
</tr>
</thead>
<tbody>
<tr>
<td>I received comprehensive feedback on my progress when studying</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>The aims and objectives of the units I studied were clear</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Course materials were delivered to me on time</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>The course materials I received were of good quality</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Lecturers and law school staff responded quickly and effectively to my queries</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Course content was appropriate to the aims and objectives of the units I studied</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

7.2 What unit of your course did you enjoy most and why?

.......................................................................................................................................
.......................................................................................................................................
.....................................................................................................................................
7.3 What unit did you think was the worst and why?
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................

7.4 Are there any other comments you would like to make about the teaching at the Law School or any other aspect of your course of study?
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
1. EMPLOYEE DETAILS

1.1 What type employment is the employee engaged in?

- Legal work in:
  - private legal profession □
  - Number of Partners □
  - community based legal service organization □
  - the public sector □
  - private industry or commerce or finance □

- Non-legal work in
  - community based legal service organization □
  - the public sector □
  - private industry or commerce or finance □

- Teaching law in an educational institution □
- Other (please specify)

1.2 To what extent does the employee perform work in the following areas of law?

<table>
<thead>
<tr>
<th>Not at all</th>
<th>A little</th>
<th>Some</th>
<th>Quite a bit</th>
<th>A lot</th>
</tr>
</thead>
</table>
1.3 **Had the employee completed Practical Legal Training or Articles of Clerkship when he/she began work?**

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.3</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>3</td>
<td>4</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## 2. Application of Knowledge and Skills in the Workplace

The study seeks to ascertain your expectations regarding the knowledge and skills of graduates and the extent to which we prepared graduates effectively for your workplace.

### 2.1 To what extent is the employee required to have...

<table>
<thead>
<tr>
<th>Knowledge of</th>
<th>Not at all</th>
<th>A little</th>
<th>Some</th>
<th>Quite a bit</th>
<th>A lot</th>
</tr>
</thead>
<tbody>
<tr>
<td>- substantive law</td>
<td>1 2 3 4 5</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- legal practice and procedure</td>
<td>1 2 3 4 5</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- law of evidence</td>
<td>1 2 3 4 5</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- policy underlying the law</td>
<td>1 2 3 4 5</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- trust accounting procedures</td>
<td>1 2 3 4 5</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application of legal and professional standards</td>
<td>1 2 3 4 5</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Understanding of the social context of law</td>
<td>1 2 3 4 5</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 2.2 To what extent did the employee have to...

| Research substantive law                         | 1 2 3 4 5  |          |      |             |       |
| Apply the legal problem solving method           | 1 2 3 4 5  |          |      |             |       |
| Read and apply legislation                       | 1 2 3 4 5  |          |      |             |       |
| Interpret case law                               | 1 2 3 4 5  |          |      |             |       |
| Complete forms and applications                  | 1 2 3 4 5  |          |      |             |       |
| Interview clients                                | 1 2 3 4 5  |          |      |             |       |
| Draft legal documents                            | 1 2 3 4 5  |          |      |             |       |
| Prepare a brief to counsel                       | 1 2 3 4 5  |          |      |             |       |
| Deal with ethical dilemmas                       | 1 2 3 4 5  |          |      |             |       |
| Analyse and reason in relation to legal problems | 1 2 3 4 5  |          |      |             |       |
| Research, investigate and organise facts          | 1 2 3 4 5  |          |      |             |       |
| Provide:                                         |            |          |      |             |       |
| - legal advice                                   | 1 2 3 4 5  |          |      |             |       |
| - financial advice                               | 1 2 3 4 5  |          |      |             |       |
| - advice about courses of action                 | 1 2 3 4 5  |          |      |             |       |
| Resolve disputes:                                |            |          |      |             |       |
| - using alternative dispute resolution            | 1 2 3 4 5  |          |      |             |       |
| - using litigation                              | 1 2 3 4 5  |          |      |             |       |

- Negotiate:
- using formal procedures 1 2 3 4 5
- using informal procedures 1 2 3 4 5

- Handle clients money 1 2 3 4 5
- Manage trust accounts 1 2 3 4 5

• Use:
  - word-processing software 1 2 3 4 5
  - database software 1 2 3 4 5
  - spreadsheet software 1 2 3 4 5

• Handle clients money 1 2 3 4 5
• Manage trust accounts 1 2 3 4 5

Please specify any other activities involving a substantial amount of time:

..........................................................
..........................................................
..........................................................

2.3 To what extent are the following statements true?

When the employee/s began work they…

<table>
<thead>
<tr>
<th>Statement</th>
<th>Not at all</th>
<th>A little</th>
<th>Some</th>
<th>Mostly</th>
<th>Completely</th>
</tr>
</thead>
<tbody>
<tr>
<td>Had the practical skills to do what was expected</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Had a knowledge of substantive law which met the requirements of the workplace.</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Was comfortable dealing with procedural law</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Was able to translate what they had learnt to the workplace.</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Had the problem solving skills needed to work effectively</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Found it easy to work as a member of a team</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Was able to deal with ethical dilemmas effectively</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Was able to plan their work to be completed effectively</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Was confident dealing with clients</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

2.4 What were the best aspects of the graduate’s knowledge and skills when he/she began work?

..........................................................

2.5 What aspects of the graduates knowledge and skills most needed improving?

..........................................................

2.6 Comment on how well prepared for work you think the graduate was.

..........................................................

2.7 What would you like to see included in the course which the graduate completed?
As part of the School’s investigation into how we can improve the content, design and delivery of our courses a survey was forwarded to all graduates (644) of the school as at September 2000. Of these graduates 523 were paralegal graduates. For the purposes of this report paralegal graduates include graduates from the Associate Degree in Law (Paralegal Studies), Associate Degree in Corrective Administration and the Bachelor of Legal and Justice Studies (BLJS). Also included in the results are responses from graduates who completed the Associate Degree in Law (Paralegal Studies) and then articulated into the Bachelor of Laws.

There were a total of 154 surveys returned, of these more than 76% (118) were from paralegal graduates.
Table 1: Response Rate by Course

<table>
<thead>
<tr>
<th>Course name</th>
<th>Number of Students Surveyed</th>
<th>Number of Responses</th>
<th>Response rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Associate Degree in Law (Paralegal Studies)</td>
<td>380</td>
<td>64</td>
<td>16.8%</td>
</tr>
<tr>
<td>Associate Degree in Corrective Administration</td>
<td>19</td>
<td>2</td>
<td>10.5%</td>
</tr>
<tr>
<td>Bachelor of Legal and Justice Studies</td>
<td>81</td>
<td>31</td>
<td>38.2%</td>
</tr>
<tr>
<td>Graduates who articulated to LLB</td>
<td>43</td>
<td>21</td>
<td>48.8%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>523</td>
<td>118</td>
<td>22.5%</td>
</tr>
</tbody>
</table>

Table 2. Age of Paralegal Graduates

<table>
<thead>
<tr>
<th>Course</th>
<th>17-21</th>
<th>22-31</th>
<th>32-41</th>
<th>42-51</th>
<th>62+</th>
</tr>
</thead>
<tbody>
<tr>
<td>Associate Degree in Law (Paralegal Studies)</td>
<td>2</td>
<td>31</td>
<td>11</td>
<td>18</td>
<td>2</td>
</tr>
<tr>
<td>Associate Degree in Corrective Administration</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Bachelor of Legal and Justice Studies</td>
<td>5</td>
<td>10</td>
<td>8</td>
<td>6</td>
<td>2</td>
</tr>
<tr>
<td>Graduates who articulated to LLB</td>
<td>0</td>
<td>8</td>
<td>10</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>TOTAL</td>
<td>7</td>
<td>49</td>
<td>31</td>
<td>27</td>
<td>4</td>
</tr>
</tbody>
</table>

Table 3. Gender of Paralegal Graduates

<table>
<thead>
<tr>
<th>Course</th>
<th>female</th>
<th>male</th>
</tr>
</thead>
<tbody>
<tr>
<td>Associate Degree in Law (Paralegal Studies)</td>
<td>44</td>
<td>13</td>
</tr>
<tr>
<td>Associate Degree in Corrective Administration</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Bachelor of Legal and Justice Studies</td>
<td>18</td>
<td>5</td>
</tr>
<tr>
<td>Graduates who articulated to four year undergraduate degree</td>
<td>15</td>
<td>5</td>
</tr>
<tr>
<td>TOTAL</td>
<td>77</td>
<td>25</td>
</tr>
</tbody>
</table>
Table 4. Mode of study 1

<table>
<thead>
<tr>
<th>Course</th>
<th>internal</th>
<th>external</th>
<th>multimodal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Associate Degree in Law (Paralegal Studies)</td>
<td>20</td>
<td>37</td>
<td>6</td>
</tr>
<tr>
<td>Associate Degree in Corrective Administration</td>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bachelor of Legal and Justice Studies</td>
<td>4</td>
<td>15</td>
<td>12</td>
</tr>
<tr>
<td>Graduates who articulated to LLB</td>
<td>12</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>TOTAL</td>
<td>36</td>
<td>57</td>
<td>23</td>
</tr>
</tbody>
</table>

Table 5. Mode of study 2

<table>
<thead>
<tr>
<th>Course</th>
<th>Full-time</th>
<th>Part time</th>
<th>mixed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Associate Degree in Law (Paralegal Studies)</td>
<td>16</td>
<td>26</td>
<td>7</td>
</tr>
<tr>
<td>Associate Degree in Corrective Administration</td>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bachelor of Legal and Justice Studies</td>
<td>12</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Graduates who articulated to LLB</td>
<td>12</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>TOTAL</td>
<td>40</td>
<td>34</td>
<td>18</td>
</tr>
</tbody>
</table>

RESULTS

1. Reasons for Choosing to Study at SCU

To establish why students choose to study at SCU we listed 5 reasons and provided a place to specify any other reason. Students were able to choose as many reasons as were applicable. Of the 118 paralegal graduates there were 160 reasons.
Table 6. Reason for study at SCU

<table>
<thead>
<tr>
<th>Reasons</th>
<th>Number of responses</th>
<th>Percent of responses</th>
<th>Percent of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proximity to SCU</td>
<td>36</td>
<td>23.4%</td>
<td>30.5%</td>
</tr>
<tr>
<td>Optional Subject available</td>
<td>11</td>
<td>6.8%</td>
<td>9.3%</td>
</tr>
<tr>
<td>Potential to go on to LLB</td>
<td>35</td>
<td>21.9%</td>
<td>29.6%</td>
</tr>
<tr>
<td>Available choices of Combined degrees</td>
<td>11</td>
<td>6.8%</td>
<td>9.3%</td>
</tr>
<tr>
<td>Ability to study externally</td>
<td>49</td>
<td>30.6%</td>
<td>41.5%</td>
</tr>
<tr>
<td>Other</td>
<td>18</td>
<td>11.5%</td>
<td>15.2%</td>
</tr>
<tr>
<td>Totals</td>
<td>160</td>
<td>100.0%</td>
<td>135.4%</td>
</tr>
</tbody>
</table>

“Other” reasons provided by paralegal graduates included:
- SCU was the only university offering Paralegal course at the time;
- Paralegal course offered units after 5.00pm which enabled me to work full-time and study part-time;
- The surrounding districts – Country university, location, North Coast beaches;
- Recommended by careers adviser at Campbelltown TAFE;
- Only University offering Bach. Legal & Justice Studies;

2. Employment

2.1 Employment whilst studying
Of the 118 paralegal graduates, 76 indicated they were working whilst enrolled in their course. Of these 47 (61.9%) continued in that same job after graduation. 24 (51%) of those who continued in the same job indicated that they had received a salary increase.
2.2 Employed since graduating

109 (93%) of the 118 paralegal graduates indicated that they had been employed since completing their course. The 109 is made up of -

- 56 (88%) of the Associate Degree in law (paralegal studies)
- 25 (83%) of BLJS graduates
- 2 (100%) Correctional Administration graduates
- 20 (95.5%) of the graduates who went on to do LLB

2.3 Currently employed

Table 7. Currently employed

<table>
<thead>
<tr>
<th>frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>92</td>
</tr>
<tr>
<td>No</td>
<td>14</td>
</tr>
<tr>
<td>Not relevant - Not employed since graduating</td>
<td>11</td>
</tr>
<tr>
<td>Not answered</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>118</td>
</tr>
</tbody>
</table>

2.4 Basis of employment

Table 8

<table>
<thead>
<tr>
<th>Course studied</th>
<th>Basis of employment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Full time</td>
</tr>
<tr>
<td>Associate Degree in Law (Paralegal Studies)</td>
<td>47</td>
</tr>
<tr>
<td>Associate Degree in Corrective Administration</td>
<td>2</td>
</tr>
<tr>
<td>Bachelor of Legal and Justice Studies</td>
<td>20</td>
</tr>
<tr>
<td>Graduates who articulated to LLB</td>
<td>16</td>
</tr>
<tr>
<td>Total</td>
<td>85</td>
</tr>
<tr>
<td></td>
<td>83.3%</td>
</tr>
</tbody>
</table>
2.5 Basis of Employment by gender

Table 9

<table>
<thead>
<tr>
<th>Gender</th>
<th>Course</th>
<th>Full time</th>
<th>Part-time</th>
<th>casual</th>
<th>Self employed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>Associate Degree in Law (Paralegal Studies)</td>
<td>8</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Associate Degree in Corrective Administration</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Bachelor of Legal and Justice Studies</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Graduates who articulated to LLB</td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>17</td>
<td>2</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>85%</td>
<td>10%</td>
<td>5%</td>
<td>0%</td>
<td></td>
</tr>
</tbody>
</table>

| Female | Associate Degree in Law (Paralegal Studies) | 34        | 4         | 2      | 1             |
|        | Associate Degree in Corrective Administration | 0         | 0         | 0      | 0             |
|        | Bachelor of Legal and Justice Studies       | 15        | 1         | 1      | 0             |
|        | Graduates who articulated to LLB            | 11        | 1         | 1      | 0             |
|        | 60                                           | 6         | 4         | 1      | 1.4%           |
|        | 84.5%                                        | 8.4%      | 5.6%      | 1.4%   |

2.6 Geographical area employed in

Table 10. Geographical area employed in:

<table>
<thead>
<tr>
<th>Course studied</th>
<th>Geographical area</th>
<th>Regional</th>
<th>Metropolitan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Associate Degree in Law (Paralegal Studies)</td>
<td>35</td>
<td>21</td>
<td></td>
</tr>
<tr>
<td>Associate Degree in Corrective Administration</td>
<td>1</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Bachelor of Legal and Justice Studies</td>
<td>13</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Graduates who articulated to four year undergraduate degree</td>
<td>7</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td>Total Count</td>
<td>56</td>
<td>47</td>
<td></td>
</tr>
<tr>
<td>Percent</td>
<td>54.3%</td>
<td>45.6%</td>
<td></td>
</tr>
</tbody>
</table>
2.7 Increase in income

Graduates were asked if they had received a salary increase as a result of their study. The next table shows that 99 of the paralegal graduates answered this question. Of these 59.5% indicated that they had received a pay increase as a result of their study.

Table 11.

<table>
<thead>
<tr>
<th>Course studied</th>
<th>Salary increase</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>yes</td>
<td>No</td>
</tr>
<tr>
<td>Associate Degree in Law (Paralegal Studies)</td>
<td>33</td>
<td>24</td>
</tr>
<tr>
<td>Associate Degree in Corrective Administration</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Bachelor of Legal and Justice Studies</td>
<td>12</td>
<td>9</td>
</tr>
<tr>
<td>Graduates who articulated to LLB</td>
<td>14</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>59</td>
<td>40</td>
</tr>
</tbody>
</table>

2.8 Average Income

105 of the paralegal graduates responded to this question. The largest percentage of paralegal graduates (55.1%) are earning between $25,000 and $44,999 (category 2 and 3) and that only a small percentage (4.7%) earn over $65,000.00.

Table 12.

<table>
<thead>
<tr>
<th>Average income</th>
<th>Associate Degree in Law (Paralegal Studies)</th>
<th>Associate Degree in Corrective Administration</th>
<th>Bachelor of Legal and Justice Studies</th>
<th>Graduates who articulated to LLB</th>
<th>Total %</th>
</tr>
</thead>
<tbody>
<tr>
<td>$15,000-24,999</td>
<td>8</td>
<td>0</td>
<td>8</td>
<td>3</td>
<td>18%</td>
</tr>
<tr>
<td>$25,000-34,999</td>
<td>18</td>
<td>0</td>
<td>4</td>
<td>2</td>
<td>22.8%</td>
</tr>
<tr>
<td>$35,000-44,999</td>
<td>19</td>
<td>0</td>
<td>7</td>
<td>8</td>
<td>32.3%</td>
</tr>
<tr>
<td>$45,000-54,999</td>
<td>6</td>
<td>2</td>
<td>2</td>
<td>4</td>
<td>13.3%</td>
</tr>
<tr>
<td>$55,000-64,999</td>
<td>4</td>
<td>0</td>
<td>3</td>
<td>2</td>
<td>8.5%</td>
</tr>
<tr>
<td>More than $65,000</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>4.7%</td>
</tr>
<tr>
<td>Total</td>
<td>58</td>
<td>2</td>
<td>25</td>
<td>20</td>
<td></td>
</tr>
</tbody>
</table>

Average Income based on Geographical Area

There are significant variances in the salaries of graduates who work in metropolitan and regional areas. The most significant is in the lower incomes where 58.1% of graduates working in regional areas are earning in the lowest 2 categories as compared to 17% of graduates working in metropolitan areas.
34.7% of graduates working in regional areas earn in the middle two categories as compared to 61.6% of graduates working in metro areas; and

there are only 7.2% of graduates in regional earning in the highest two categories as opposed to 21.2% of graduates working in metro areas

Table 13

<table>
<thead>
<tr>
<th>Geographical area</th>
<th>Course</th>
<th>$15,000 -24,999</th>
<th>$25,000 -34,999</th>
<th>$35,000 -44,999</th>
<th>$45,000 -54,999</th>
<th>$55,000 -64,999</th>
<th>More than $65,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>regional</td>
<td>Associate Degree in Law (Paralegal Studies)</td>
<td>6</td>
<td>16</td>
<td>9</td>
<td>2</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Associate Degree in Corrective Administration</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Bachelor of Legal and Justice Studies</td>
<td>6</td>
<td>2</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Graduates who articulated to LLB</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Frequency</td>
<td></td>
<td>13</td>
<td>19</td>
<td>14</td>
<td>5</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>% of graduates in regional areas</td>
<td></td>
<td>23.6%</td>
<td>34.5%</td>
<td>25.4%</td>
<td>9.3%</td>
<td>5.4%</td>
<td>1.8%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Geographical area</th>
<th>Course</th>
<th>$15,000 -24,999</th>
<th>$25,000 -34,999</th>
<th>$35,000 -44,999</th>
<th>$45,000 -54,999</th>
<th>$55,000 -64,999</th>
<th>More than $65,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Metropolitan</td>
<td>Associate Degree in Law (Paralegal Studies)</td>
<td>1</td>
<td>1</td>
<td>10</td>
<td>4</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Associate Degree in Corrective Administration</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Bachelor of Legal and Justice Studies</td>
<td>2</td>
<td>2</td>
<td>4</td>
<td>2</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Graduates who articulated to LLB</td>
<td>1</td>
<td>1</td>
<td>6</td>
<td>2</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Frequency</td>
<td></td>
<td>4</td>
<td>4</td>
<td>20</td>
<td>9</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>% of graduates in metro area</td>
<td></td>
<td>8.5%</td>
<td>8.5%</td>
<td>42.5%</td>
<td>19.1%</td>
<td>12.7%</td>
<td>8.5%</td>
</tr>
</tbody>
</table>
2.9 Approximate income by gender

Generally male paralegals are earning slightly higher incomes than females. 30% of males are earning in the top three categories as compared to 25.7% females. 70% of males earn in the lowest three categories compared with 73.3% of females.

Table 14

<table>
<thead>
<tr>
<th>Gender</th>
<th>Course</th>
<th>$15,000-24,999</th>
<th>$25,000-34,999</th>
<th>$35,000-44,999</th>
<th>$45,000-54,999</th>
<th>$55,000-64,999</th>
<th>More than $65,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>Associate Degree in Law (Paralegal Studies)</td>
<td>2</td>
<td>2</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Associate Degree in Corrective Administration</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Bachelor of Legal and Justice Studies</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Graduates who articulated to LLB</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>4</td>
<td>3</td>
<td>7</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Gender</th>
<th>Course</th>
<th>$15,000-24,999</th>
<th>$25,000-34,999</th>
<th>$35,000-44,999</th>
<th>$45,000-54,999</th>
<th>$55,000-64,999</th>
<th>More than $65,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>female</td>
<td>Associate Degree in Law (Paralegal Studies)</td>
<td>5</td>
<td>14</td>
<td>14</td>
<td>5</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Associate Degree in Corrective Administration</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Bachelor of Legal and Justice Studies</td>
<td>4</td>
<td>4</td>
<td>5</td>
<td>2</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Graduates who articulated to LLB</td>
<td>1</td>
<td>1</td>
<td>5</td>
<td>4</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>10</td>
<td>19</td>
<td>24</td>
<td>11</td>
<td>6</td>
<td>1</td>
</tr>
</tbody>
</table>
### 2.11 Type of Employment

<table>
<thead>
<tr>
<th></th>
<th>Associate Degree in Law (Paralegal Studies)</th>
<th>Bachelor of Legal and Justice Studies</th>
<th>Associate Degree in Corrective Administration</th>
<th>Graduates who articulated to LLB</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>private legal profession</strong></td>
<td>33</td>
<td>9</td>
<td>0</td>
<td>14</td>
<td>56</td>
</tr>
<tr>
<td><strong>community based legal service</strong></td>
<td>1</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td><strong>the public sector (legal)</strong></td>
<td>5</td>
<td>6</td>
<td>2</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td><strong>private industry or commerce or finance (legal)</strong></td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td><strong>community based service (non-legal)</strong></td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td><strong>the public sector (non-legal)</strong></td>
<td>4</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>7</td>
</tr>
<tr>
<td><strong>private industry or commerce or finance (non-legal)</strong></td>
<td>9</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>10</td>
</tr>
<tr>
<td><strong>teaching law</strong></td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td><strong>other</strong></td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>57</strong></td>
<td><strong>25</strong></td>
<td><strong>2</strong></td>
<td><strong>20</strong></td>
<td><strong>104</strong></td>
</tr>
</tbody>
</table>

By far the highest percentage (53.8%) of paralegal graduates work in the private legal profession. 14.4% do legal work in the public sector.

Of the 104 paralegal graduates who specified the type of employment they were engaged in 74% indicated that it was their first preference of employment.

### 3. Satisfaction with course
3.1 Prepared for workplace

Graduates were asked to rate how they thought the course prepared them for the workplace. The result is shown in the following graph. There were 100 responses from paralegal graduates. The highest percentage 43% of paralegal graduates indicated that the course “mostly” prepared them for the workplace.

Table 16. Prepared for workplace

<table>
<thead>
<tr>
<th>Course studied</th>
<th>did the course prepare you for the workplace</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>not at all</td>
<td>a little</td>
</tr>
<tr>
<td>AssocDegLaw</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>BLJS</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>AssocDegCorrAdmin</td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>Graduates who articulated to LLB</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td>3</td>
<td>14</td>
</tr>
</tbody>
</table>

3.2 Graduates were asked to rate various statements regarding their satisfaction with the course they undertook and the administration of it. Generally the responses show high levels of satisfaction with the exception of “comprehensive feedback” where 45.3% of graduates from the Associate Degree and 46.6% of graduates from the BLJS indicated they were less than satisfied.
Table 17

<table>
<thead>
<tr>
<th></th>
<th>AssocDegLaw</th>
<th>BLJS</th>
<th>AssocDegCorrAdmin</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>not at all</td>
<td>a little</td>
<td>some</td>
</tr>
<tr>
<td>received comprehensive feedback</td>
<td>1.8%</td>
<td>10.5%</td>
<td>33.3%</td>
</tr>
<tr>
<td>aims &amp; objectives clear</td>
<td>.0%</td>
<td>5.3%</td>
<td>15.8%</td>
</tr>
<tr>
<td>course materials delivered on time</td>
<td>.0%</td>
<td>5.3%</td>
<td>7.0%</td>
</tr>
<tr>
<td>course materials good quality</td>
<td>.0%</td>
<td>1.8%</td>
<td>10.9%</td>
</tr>
<tr>
<td>staff responded quickly &amp; effectively</td>
<td>.0%</td>
<td>7.3%</td>
<td>14.5%</td>
</tr>
<tr>
<td>course content appropriate to aims</td>
<td>.0%</td>
<td>5.4%</td>
<td>8.9%</td>
</tr>
</tbody>
</table>

4. Graduates were asked what aspects of the course had been of the most help in their work. 92 or 64.3% of the graduates responded to this question. The responses were varied and covered many different aspects. The most prevalent responses can be summarised as follows:

4.1 Most graduates listed **specific units** as being the most help to them in their work. In order of prevalence these were:

- Legal research and writing (24 graduates indicated this subject as the most helpful aspect of the course)
- Conveyancing
• Criminal process

“Criminal law - Having a lecturer that was practicing as well was extremely beneficial”

4.2 50% of the responses identified specific skills they had acquired as the most helpful in their work: Some responses included:

“The ability to research and apply that research to matters”
“Research and report writing skills, identifying and solving legal problems.”
“Both are very useful when it comes to preparing written advices”
“Broad knowledge base, problem solving skills and critical thinking skills”
“Time management and organisation skills”
“Dispute resolution and negotiation skills”
“Observational and analytical and problem solving skills”
“Being taught to challenge ideas and concepts not just accept them”
“The ability to deal with large workloads”
“The ability to sift through bulk information and cull”

4.3 7 graduates (8%) indicated that the best aspect of the course was that they had gained confidence. One stated:

“The course (Paralegal) gave me the confidence to ask my employer for the award wage and some acknowledgment/appreciation for the work I did in the office. Unfortunately this resulted in my quitting my job when my employer refused to do either.”

4.4 A small number of graduates (5 responses) felt the lecturers and interaction was most helpful

“The interdisciplinary and progressive approach to the law of some lecturers”
“The good balance of lecturers and tutors with practical and academic backgrounds”
“Face to face discussions”

5. Graduates were asked to indicate what could have been included in the course to help them in the workplace.

By far the most overwhelming response to this question was for the inclusion of more practical components into the courses. Of the 88 graduates who responded to this question more than 95% indicated that they felt the course would have been of more help in the workplace if it focused more on practical aspects in both legal and non-legal areas. Below are some examples of the comments made by graduates.
5.1 75% of graduates of the Associate Degree (Paralegal Studies) suggested more practical units were required with the emphasis on office administration, preparing legal documents and skills for dealing with clients.

- “Opportunities for practical experience. Even help with finding some voluntary workplace training would have been very beneficial”;
- “A unit covering Staff/Office management”
- “More document drafting and general office/daily procedure”
- “More focus on practical transactions rather than theory”
- “How to actually deal with clients, how to fill out and draft legal documents”
- “Phone skills, communication skills, client negotiations, dealing with public”
- “More case study outcomes not just questions. You need to deal with real life situations and provide solutions.”
- “A work experience unit”
- “Drafting affidavits”
- “Some practical training in a workshop - how to approach things and answer questions with confidence whilst with a client. More in-depth and easy to understand situations.”

With respect to the conveyancing units para-legal graduates made these comments:

- “The course never actually showed us how to put a contract together - more practical instruction is needed”.
- “Practical conveyancing training - how to go through a contract with clients, procedures and forms.”
- “The following areas were not covered efficiently: Stamp Duty, requisitions on title, settlement statements, s88B, Contracts. Even after 2 years of experience I still am very nervous and uncomfortable explaining the contract to purchasers. I think this could be avoided if the course focused on the practical aspects.”

5.2 All of the graduates from Bachelor of Legal and Justice Studies suggested the inclusion of more practical components with the emphasis on office administration.

- “I feel I had no practical knowledge”;
- “A practical computer literacy course”;
- “More practical based skills eg typing, computers etc.”
- “Non-law subjects such as administration, office skills”
- “Basic information about legal office - running of office accounts etc.”
- “Make work experience compulsory”
• “Much more practical work. In house workshops would have been great. External students miss too many of the basics - it seems to be presumed that we already have these skills, but more often than not we don’t”
• “A subject covering interviewing skills, dealing with clients in various situations”
• “Procedures relating to court documents, preparation of briefs and the general operation of law.”
• “A unit covering the administrative side of the legal system eg. Courts, practice and procedure and legal aid”;

6. Graduates were asked which unit of the course did they most enjoy and why. The following table contains a summary of the most commonly selected units by course together with the reasons and some of the comments made.

Table 18

<table>
<thead>
<tr>
<th>Course</th>
<th>Subject</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>AssocDegLaw</td>
<td>Criminal law</td>
<td>Interesting, lecturer</td>
</tr>
<tr>
<td></td>
<td>Torts</td>
<td>Interesting, Lecturer and lectures clear and concise</td>
</tr>
<tr>
<td></td>
<td>Family Law</td>
<td>Interesting, relevant to work</td>
</tr>
<tr>
<td></td>
<td>Contemporary Aboriginal legal Issues</td>
<td>“An eye opener from high school education which left everything out”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“I never knew any aspects of this unit previously I was totally ignorant of the real truth”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“Interesting, current and had a practical aspect to learning”</td>
</tr>
<tr>
<td></td>
<td>Conveyancing</td>
<td>Relevant to work</td>
</tr>
<tr>
<td>BLJS</td>
<td>Contemporary Aboriginal legal Issues</td>
<td>Informative, interesting.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“It really pushed my boundaries and I had to work hard”</td>
</tr>
<tr>
<td></td>
<td>Criminal Process</td>
<td>Interesting, “the lecturer made learning fun”</td>
</tr>
<tr>
<td></td>
<td>Drugs Crime &amp; the law</td>
<td>“Lecturer/tutor presented concepts and information in a way that was easily absorbed”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Relevant to work</td>
</tr>
<tr>
<td></td>
<td>Litigation</td>
<td>“All procedure” relevant to work</td>
</tr>
</tbody>
</table>

7. The graduates were asked to indicate which unit they least enjoyed and why. The table below is a summary of the most frequently selected subjects together with reasons and some comments.
<table>
<thead>
<tr>
<th>Course</th>
<th>Subject</th>
<th>Reasons and comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>AssocDegLaw</td>
<td>Securities Market Regulation</td>
<td>“Did not appear to have same relevance as other units”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“I did not have any interest in the subject and did not understand it”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“I could understand the materials but had trouble answering questions”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“Far too much reading. I did about 15 hours per week on this subject alone and still did not get through the material”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“Like chewing on razor blades”</td>
</tr>
<tr>
<td>Accounting</td>
<td>Unnecessary,</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>“too difficult to study externally”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“This unit pretended to be a conveyancing subject”</td>
</tr>
<tr>
<td>Computer studies</td>
<td>“lack of access to computers with appropriate software”</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>“No need to understand programming”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“This unit did not advance my complete computer illiteracy. The unit should have concentrated on the software used in legal firms”</td>
</tr>
<tr>
<td>Conveyancing</td>
<td>“Did not cover enough of the aspects to enable a student to go immediately into practice.”</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>“Extremely difficult unit”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“the lecturing method”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“the accounting aspects”</td>
</tr>
<tr>
<td>Company law</td>
<td>“The material in this unit was extremely complex”</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>“What was studied in class had no connection with assignments”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“Did not see the relevant of this unit to the conveyancing course”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“Too much reading”</td>
</tr>
<tr>
<td>Family Law</td>
<td>“taught in a disjointed fashion”</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>“Too dry”</td>
</tr>
<tr>
<td>Land law</td>
<td>“The antiquated language, the style of teaching &amp; the exam was too short”</td>
<td></td>
</tr>
</tbody>
</table>
Table 19 Cont.

<table>
<thead>
<tr>
<th>Course</th>
<th>Subject</th>
<th>Reasons/Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>BLJS</td>
<td>Conveyancing</td>
<td>“The external materials were not easy to follow especially Legal &amp; Conveyancing Practice (LA108), Conveyancing Professional Practice (LA107).”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“here did not seem to be any clear guidelines for this unit.” (LA107)</td>
</tr>
<tr>
<td></td>
<td>Computers</td>
<td>“The information was very technical and was not particularly relevant to the rest of my study.”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“Because we had to learn binary cove and really useless stuff, it would have been better to learn form generation etc.”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“Not relevant to the course.”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“The trouble with this unit is the complete lack of assistance from the lecturer and the computer school.”</td>
</tr>
<tr>
<td></td>
<td>Legal Studies II</td>
<td>“The style of lecturing made it difficult to learn and ask questions”</td>
</tr>
</tbody>
</table>

8. Other comments

Finally graduates were asked to make any further comments about the teaching or any other aspect of their course of study. The following is a selection of the most constructive comments from each of the course.

Table 20

<table>
<thead>
<tr>
<th>Course</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>AssocDegLaw</td>
<td>“Law firms on the North Coast and other country areas do not seem to recognise the qualification I have. They only want people with experience.”</td>
</tr>
<tr>
<td></td>
<td>“I did not feel equipped to work in a law office. I do not feel I received any training in the basic areas.”</td>
</tr>
<tr>
<td></td>
<td>“I loved the course. Fantastic for my personal development. I found that local law firms (Lismore area) did not recognise the course and failed to provide appropriate salary for a paralegal. It was disappointing.”</td>
</tr>
<tr>
<td></td>
<td>“The law school ought to be commended for its innovative approach and delivery of its units. Being former (grossly unsatisfied) arts student, it was the professional outlook displayed by the school which enabled me to complete my course of study”</td>
</tr>
<tr>
<td></td>
<td>“More contact from staff in a supportive capacity. In my elective units (o/s law school) the tutors actually made contact to see how I was coping with the unit and its content. This was morale boosting and had a very positive effect on my studies. Just one telephone call made me feel that I was not isolated. The SCU law staff would do best to follow suit. External study is not easy at the best of times.”</td>
</tr>
</tbody>
</table>
“Keep on providing the highly supportive, critical & competitive environment – keep on being innovative & encouraging.”

“Generally good but industry lacks confidence that students have skills.

“Need to educate industry – legal secretaries are cheaper which causes problems for over-skilled paralegals.”

BLJS

“... a note to say how friendly the school is and the campus as a whole is a very relaxing & supportive environment. Maybe an age requirement for entry to this course because I found the younger students were distracted and not ready for such an intense course.”

“Maybe some greater external support!”

“Problems: Not being able to consolidate degree and study LLB or Justice studies/LLB externally. Not getting exemptions for study carried out at SCU from other universities. Finding that other universities do not have the same standard of course material for students as SCU.”

“I have studied at 5 unis, mostly in the external mode, and I have trained thousands of students. SCU’s law school external teaching methods are outstanding. Every one of the staff members – academic and administrative – were fantastic. I found the opportunity to major in BL&J exactly suited my job at the time. My experience with SCU has been the most enjoyable and satisfying educational experience of my life.”

“After completing my course I am still not fully qualified for anything. Employers do not have an understanding of what the course involved. The area of employment I am looking for requires people to have 2-3 years experience.”

“All of the lecturers I met were dedicated individuals who made the subjects interesting and provided encouragement. The only criticism I have is respect to the reading material. This was sometimes of poor quality and was very hard to read due to the poor quality and size of print. This often caused more time than necessary to be consumed reading material.”

Graduates were asked to indicate on a scale 1 (Not at all) to 5 (Completely) how much they agreed with each of the statements regarding their ability to apply knowledge and skills when they commenced work. The following table breaks the responses up into course studied. The percentage is the percentage of responses for that course. So for example 13.3% of paralegal graduates indicated that when they began work after their course they were “not at all” comfortable dealing with procedural law”. 28.6% of BLJS graduates indicated they were “a little” comfortable dealing with procedural law.

Table 20
<table>
<thead>
<tr>
<th>Course</th>
<th>When I began work after my course…</th>
<th>Not at all</th>
<th>A little</th>
<th>some</th>
<th>mostly</th>
<th>Completely</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AssocDeg Law</td>
<td>I had the practical skills expected</td>
<td>6.1%</td>
<td>10.2%</td>
<td>20.4%</td>
<td>30.6%</td>
<td>32.7%</td>
</tr>
<tr>
<td></td>
<td>My knowledge of substantive law was appropriate</td>
<td>9.1%</td>
<td>11.4%</td>
<td>25.0%</td>
<td>38.6%</td>
<td>15.9%</td>
</tr>
<tr>
<td></td>
<td>I was comfortable dealing with procedural law</td>
<td>13.3%</td>
<td>15.6%</td>
<td>28.9%</td>
<td>26.7%</td>
<td>15.6%</td>
</tr>
<tr>
<td></td>
<td>I could translate what was learnt to the workplace</td>
<td>10.6%</td>
<td>10.6%</td>
<td>25.5%</td>
<td>25.5%</td>
<td>27.7%</td>
</tr>
<tr>
<td></td>
<td>I had the problem solving skills needed</td>
<td>.0%</td>
<td>12.5%</td>
<td>10.4%</td>
<td>52.1%</td>
<td>25.0%</td>
</tr>
<tr>
<td></td>
<td>I found it easy to work as a team member</td>
<td>2.1%</td>
<td>.0%</td>
<td>6.4%</td>
<td>38.3%</td>
<td>53.2%</td>
</tr>
<tr>
<td></td>
<td>I was able to deal with ethical dilemmas effectively</td>
<td>4.2%</td>
<td>10.4%</td>
<td>16.7%</td>
<td>45.8%</td>
<td>22.9%</td>
</tr>
<tr>
<td></td>
<td>I was able to plan work to be completed effectively</td>
<td>.0%</td>
<td>2.1%</td>
<td>17.0%</td>
<td>40.4%</td>
<td>40.4%</td>
</tr>
<tr>
<td></td>
<td>I was confident dealing with clients</td>
<td>.0%</td>
<td>10.6%</td>
<td>12.8%</td>
<td>34.0%</td>
<td>42.6%</td>
</tr>
<tr>
<td>BLJS</td>
<td>I had the practical skills expected</td>
<td>.0%</td>
<td>12.0%</td>
<td>20.0%</td>
<td>36.0%</td>
<td>32.0%</td>
</tr>
<tr>
<td></td>
<td>My Knowledge of substantive law was appropriate</td>
<td>.0%</td>
<td>4.5%</td>
<td>36.4%</td>
<td>31.8%</td>
<td>27.3%</td>
</tr>
<tr>
<td></td>
<td>I was comfortable dealing with procedural law</td>
<td>.0%</td>
<td>28.6%</td>
<td>14.3%</td>
<td>33.3%</td>
<td>23.8%</td>
</tr>
<tr>
<td></td>
<td>I could translate what was learnt to the workplace</td>
<td>.0%</td>
<td>28.0%</td>
<td>12.0%</td>
<td>32.0%</td>
<td>28.0%</td>
</tr>
<tr>
<td></td>
<td>I had the problem solving skills needed</td>
<td>.0%</td>
<td>12.0%</td>
<td>20.0%</td>
<td>28.0%</td>
<td>40.0%</td>
</tr>
<tr>
<td></td>
<td>I found it easy to work as a team member</td>
<td>.0%</td>
<td>4.0%</td>
<td>8.0%</td>
<td>28.0%</td>
<td>60.0%</td>
</tr>
<tr>
<td></td>
<td>I was able to deal with ethical dilemmas effectively</td>
<td>.0%</td>
<td>8.0%</td>
<td>20.0%</td>
<td>44.0%</td>
<td>28.0%</td>
</tr>
<tr>
<td></td>
<td>I was able to plan work to be completed effectively</td>
<td>.0%</td>
<td>4.0%</td>
<td>20.0%</td>
<td>24.0%</td>
<td>52.0%</td>
</tr>
<tr>
<td></td>
<td>I was confident dealing with clients</td>
<td>.0%</td>
<td>12.5%</td>
<td>8.3%</td>
<td>25.0%</td>
<td>54.2%</td>
</tr>
</tbody>
</table>
Graduates were asked to indicate on a scale 1 – 5 (1= not at all, 5 = a lot) to what extent they performed in various areas of law. The following table breaks the responses into course studied.

<table>
<thead>
<tr>
<th>AssocDeg Correct Admin.</th>
<th>I had the practical skills expected</th>
<th>.0%</th>
<th>.0%</th>
<th>.0%</th>
<th>100.0%</th>
<th>.0%</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>My knowledge of substantive law was appropriate</td>
<td>.0%</td>
<td>50.0%</td>
<td>50.0%</td>
<td>.0%</td>
<td>.0%</td>
</tr>
<tr>
<td></td>
<td>I was comfortable dealing with procedural law</td>
<td>50.0%</td>
<td>.0%</td>
<td>50.0%</td>
<td>.0%</td>
<td>.0%</td>
</tr>
<tr>
<td></td>
<td>I could translate what was learnt to the workplace</td>
<td>.0%</td>
<td>.0%</td>
<td>100.0%</td>
<td>.0%</td>
<td>.0%</td>
</tr>
<tr>
<td></td>
<td>I had the problem solving skills needed</td>
<td>.0%</td>
<td>.0%</td>
<td>50.0%</td>
<td>50.0%</td>
<td>.0%</td>
</tr>
<tr>
<td></td>
<td>I found it easy to work as a team member</td>
<td>.0%</td>
<td>.0%</td>
<td>50.0%</td>
<td>50.0%</td>
<td>.0%</td>
</tr>
<tr>
<td></td>
<td>I was able to deal with ethical dilemmas effectively</td>
<td>.0%</td>
<td>.0%</td>
<td>50.0%</td>
<td>50.0%</td>
<td>.0%</td>
</tr>
<tr>
<td></td>
<td>I was able to plan work to be completed effectively</td>
<td>.0%</td>
<td>.0%</td>
<td>50.0%</td>
<td>50.0%</td>
<td>.0%</td>
</tr>
<tr>
<td></td>
<td>I was confident dealing with clients</td>
<td>.0%</td>
<td>.0%</td>
<td>50.0%</td>
<td>50.0%</td>
<td>.0%</td>
</tr>
<tr>
<td>Course</td>
<td>not at all</td>
<td>a little</td>
<td>some</td>
<td>quite a bit</td>
<td>a lot</td>
<td></td>
</tr>
<tr>
<td>-------------------------</td>
<td>------------</td>
<td>----------</td>
<td>-------</td>
<td>-------------</td>
<td>-------</td>
<td></td>
</tr>
<tr>
<td>AssocDegLaw</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Criminal law</td>
<td>63.8%</td>
<td>21.3%</td>
<td>6.4%</td>
<td>4.3%</td>
<td>4.3%</td>
<td></td>
</tr>
<tr>
<td>Constitutional law</td>
<td>86.4%</td>
<td>4.5%</td>
<td>9.1%</td>
<td>.0%</td>
<td>.0%</td>
<td></td>
</tr>
<tr>
<td>Administrative law</td>
<td>77.3%</td>
<td>9.1%</td>
<td>11.4%</td>
<td>.0%</td>
<td>2.3%</td>
<td></td>
</tr>
<tr>
<td>Torts</td>
<td>50.0%</td>
<td>21.7%</td>
<td>15.2%</td>
<td>4.3%</td>
<td>8.7%</td>
<td></td>
</tr>
<tr>
<td>Contracts</td>
<td>34.8%</td>
<td>17.4%</td>
<td>15.2%</td>
<td>15.2%</td>
<td>17.4%</td>
<td></td>
</tr>
<tr>
<td>Property</td>
<td>42.6%</td>
<td>12.8%</td>
<td>12.8%</td>
<td>8.5%</td>
<td>23.4%</td>
<td></td>
</tr>
<tr>
<td>Equity &amp; trusts</td>
<td>61.4%</td>
<td>29.5%</td>
<td>9.1%</td>
<td>.0%</td>
<td>.0%</td>
<td></td>
</tr>
<tr>
<td>Company</td>
<td>54.3%</td>
<td>28.3%</td>
<td>15.2%</td>
<td>2.2%</td>
<td>.0%</td>
<td></td>
</tr>
<tr>
<td>Family law</td>
<td>56.5%</td>
<td>21.7%</td>
<td>6.5%</td>
<td>.0%</td>
<td>15.2%</td>
<td></td>
</tr>
<tr>
<td>Commercial</td>
<td>41.3%</td>
<td>26.1%</td>
<td>17.4%</td>
<td>8.7%</td>
<td>6.5%</td>
<td></td>
</tr>
<tr>
<td>Litigation</td>
<td>46.8%</td>
<td>14.9%</td>
<td>10.6%</td>
<td>6.4%</td>
<td>21.3%</td>
<td></td>
</tr>
<tr>
<td>Wills &amp; estates</td>
<td>42.6%</td>
<td>12.8%</td>
<td>17.0%</td>
<td>14.9%</td>
<td>12.8%</td>
<td></td>
</tr>
<tr>
<td>Conveyancing</td>
<td>37.5%</td>
<td>14.6%</td>
<td>6.3%</td>
<td>8.3%</td>
<td>33.3%</td>
<td></td>
</tr>
<tr>
<td>Workers compensation</td>
<td>67.4%</td>
<td>13.0%</td>
<td>.0%</td>
<td>2.2%</td>
<td>17.4%</td>
<td></td>
</tr>
<tr>
<td>Personal injuries</td>
<td>68.9%</td>
<td>8.9%</td>
<td>.0%</td>
<td>2.2%</td>
<td>20.0%</td>
<td></td>
</tr>
<tr>
<td>Office management</td>
<td>41.3%</td>
<td>17.4%</td>
<td>17.4%</td>
<td>8.7%</td>
<td>15.2%</td>
<td></td>
</tr>
<tr>
<td>BLJS</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Criminal law</td>
<td>36.0%</td>
<td>16.0%</td>
<td>12.0%</td>
<td>20.0%</td>
<td>16.0%</td>
<td></td>
</tr>
<tr>
<td>Constitutional law</td>
<td>78.3%</td>
<td>17.4%</td>
<td>4.3%</td>
<td>.0%</td>
<td>.0%</td>
<td></td>
</tr>
<tr>
<td>Administrative law</td>
<td>60.9%</td>
<td>17.4%</td>
<td>13.0%</td>
<td>4.3%</td>
<td>4.3%</td>
<td></td>
</tr>
<tr>
<td>Torts</td>
<td>58.3%</td>
<td>8.3%</td>
<td>4.2%</td>
<td>25.0%</td>
<td>4.2%</td>
<td></td>
</tr>
<tr>
<td>Contracts</td>
<td>32.0%</td>
<td>12.0%</td>
<td>24.0%</td>
<td>16.0%</td>
<td>16.0%</td>
<td></td>
</tr>
<tr>
<td>Property</td>
<td>54.2%</td>
<td>8.3%</td>
<td>8.3%</td>
<td>8.3%</td>
<td>20.8%</td>
<td></td>
</tr>
<tr>
<td>Equity &amp; trusts</td>
<td>73.9%</td>
<td>13.0%</td>
<td>.0%</td>
<td>8.7%</td>
<td>4.3%</td>
<td></td>
</tr>
<tr>
<td>Company</td>
<td>45.8%</td>
<td>16.7%</td>
<td>20.8%</td>
<td>12.5%</td>
<td>4.2%</td>
<td></td>
</tr>
<tr>
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</tr>
<tr>
<td>Commercial</td>
<td>43.5%</td>
<td>17.4%</td>
<td>21.7%</td>
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<td>8.7%</td>
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</tr>
<tr>
<td>Litigation</td>
<td>54.2%</td>
<td>16.7%</td>
<td>4.2%</td>
<td>12.5%</td>
<td>12.5%</td>
<td></td>
</tr>
<tr>
<td>Wills &amp; estates</td>
<td>60.0%</td>
<td>4.0%</td>
<td>8.0%</td>
<td>4.0%</td>
<td>24.0%</td>
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</tr>
<tr>
<td>Conveyancing</td>
<td>52.2%</td>
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<td>8.7%</td>
<td>17.4%</td>
<td></td>
</tr>
<tr>
<td>Workers compensation</td>
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<td>.0%</td>
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<tr>
<td>Personal injuries</td>
<td>65.2%</td>
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<td>8.7%</td>
<td>4.3%</td>
<td></td>
</tr>
<tr>
<td>Office management</td>
<td>29.2%</td>
<td>12.5%</td>
<td>25.0%</td>
<td>8.3%</td>
<td>25.0%</td>
<td></td>
</tr>
</tbody>
</table>
To evaluate how well the course prepared graduates for the workplace we asked graduates to remember their experiences when the first commenced work after completing their course and indicate on a scale of 1-5 to what extent their job required application of knowledge and skills. The following table displays the results to this question by course. The percentage represents the percentage for each course.

<table>
<thead>
<tr>
<th>AssocDegCorr</th>
<th>Constitutional law</th>
<th>Administrative law</th>
<th>Torts</th>
<th>Contracts</th>
<th>Property</th>
<th>Equity &amp; trusts</th>
<th>Company</th>
<th>Family law</th>
<th>Commercial</th>
<th>Litigation</th>
<th>Wills &amp; estates</th>
<th>Conveyancing</th>
<th>Workers comp</th>
<th>Personal injuries</th>
<th>Office management</th>
</tr>
</thead>
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<td>50.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>50.0%</td>
</tr>
</tbody>
</table>

Table 22

<table>
<thead>
<tr>
<th>AssocDegLaw</th>
<th>To what extent does your job require…</th>
<th>not at all</th>
<th>a little</th>
<th>some</th>
<th>quite a bit</th>
<th>a lot</th>
</tr>
</thead>
<tbody>
<tr>
<td>knowledge of substantive law</td>
<td>40.4%</td>
<td>19.1%</td>
<td>14.9%</td>
<td>17.0%</td>
<td>8.5%</td>
<td></td>
</tr>
<tr>
<td>knowledge of practice &amp; procedure</td>
<td>23.4%</td>
<td>12.8%</td>
<td>19.1%</td>
<td>19.1%</td>
<td>25.5%</td>
<td></td>
</tr>
<tr>
<td>knowledge of evidence</td>
<td>52.2%</td>
<td>17.4%</td>
<td>13.0%</td>
<td>8.7%</td>
<td>8.7%</td>
<td></td>
</tr>
<tr>
<td>knowledge of policy</td>
<td>40.4%</td>
<td>34.0%</td>
<td>12.8%</td>
<td>8.5%</td>
<td>4.3%</td>
<td></td>
</tr>
<tr>
<td>knowledge of trust accounting</td>
<td>46.8%</td>
<td>12.8%</td>
<td>12.8%</td>
<td>12.8%</td>
<td>14.9%</td>
<td></td>
</tr>
<tr>
<td>Application of legal &amp; professional standards</td>
<td>23.9%</td>
<td>17.4%</td>
<td>21.7%</td>
<td>17.4%</td>
<td>19.6%</td>
<td></td>
</tr>
<tr>
<td>Understanding of the social context of law</td>
<td>38.3%</td>
<td>21.3%</td>
<td>25.5%</td>
<td>10.6%</td>
<td>4.3%</td>
<td></td>
</tr>
<tr>
<td>knowledge of substantive law</td>
<td>16.7%</td>
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<td>20.8%</td>
<td>20.8%</td>
<td>20.8%</td>
<td></td>
</tr>
<tr>
<td>Course studied</td>
<td>To what extent do you have to</td>
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<td>a little</td>
<td>some</td>
<td>quite a bit</td>
<td>a lot</td>
</tr>
<tr>
<td>-----------------------------------</td>
<td>------------------------------</td>
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<td>---------</td>
<td>-------</td>
<td>-------------</td>
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</tr>
<tr>
<td>AssocDegLaw</td>
<td>research substantive law</td>
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<td>19.6%</td>
<td>23.9%</td>
<td>6.5%</td>
<td>15.2%</td>
</tr>
<tr>
<td></td>
<td>apply legal problem solving method</td>
<td>23.4%</td>
<td>23.4%</td>
<td>25.5%</td>
<td>12.8%</td>
<td>14.9%</td>
</tr>
<tr>
<td></td>
<td>read &amp; apply legislation</td>
<td>22.9%</td>
<td>10.4%</td>
<td>29.2%</td>
<td>20.8%</td>
<td>16.7%</td>
</tr>
<tr>
<td></td>
<td>interpret case law</td>
<td>36.2%</td>
<td>27.7%</td>
<td>23.4%</td>
<td>0%</td>
<td>12.8%</td>
</tr>
<tr>
<td></td>
<td>complete forms &amp; applications</td>
<td>13.0%</td>
<td>4.3%</td>
<td>15.2%</td>
<td>8.7%</td>
<td>58.7%</td>
</tr>
<tr>
<td></td>
<td>Interview clients</td>
<td>25.5%</td>
<td>2.1%</td>
<td>19.1%</td>
<td>8.5%</td>
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<tr>
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<td>Draft legal documents</td>
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<td>8.5%</td>
<td>23.4%</td>
<td>42.6%</td>
</tr>
<tr>
<td></td>
<td>Prepare a brief to counsel</td>
<td>52.2%</td>
<td>8.7%</td>
<td>8.7%</td>
<td>10.9%</td>
<td>19.6%</td>
</tr>
<tr>
<td></td>
<td>deal with ethical dilemmas</td>
<td>29.8%</td>
<td>29.8%</td>
<td>27.7%</td>
<td>6.4%</td>
<td>6.4%</td>
</tr>
<tr>
<td></td>
<td>analyse &amp; reason</td>
<td>31.9%</td>
<td>19.1%</td>
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<td>17.0%</td>
<td>17.0%</td>
</tr>
</tbody>
</table>

To evaluate what graduates were required to do in the workplace we asked them to indicate on a scale of 1-5 to what extent they are required to carry out certain activities. The following table shows the response to this question by course.

Table 23

<table>
<thead>
<tr>
<th>AssocDegCorrAdmin</th>
<th>knowledge of substantive law</th>
<th>not at all</th>
<th>a little</th>
<th>some</th>
<th>quite a bit</th>
<th>a lot</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
<tr>
<td></td>
<td>knowledge of evidence</td>
<td>33.3%</td>
<td>25.0%</td>
<td>16.7%</td>
<td>16.7%</td>
<td>8.3%</td>
</tr>
<tr>
<td></td>
<td>knowledge of policy</td>
<td>29.2%</td>
<td>25.0%</td>
<td>12.5%</td>
<td>20.8%</td>
<td>12.5%</td>
</tr>
<tr>
<td></td>
<td>knowledge of trust accounting</td>
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<td>12.5%</td>
</tr>
<tr>
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<td>16.7%</td>
<td>20.8%</td>
<td>29.2%</td>
<td>16.7%</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>AssocDegLaw</th>
<th>knowledge of substantive law</th>
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<th>a little</th>
<th>some</th>
<th>quite a bit</th>
<th>a lot</th>
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</thead>
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</tr>
<tr>
<td>Research, investigate &amp; organise</td>
<td>23.4%</td>
<td>17.0%</td>
<td>21.3%</td>
<td>19.1%</td>
<td>19.1%</td>
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</tr>
<tr>
<td>provide legal advice</td>
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<tr>
<td>provide advice course of action</td>
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<td>17.0%</td>
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</tr>
<tr>
<td>resolve disputes- using ADR</td>
<td>53.2%</td>
<td>14.9%</td>
<td>12.8%</td>
<td>10.6%</td>
<td>8.5%</td>
<td></td>
</tr>
<tr>
<td>resolve disputes- using litigation</td>
<td>60.9%</td>
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<td>6.5%</td>
<td>4.3%</td>
<td>15.2%</td>
<td></td>
</tr>
<tr>
<td>negotiate- using formal procedures</td>
<td>48.9%</td>
<td>17.8%</td>
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<td>6.7%</td>
<td>6.7%</td>
<td></td>
</tr>
<tr>
<td>negotiate- using informal procedures</td>
<td>39.1%</td>
<td>21.7%</td>
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</tr>
<tr>
<td>Use word processing software</td>
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<tr>
<td>handle clients money</td>
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<td>19.2%</td>
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</tr>
<tr>
<td>read &amp; apply legislation</td>
<td>26.9%</td>
<td>19.2%</td>
<td>19.2%</td>
<td>19.2%</td>
<td>15.4%</td>
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<tr>
<td>interpret case law</td>
<td>34.6%</td>
<td>30.8%</td>
<td>19.2%</td>
<td>11.5%</td>
<td>3.8%</td>
<td></td>
</tr>
<tr>
<td>complete forms &amp; applications</td>
<td>20.0%</td>
<td>4.0%</td>
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<tr>
<td>Interview clients</td>
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<td>53.8%</td>
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<tr>
<td>Draft legal documents</td>
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<td>26.9%</td>
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<tr>
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<td>11.5%</td>
<td>7.7%</td>
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<tr>
<td>deal with ethical dilemmas</td>
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<tr>
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<td>11.5%</td>
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<td>19.2%</td>
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<tr>
<td>Research, investigate &amp; organise</td>
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<td>3.8%</td>
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<tr>
<td>resolve disputes- using ADR</td>
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<td>7.7%</td>
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<tr>
<td>negotiate- using formal procedures</td>
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<td>7.7%</td>
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<tr>
<td>negotiate- using informal procedures</td>
<td>30.8%</td>
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<tr>
<td>use database software</td>
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<td>72.0%</td>
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</tr>
<tr>
<td>Use spreadsheet software</td>
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<td>20.0%</td>
<td>28.0%</td>
<td></td>
</tr>
<tr>
<td>handle clients money</td>
<td>46.2%</td>
<td>11.5%</td>
<td>7.7%</td>
<td>7.7%</td>
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<tr>
<td>manage trust account</td>
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<table>
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<tr>
<th>AssocDegCorr Admin.</th>
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<th>100.0%</th>
<th>.0%</th>
<th>.0%</th>
<th>.0%</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>apply legal problem solving method</td>
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<td>.0%</td>
<td>50.0%</td>
<td>.0%</td>
<td>.0%</td>
</tr>
<tr>
<td></td>
<td>read &amp; apply legislation</td>
<td>.0%</td>
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<td>50.0%</td>
<td>.0%</td>
<td>.0%</td>
</tr>
<tr>
<td></td>
<td>interpret case law</td>
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<tr>
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<td>Interview clients</td>
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<tr>
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</tr>
<tr>
<td></td>
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</tr>
<tr>
<td></td>
<td>analyse &amp; reason</td>
<td>50.0%</td>
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<td>.0%</td>
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</tr>
<tr>
<td></td>
<td>Research, investigate &amp; organise</td>
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<td></td>
<td>provide legal advice</td>
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<tr>
<td></td>
<td>provide financial advice</td>
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<td>.0%</td>
<td>.0%</td>
</tr>
<tr>
<td></td>
<td>provide advice course of action</td>
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<td>.0%</td>
<td>.0%</td>
<td>.0%</td>
</tr>
<tr>
<td></td>
<td>resolve disputes- using ADR</td>
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<td>50.0%</td>
<td>.0%</td>
<td>.0%</td>
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<tr>
<td></td>
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<td>.0%</td>
<td>.0%</td>
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<tr>
<td></td>
<td>negotiate- using formal procedures</td>
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<td>.0%</td>
<td>50.0%</td>
<td>.0%</td>
<td>.0%</td>
</tr>
<tr>
<td></td>
<td>negotiate- using informal procedures</td>
<td>50.0%</td>
<td>.0%</td>
<td>.0%</td>
<td>50.0%</td>
<td>.0%</td>
</tr>
<tr>
<td></td>
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<td>50.0%</td>
<td>50.0%</td>
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<td>use database software</td>
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<td>.0%</td>
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</tr>
<tr>
<td></td>
<td>handle clients money</td>
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<td>.0%</td>
<td>.0%</td>
<td>.0%</td>
<td>.0%</td>
</tr>
<tr>
<td></td>
<td>manage trust account</td>
<td>100.0%</td>
<td>.0%</td>
<td>.0%</td>
<td>.0%</td>
<td>.0%</td>
</tr>
</tbody>
</table>
As part of the School’s investigation into how we could improve the content, design and delivery of our courses a survey was sent to Employers at the same time as the survey was sent to all graduates.
There was a total of only 19 surveys returned.

1.2 To what extent does the employee perform work in the following areas of law?

<table>
<thead>
<tr>
<th>Area</th>
<th>not at all</th>
<th>a little</th>
<th>some</th>
<th>quite a bit</th>
<th>a lot</th>
</tr>
</thead>
<tbody>
<tr>
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<td>%</td>
<td>Count</td>
<td>%</td>
<td>Count</td>
<td>%</td>
</tr>
<tr>
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</tr>
<tr>
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<td>6.7%</td>
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</tr>
<tr>
<td>Administrative law</td>
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<td>4</td>
<td>25.0%</td>
<td>2</td>
</tr>
<tr>
<td>Torts</td>
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<td>13.3%</td>
<td>3</td>
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<td>18.8%</td>
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<td>6.3%</td>
<td>6</td>
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<tr>
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<td>20.0%</td>
<td>4</td>
</tr>
<tr>
<td>Equity &amp; Trusts</td>
<td>8</td>
<td>53.3%</td>
<td>4</td>
<td>26.7%</td>
<td>2</td>
</tr>
<tr>
<td>Company</td>
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<td>40.0%</td>
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<td>20.0%</td>
<td>3</td>
</tr>
<tr>
<td>Family law</td>
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<td>43.8%</td>
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<td>18.8%</td>
<td>2</td>
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<tr>
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<td>18.8%</td>
<td>2</td>
<td>12.5%</td>
<td>8</td>
</tr>
<tr>
<td>Litigation</td>
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<td>1</td>
<td>6.7%</td>
<td>3</td>
</tr>
<tr>
<td>Wills &amp; Estates</td>
<td>6</td>
<td>37.5%</td>
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<td>1</td>
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<tr>
<td>Conveyancing</td>
<td>5</td>
<td>31.3%</td>
<td>5</td>
<td>31.3%</td>
<td>1</td>
</tr>
<tr>
<td>Workers Comp</td>
<td>11</td>
<td>73.3%</td>
<td>1</td>
<td>6.7%</td>
<td>1</td>
</tr>
<tr>
<td>Personal Injuries</td>
<td>5</td>
<td>33.3%</td>
<td>4</td>
<td>26.7%</td>
<td>3</td>
</tr>
<tr>
<td>Office Management</td>
<td>7</td>
<td>41.2%</td>
<td>6</td>
<td>35.3%</td>
<td>1</td>
</tr>
</tbody>
</table>
## 2.1 To what extent is the employee required to have

<table>
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<tr>
<th>Required to have:</th>
<th>not at all</th>
<th>a little</th>
<th>some</th>
<th>quite a bit</th>
<th>a lot</th>
</tr>
</thead>
<tbody>
<tr>
<td>knowledge of substantive law</td>
<td>2 11.8%</td>
<td>3 17.6%</td>
<td>1 5.9%</td>
<td>7 41.2%</td>
<td>4 23.5%</td>
</tr>
<tr>
<td>knowledge of practice &amp; procedure</td>
<td>1 5.9%</td>
<td>3 17.6%</td>
<td>1 5.9%</td>
<td>6 35.3%</td>
<td>6 35.3%</td>
</tr>
<tr>
<td>knowledge of evidence</td>
<td>4 23.5%</td>
<td>2 11.8%</td>
<td>6 35.3%</td>
<td>2 11.8%</td>
<td>3 17.6%</td>
</tr>
<tr>
<td>knowledge of policy</td>
<td>2 11.8%</td>
<td>3 17.6%</td>
<td>7 41.2%</td>
<td>4 23.5%</td>
<td>1 5.9%</td>
</tr>
<tr>
<td>knowledge of trust accounting</td>
<td>4 23.5%</td>
<td>4 23.5%</td>
<td>5 29.4%</td>
<td>1 5.9%</td>
<td>3 17.6%</td>
</tr>
<tr>
<td>Application of legal &amp; professional standards</td>
<td>1 5.9%</td>
<td>4 23.5%</td>
<td>3 17.6%</td>
<td>3 17.6%</td>
<td>6 35.3%</td>
</tr>
<tr>
<td>Understanding of the social context of law</td>
<td>4 23.5%</td>
<td>3 17.6%</td>
<td>5 29.4%</td>
<td>3 17.6%</td>
<td>2 11.8%</td>
</tr>
</tbody>
</table>

## 2.2 To what extent did the employee have to...

<table>
<thead>
<tr>
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<th>a little</th>
<th>some</th>
<th>quite a bit</th>
<th>a lot</th>
</tr>
</thead>
<tbody>
<tr>
<td>research substantive law</td>
<td>2 11.8%</td>
<td>2 11.8%</td>
<td>7 41.2%</td>
<td>4 23.5%</td>
<td>2 11.8%</td>
</tr>
<tr>
<td>apply legal problem solving method</td>
<td>2 11.8%</td>
<td>2 11.8%</td>
<td>6 35.3%</td>
<td>5 29.4%</td>
<td>2 11.8%</td>
</tr>
<tr>
<td>read &amp; apply legislation</td>
<td>2 11.8%</td>
<td>2 11.8%</td>
<td>7 41.2%</td>
<td>2 11.8%</td>
<td>4 23.5%</td>
</tr>
<tr>
<td>interpret case law</td>
<td>4 23.5%</td>
<td>3 17.6%</td>
<td>5 29.4%</td>
<td>3 17.6%</td>
<td>2 11.8%</td>
</tr>
<tr>
<td>complete forms &amp; applications</td>
<td>1 5.9%</td>
<td>1 5.9%</td>
<td>4 23.5%</td>
<td>4 23.5%</td>
<td>7 41.2%</td>
</tr>
<tr>
<td>interview clients</td>
<td>3 17.6%</td>
<td>2 11.8%</td>
<td>3 17.6%</td>
<td>1 5.9%</td>
<td>8 47.1%</td>
</tr>
<tr>
<td>legal documents</td>
<td>3 17.6%</td>
<td>7 41.2%</td>
<td>3 17.6%</td>
<td>4 23.5%</td>
<td>4 23.5%</td>
</tr>
<tr>
<td>prepare a brief to counsel</td>
<td>7 41.2%</td>
<td>4 23.5%</td>
<td>2 11.8%</td>
<td>2 11.8%</td>
<td>2 11.8%</td>
</tr>
</tbody>
</table>
Deal with ethical dilemmas  |  5 | 29.4% | 5 | 29.4% | 4 | 23.5% | 1 | 5.9% | 2 | 11.8%  
analyse & reason | 1 | 5.9% | 2 | 11.8% | 5 | 29.4% | 5 | 29.4% | 4 | 23.5%  
research, investigate & organise | 2 | 11.8% | 1 | 5.9% | 5 | 29.4% | 3 | 17.6% | 6 | 35.3%  
provide legal advice | 5 | 31.3% | 1 | 6.3% | 2 | 12.5% | 2 | 12.5% | 6 | 37.5%  
provide financial advice | 8 | 50.0% | 4 | 25.0% | 2 | 12.5% | 1 | 6.3% | 1 | 6.3%  
Provide advice course of action | 5 | 33.3% | 1 | 6.7% | 4 | 26.7% | 4 | 26.7% | 1 | 6.7%  
resolve disputes- ADR | 7 | 41.2% | 4 | 23.5% | 2 | 11.8% | 3 | 17.6% | 1 | 5.9%  
Resolve disputes- litigation | 6 | 37.5% | 2 | 12.5% | 4 | 25.0% | 1 | 6.3% | 3 | 18.8%  
negotiate- formal procedures | 3 | 17.6% | 3 | 17.6% | 5 | 29.4% | 5 | 29.4% | 1 | 6.7%  
negotiate- informal procedures | 3 | 17.6% | 2 | 11.8% | 6 | 35.3% | 4 | 23.5% | 2 | 11.8%  
use word processing software | 1 | 5.9% | 1 | 5.9% | 1 | 5.9% | 3 | 17.6% | 11 | 64.7%  
use database software | 1 | 5.9% | 4 | 23.5% | 3 | 17.6% | 1 | 5.9% | 8 | 47.1%  
use spreadsheet | 5 | 29.4% | 5 | 29.4% | 1 | 5.9% | 3 | 17.6% | 3 | 17.6%  
handle clients money | 5 | 29.4% | 4 | 23.5% | 2 | 11.8% | 3 | 17.6% | 3 | 17.6%  
manage trust account | 10 | 58.8% | 3 | 17.6% | 1 | 5.9% | 1 | 5.9% | 2 | 11.8%  

2.3 To what extent are the following statements true?

When the employee commenced work they…

<table>
<thead>
<tr>
<th>When the employee commenced work they:</th>
<th>not at all</th>
<th>a little</th>
<th>some</th>
<th>mostly</th>
<th>completely</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Count %</td>
<td>Count %</td>
<td>Count %</td>
<td>Count %</td>
<td>Count %</td>
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<tr>
<td>had the practical skills expected</td>
<td>4</td>
<td>23.5%</td>
<td>3</td>
<td>17.6%</td>
<td>5</td>
</tr>
<tr>
<td>had knowledge of substantive law which met requirements of workplace</td>
<td>3</td>
<td>17.6%</td>
<td>4</td>
<td>23.5%</td>
<td>8</td>
</tr>
<tr>
<td>were comfortable dealing with procedural law</td>
<td>4</td>
<td>23.5%</td>
<td>4</td>
<td>23.5%</td>
<td>7</td>
</tr>
<tr>
<td>could translate what</td>
<td>1</td>
<td>5.9%</td>
<td>3</td>
<td>17.6%</td>
<td>5</td>
</tr>
</tbody>
</table>
was learnt to the workplace
had the problem solving skills needed                              2 11.8%  6 35.3%  6 35.3%  3 17.6%
found it easy to work as a team member                              1  5.9%  1  5.9%  1  5.9%  6 35.3%  8 47.1%
were able to deal with ethical dilemmas effectively                1  5.9%  2 11.8%  6 35.3%  4 23.5%  4 23.5%
were able to plan work to be completed effectively                1  5.9%  1  5.9%  5 29.4%  3 17.6%  7 41.2%
were confident dealing with clients                                2 11.8%  1  5.9%  9 52.9%  5 29.4%

2.4 Best aspects of graduates knowledge and skills

- Extensive prior experience, supplemented by law studies
- Previous business experience
- Application of problem solving techniques
- Good practical course, excellent reference notes especially family law, wills & estates.
- Computer skills (3)
- Research skills
- Trust accounting
- General understanding of broad legal issues

2.5 Skills most in need of improvement

- Time management
- Exposure to specific area of law
- Substantive law
- Computer knowledge
- Confidence
- Objectivity
- Knowledge of procedure and practical skills particularly in specific area of work

2.6 How well prepared was employee?

- Very well (3)
- Reasonable (2)
- Quite satisfactory (2)
- Fairly well
Not very well prepared for conveyancing.

2.7 What would you like included in the course?

- More practice, less old law
- Greater focus on administrative law and underlying policy
- Opportunity to expand associate degree to LLB
- Electronic legal research
- A practical conveyancing component similar to the trust accounting module
- Practical computer skills for law offices
Appendix D

SURVEY CONCERNING PARALEGALS AND THEIR WORK IN LEGAL FIRMS

DETAILS OF LEGAL FIRM

1.1 Where is your practice located (city/suburb, town)?
..........................................................................................................................................................

1.2 What is the size of your practice?
    Number of partners............
    Number of employed solicitors....... 

1.3 Do you employ any paralegals in your practice?
    □ yes    □ no
    If yes, how many?.....

    (If you don’t employ any paralegals, thank you for participating.)
2.1 To what extent do paralegals in your firm perform work in the following areas of law?

<table>
<thead>
<tr>
<th>Area of Law</th>
<th>Not at all</th>
<th>A little</th>
<th>Some</th>
<th>Quite a bit</th>
<th>A lot</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal law and procedure</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Constitutional law</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Administrative law</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Torts</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Contracts</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Property</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Equity and trusts</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
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<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Family Law</td>
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<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Commercial Law</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Litigation</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Wills and Estates</td>
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<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Conveyancing</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Workers Compensation</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Personal Injuries</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Office Management</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

2.2 To what extent is it advantageous for a paralegal working in your firm to have…

<table>
<thead>
<tr>
<th>Knowledge of</th>
<th>Not at all</th>
<th>A little</th>
<th>Some</th>
<th>Quite a bit</th>
<th>A lot</th>
</tr>
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<tbody>
<tr>
<td>- substantive law</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>- legal practice and procedure</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>- trust accounting procedures</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Application of legal and professional standards</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Understanding of the social context of law</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>
2.3 In your firm, to what extent does a paralegal...

<table>
<thead>
<tr>
<th>Activity</th>
<th>Not at all</th>
<th>A little</th>
<th>Some</th>
<th>Quite a bit</th>
<th>A lot</th>
</tr>
</thead>
<tbody>
<tr>
<td>Research substantive law</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Complete forms and applications</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Interview clients</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Draft legal documents</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Prepare a brief to counsel</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Research, investigate and organise facts</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Use:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- word-processing software</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>- database software</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>- spreadsheet software</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Handle clients money</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Manage trust accounts</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

2.4 Please specify any other activities involving a substantial amount of time:

..........................................................................................................................................................
..........................................................................................................................................................
..........................................................................................................................................................

2.5 In your firm, to what extent is it important that a paralegal has the following?

<table>
<thead>
<tr>
<th>Skill</th>
<th>Not at all</th>
<th>A little</th>
<th>Some</th>
<th>Mostly</th>
<th>Completely</th>
</tr>
</thead>
<tbody>
<tr>
<td>The practical skills to do what is expected</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Knowledge of substantive law</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Knowledge of procedural law</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>The ability to translate what they had learnt to the workplace</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>The problem solving skills needed to work effectively</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>The ability to work as a member of a team</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>The ability to deal with ethical dilemmas effectively</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>The ability to plan their work to be completed effectively</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Confidence dealing with clients</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>
3.1 What skills/knowledge do you think are most important for a paralegal to have?

3.2 If you were to devise an educational course for paralegals, are there basic skills and knowledge that you would include in such a course to assist a paralegal to work more effectively?

3.3 Are there any special skills and knowledge that you would like to see included?
3.4 Are you aware of any education courses specifically designed for paralegals?
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................

3.5 To your knowledge have any of your paralegal employees participated in any course of training or education?
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3.6 If you knew that a course of training and education was available to your paralegal employees would you be prepared to provide flexible working conditions to accommodate their learning?
☐ yes ☐ no

3.7 To your knowledge are any of your paralegal employees students (past or present) of Southern Cross University?
........................................................................................................................................
........................................................................................................................................

3.8 If your answer to 3.7 was “yes”, has that employee expressed satisfaction or dissatisfaction with the course or any aspects of it?
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
3.9 Do you have any further comments about paralegals - their role in the delivery of legal services or their education?
Appendix E

INDUSTRIAL AWARDS COVERING PARALEGALS IN NSW AND VICTORIA – JOB DESCRIPTIONS AND SKILLS

_Clerical and Administrative Employees Legal Industry Consolidated (State) Award (NSW)_

<table>
<thead>
<tr>
<th>Unit</th>
<th>Element</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indicative tasks of a Grade 5 position are:</td>
<td>Establish a records system to ensure integrity of the system by being able to:</td>
</tr>
<tr>
<td>Information Handling</td>
<td>Determine the needs of the organisation.</td>
</tr>
<tr>
<td></td>
<td>Establish and maintain library resource collection by being able to:</td>
</tr>
<tr>
<td></td>
<td>Update incoming publications.</td>
</tr>
<tr>
<td></td>
<td>Circulate publications.</td>
</tr>
<tr>
<td>Communication</td>
<td>Initiate research and prepare information to facilitate communication flow by being able to:</td>
</tr>
<tr>
<td></td>
<td>Obtain data from external sources.</td>
</tr>
<tr>
<td></td>
<td>Produce report.</td>
</tr>
<tr>
<td></td>
<td>Identify need for documents and/or research.</td>
</tr>
<tr>
<td></td>
<td>Prepare drafts.</td>
</tr>
<tr>
<td>Enterprise/Industry</td>
<td>Provide advice in response to the changing environment in order to achieve organisational goals by being able to:</td>
</tr>
<tr>
<td></td>
<td>Assist with the development of options for future strategies.</td>
</tr>
<tr>
<td></td>
<td>Assist with planning to match future requirements with resource allocation.</td>
</tr>
<tr>
<td></td>
<td>Analyse changes to the internal/external environment</td>
</tr>
</tbody>
</table>
which impact on the role of the department or enterprise.

Technology

Manage the design and development of documents, reports and worksheets by being able to:

- Identify document requirements.
- Determine presentation and format of document.
- Establish, maintain and supervise a small network by being able to:
  - Establish and maintain a small network.
  - Shut down network equipment.
- Train network users.

Organisational

Plan and manage conferences/meetings on behalf of management to achieve identified goals by being able to:

- Plan and organise conference.
- Promote conference/meetings.
- Co-ordinate conference proceedings.

Team

Manage the team to ensure team achievements reflect identified enterprise objectives by being able to:

- Plan and allocate work for the team.
- Monitor team performance.
- Organise training for team.
- Participate in staff selection to ensure team goals are achieved by being able to:
  - Identify requirements for new team position.
  - Draft job vacancy advertisement.

Business Financial

Manage payroll records for employee salaries and statutory record keeping purposes by being able to:

- Administer PAYE salary records.
- Process payment of wages and salaries.
- Prepare payroll data.

Legal

Acquire and apply a working knowledge of the structures and methods of the New South Wales legal system by being able to:

- Understand and participate in, under supervision, the processes of major legal institutions.
Display an understanding of areas of law and legal procedure.
Initiate routine legal procedures and documentation.
Take court judgements and attend court mentions as required.
Advise clients on basic legal issues.


An indicative training and vocational education level for this grade is part achievement of Associate Diploma at TAFE or Tertiary level (or equivalent).

**GENERIC SKILLS**
As per Grades 1, 2, 3 and 4.
AW801883 - 1993 14

**CORE SKILLS**
Information Handling - establish a records system to ensure integrity of system by being able to:

- determine the needs of the organisation
- select appropriate system
- implement new/improved system
- provide staff training
- establish and maintain library resource collection by being able to:
  - store publications
  - update incoming publications
  - circulate publications.

Communication - initiate research and prepare information to facilitate communication flow by being able to:

- need for documents identified
- need for research identified
• obtain date
• drafts prepared
• produce report.

Enterprise/Industry - provide advice on response to the changing environment in order to achieve organisational goals by being able to:
  • analyse changes to the internal/external environment which impact on the role of the department or enterprise
  • assist with the development of options for future strategies
  • assist with planning to match future requirements.

Technology - manage the design and development of documents, reports and work sheets by being able to:
  • identify document requirements
  • design document format
    – establish, maintain and supervise a small network by being able to:
    • establish a small network
    • maintain a small network
    • assist network users
    • shut down network equipment
    • train network users.

Organisational - plan and manage meeting to achieve identified group/section goals by being able to:
  – organise meetings
  – conduct meetings on behalf of management
  – plan and manage conferences on behalf of management to achieve identified goals by being able to:
    • plan conference
    • organise conference
    • promote conference
    • co-ordinate conference proceedings.

Team - manage the team to ensure team achievements reflect identified enterprise objectives by being able to:
• clarify the link between goals of the team and goals of the enterprise
• plan and allocate work for the team
• monitor team performance
• evaluate achievements of team
• organise training for team
  – participate in staff selection to ensure team goals are achieved by being able to:
    • identify requirements for new team position
    • draft job vacancy advertisement
    • select staff
    • employ staff.

Business/Financial - manage payroll records for employee salaries and statutory record keeping purposes by being able to:
  • prepare payroll data
  • process, payment of wages and salaries
  • administer PAYE salary records.

Legal Skill - acquire and apply a working knowledge of the structures and methods of the Victorian Legal System by being able to:
  • understand and participate in, under supervision, the processes of major legal institutions
  • display an understanding of areas of law and legal procedures for resolving matters referred to the employee, subject to general and procedural supervision
  • initiate routine legal procedures and documentation.”

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