

**Options Paper**

**Building Capacity and Sustainability at the  
University of Melbourne Student Union Legal  
Service**

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## **I. BACKGROUND & INTRODUCTION**

A Student Legal Service was first established at Melbourne University more than thirty years ago and there has been one operating more or less continuously ever since. The Student Union took on its operation in the late 1980s and over a number of years the Service has expanded and contracted according to the prevailing funding environment.

The Service encourages and resources students to attempt to resolve their own legal problems wherever possible.

In early 2005 the Service, then operated by the MU Student Union Ltd, commenced a small volunteer program. The Service recruited eight law students who began volunteering on a weekly or fortnightly basis. Students were involved in the daily running of the legal practice, and had the opportunity to acquire client interviewing and drafting skills, as well as to conduct legal research and file review. The scheme aimed to benefit the service by using volunteers to perform the more basic tasks, leaving the solicitor free to work on more complex files or conduct Community Legal Education.

By August 2005 however, the program was already in decline. The program was finally discontinued at the end of 2005 with the resignation of the Legal Service solicitor at that time.

There were several attempts in 2006 and 2007 to reinstate an ad hoc volunteer position, however there were insufficient resources to coordinate and structure the program to make it sustainable. For the period 2007-2011 – when funding was limited due to Voluntary Student Unionism - the Service was engaged in a tripartite agreement with RMIT and Swinburne Universities to provide legal services to their students several days a week. This meant that the resources devoted to Melbourne University students were effectively reduced by two thirds and growing service capacity was not possible during that period.

In 2012 the Service was transferred from MU Student Union Ltd (MUSUL) to University of Melbourne Student Union (UMSU) as part of the realignment of student services into UMSU to form part of the Advocacy & Legal division. The creation of the division allowed for shared management and coordination of service provision and promotion and has provided the platform for the capacity building project.

The Service is currently fully funded from the Student Service and Amenity Fee (SSAF) and casework and advice is provided by a sole practitioner who is responsible for providing legal services to students as well as in-house legal work for UMSU.

The service is a registered CLC, however it diverges from the usual CLC model in that it is not governed by a management committee – rather it is subject to the governance of UMSU Students' Council and a smaller Student Advisory group to which it is accountable and takes its broad strategic direction. The Manager of the division provides operational management of its day to day, budget and resource allocation as well as implementing strategic directions and planning. The solicitor is the sole practitioner and Principal.

The capacity and sustainability building project has both short and long-term goals and objectives. In the short term our un-met need appears to be primarily in relation to the Service's ability to perform its full function as a CLC. Arguably the current demand for casework services and advice is being met. Additionally, the Service is currently restricted to providing services to Melbourne University students by virtue of the SSAF funding regulations. This means it cannot expand its client catchment at this stage.

Accordingly, in the short term, some volunteer paralegal support for tasks such as intake/assessment, legal research and simple drafting would free up the solicitor to meet the Service's community legal education obligations and perform some public advocacy work. Alternatively or additionally, student volunteers could meaningfully work on some of these community legal education and public advocacy tasks.

In the longer term the goal is to plan for a scalable service which can weather the loss of the SSAF. To this end the Service needs to establish some meaningful relationships with the Melbourne Law School (MLS)

and other local CLCs so that other funding sources/models might be possible when the time comes. One possible method to both increase capacity but remain sustainable is to leverage student volunteers to increase the range of service delivery without increasing the cost base; however this proposal is not without complexity, and thorough planning is critical to its effectiveness.

The Service is in the final stages of NALCLC accreditation which, among other things, involves setting up a best-practice/risk managed volunteering environment prior to taking on any volunteers. Ultimately the development of a para legal volunteer program here is still at first principles. We hope to draw on the experience and expertise of practitioners, academics and students in the clinical legal education, public interest law and CLC sectors to inform possible approaches.

This paper is intended to form the basis of further discussion and development of the strategic planning for the Service.

I am grateful to the following people for their input into this paper:

- Stan Winford, Principal Coordinator, Legal Programs at the Centre for Innovative Justice;
- Claire Carroll, Director, Public Interest Law Initiative & Director of Clinical Programs Melbourne Law School;
- Stephanie Marshall, Vice President Student Legal Service, University of Tasmania;
- Thomas McLoughlin, Director SRC Legal Service University of Sydney; and
- Greta Heywood, Legal Service Solicitor, UMSU Legal Service.

## II. RATIONALE & DRIVERS

### A *Capacity, Un-met Need and Demand*

To borrow the definition from the Productivity Commission's Draft Report *on Access to Justice Arrangements*, 'legal need' is described as problems for which a legal remedy exists that individuals cannot resolve effectively by their own means. Unmet need is defined as a situation where a person is unaware that they have a legal right, or where they would like to defend a right, but do not as they cannot access legal advice for various reasons.<sup>1</sup>

With respect to legal need at Melbourne University, according to the Service's data collection, since 2012 the Service has averaged 24 clients per month. The most common matters are:

- Traffic and Public Transport Infringements;
- Employment matters;
- Motor vehicle Accidents; and
- Family Law matters.

These collectively comprise almost 50% of the matters dealt with by the Service. Other issues, such as tenancy advice are currently predominantly handled by the University's Housing Service and there are smaller, but not insignificant numbers of matters concerning consumer and criminal law, among others.

We have sought to measure un-met need in the provision of services by tracking, where possible, those contacting the service:

- wishing to make an appointment but being unable to do so in time frame required;
- wishing to make an appointment at a preferred time which is not available;
- seeking assistance in an area or for matters which are not within the current charter; and
- seeking assistance where they are not a student of the University.

This data has recently been collected by the Student Services Officer. Over a single month there were more than 10 individuals seeking a service who could not be assisted. This represents almost half the number of those who did secure a service.

From this it can be concluded that there remains a small but not insignificant unmet need for casework and advice.

It should also be noted that un-met need can occur through a lack of awareness of a service. This means more vigorous promotion of the service would likely further increase demand.

Un-met demand in relation to non-casework services is also a critical issue. The National Association of Community Legal Centres ("NACLC") submitted:

*Law reform is a key element of the community legal centre service delivery model. It is an effective and efficient way to address the systemic problems facing some clients, complementing the important face to face individual client work. Law reform work can deliver far-reaching outcomes for clients, resulting in improvements to laws, policies and practices.*<sup>2</sup>

A sole practitioner is effectively unable to fulfil the Service's full role as a CLC and it is clear that the Community Legal Education and policy/submission functions of a CLC are not being adequately provided.

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<sup>1</sup> Australian Government Productivity Commission, *Access to Justice Arrangements* (Draft Report, April 2014)

<[http://www.pc.gov.au/\\_data/assets/pdf\\_file/0008/135296/access-justice-draft.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0008/135296/access-justice-draft.pdf)>.

<sup>2</sup> National Association of Community Legal Centres (2008) Submission to the Attorney General's Review of the Commonwealth Legal Services Program, as quoted in Federal Attorney General's Department (2008) Review of the Commonwealth Legal Services Program, 73.

### **1. Relevance of Service to Students**

Another demand on the Service in its context in a student organisation is that it should be relevant to students. This extends to the demand that the Service offers opportunities to law students to gain experience. Over the last two years there has been a steady number of enquiries from law students, especially those at the MLS, for volunteer or vocational placement opportunities.

#### **B Goals & Objectives of Capacity Building**

The goal is to formulate and implement a scalable service model which can weather uncertain funding environments into the future. The objective is that, by engaging later year law students to deliver some services under supervision, the Service will increase its capacity to meet all of its obligations as a CLC. Additionally, student demand for clinical experience can be addressed and a model of service delivery which is scalable in the face of decreased funding or changes in funding source will maximise the sustainability of the Service.

#### **1. Increase capacity**

There is an identified need to build capacity for the Service to perform its Community Legal Education and public advocacy functions.

The proposed objectives are as follows:

- to implement and operate a system that provides the Legal Service's solicitor with volunteers to assist in the operation of the service;
- more specifically, to implement and operate a system that allows for the recruitment of volunteers who have the necessary experience and skills to work in a clinical-based legal practice;
- to ensure volunteers assist the operation of the Legal Service by performing the tasks equivalent to a paid paralegal in private practice. This includes receiving instructions from the solicitor to draft documents, document management, communicating with clients and undertaking legal research;
- to ensure that the operation of the program does not burden the solicitor to the extent of compromising the solicitor's ability to fulfil his or her primary role as a legal advisor to both the Union and students generally;
- to operate with minimal cost to the Union. This includes costs in terms of finances, resources, paid labour, office space, etc.;
- to ensure that recruited volunteers work in a professional manner and are able to carry out the obligations consistent with working in a service that provides legal advice. These obligations involve to a high degree the duty of confidence and to a lesser extent the duty to avoid conflicts of interest;
- that the program is able to operate under its own coordination, so that it is independent of the staffing arrangement of the legal service at any given time;
- to provide practical work experience to students currently undertaking legal education.

#### **2. Scalability and Sustainability**

Currently the Service is fully funded by the SSAF. The SSAF is regulated by legislation which provides it is to be used only for certain allowable purposes. This necessarily limits the ambit of services provided and constrains the clients of the service to current University of Melbourne students.

However should the SSAF be discontinued in the future, the Service may need to decrease fixed costs of full-time staff and supplement service delivery with volunteers – just as the broader Community legal sector has done for many years. To this end, developing the infrastructure and support required for the effective utilisation of volunteer resources will be a useful framework to support the ongoing viability of the Service.

### III. INFRASTRUCTURE AND SUPPORT REQUIRED

It is of critical importance that any proposal to involve student volunteers in service provision is not exploitative of free student labour.

To this end, there must be in place the means to support students in a learning environment which encourages them to translate theory into practice, coordinates their tasks and supervises their work. This requires the commitment of resources to allow sufficient continuity for both students' learning needs and any work they perform for the Service – whether it's casework or project/research.

#### **A The Challenge of Balancing Service Responsibilities with Student Interests**

Fundamentally our planning needs to anticipate the potentially competing policy priorities of the Service's casework, public advocacy and legal education obligations. The need for an educational focus also raises the balance between skills learning and the development of students' understanding of legal ethics with the overarching duties and obligations of legal practice management.<sup>3</sup>

There is no question that, whichever model is chosen ultimately must ensure both that the volunteer experience is educative and value-added and not a form of exploitation, as well as managing risk in the legal practice management environment.

#### **1. Partnerships, Pedagogical support and Risk Management**

Clinical Legal Education (CLE) is distinct from pro bono public interest and student volunteer programs. Volunteers do not have the benefit of a specialised curriculum to support and focus their learning and practice. Volunteer placements generally have limited educational objectives compared to CLE, do not generally seek to develop students' normative awareness and do not set out to strengthen wider legal education and law reform curricula, although both can awaken and sustain graduates' civic consciousness once they are in practice.<sup>4</sup>

Without the structure of a dedicated CLE program - how can we harness synergies with students' study subject matter – e.g. ethics and practice management? Can we rely on their coursework, remote from the Service – to supply this or do they need to be formalised into a comprehensive volunteer training program?

In most CLCs volunteer risk management is ensured by way of policies ensuring that each student is apprised of their ethical obligations, with particular attention to the scope of, and exceptions to, client confidentiality and other ethical and fiduciary obligations owed to clients. The National Association of Community Legal Centres (NACLC) is currently finalising accreditation for the Service. This includes a suite of recommendations for risk management of student volunteers. Additionally UMSU is currently conducting a Clubs and Volunteering Review that will outline a broader UMSU framework for the governance of volunteer programs as well as determining elements of universal training and risk management processes.

In addition to its current policies and operating procedures, the Service will need to develop written policies specifically relating to supervision of student volunteers, confidentiality and conflicts of interest.

The final piece in the puzzle is: how do we provide this infrastructure and support *with no extra resources at hand*? Or put another way – how do we build capacity without increasing costs? Can we investigate partnerships with local Law Schools to provide this support? Does it tie us to a specific clinical program or is it extensible to a volunteer program?

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<sup>3</sup> Jeffrey Giddings, Promoting justice through clinical legal education (2013), 155.

<sup>4</sup> Professor Adrian Evans et al, *Best Practices | Australian Clinical Legal Education*, <[http://www.cald.asn.au/assets/lists/Resources/Best\\_Practices\\_Australian\\_Clinical\\_Legal\\_Education\\_Sept\\_2012.pdf](http://www.cald.asn.au/assets/lists/Resources/Best_Practices_Australian_Clinical_Legal_Education_Sept_2012.pdf)>.

## **IV. OPTIONS FOR BUILDING A SUSTAINABLE LEGAL SERVICE**

Based on the preceding, there are several possible models to increase the capacity of the service to meet its mission as a CLC. Students could meaningfully contribute to public policy and law reform submissions, develop website content and self-help resources, or write a column in *Farrago*. In terms of case work assistance, para legal volunteers can conduct intake interviews; do case research and basic drafting under supervision.

The question is – can we harness the resources of local education providers to deliver an academic context to service delivery or should we model ourselves on our larger CLC cousins in the community?

### **A Clinical Legal Education – preparation for paralegal volunteers?**

The primary focus of academic clinical programs is the development of practical lawyering skills in a closely supervised environment. The student has the advantage of both practitioner and academic supervision. The typical model is:

*An intensive small group learning experience in which each student takes responsibility for legal and related work for a client (whether real or simulated) in collaboration with a supervisor. The student takes the opportunity to reflect on matters including their interactions with the client, their colleagues and their supervisor as well as the ethical aspects and impact of the law and legal processes.*<sup>5</sup>

First and foremost – this model puts the educational experience of students at its core and provides an educational environment which CLC volunteer programmes cannot match.

Between 1994 when there was an unsuccessful attempt to set up a clinical education program with MLS and this year there has been no clinical education subjects at MLS.<sup>6</sup> However, the Public Interest Law Clinic at the MLS is now running. This may provide an excellent stepping stone for students who wish to make a commitment to volunteering with the UMSU Legal Service. Successful completion of in a clinical legal subject would address the problems we have experienced in the past has with recruiting student volunteers who have both sufficient familiarity with ethical and legal practice management issues as well as adequate experience and understanding of the commitment involved in volunteering as a paralegal.

### **B Student Pro Bono: CLC Volunteer model – students as paralegals**

*The National Pro Bono Resource Centre defines student pro bono in the following terms: 'student pro bono' is where students, without fee, reward or academic credit provide or assist in the provision of services that will provide or enhance access to justice for low income and disadvantaged people or for non-profit organisations that work on behalf of members of the community who are disadvantaged or marginalised, or that work for the public good.*<sup>7</sup>

While students at Melbourne University are unlikely as a class to be 'disadvantaged', they are nonetheless generally on low or no incomes and will not otherwise have ready access to justice on a fee for service basis.

Students could be recruited as Volunteer Legal Assistants who are able – under supervision - to provide administrative, research, client intake, or other support roles within the Service.

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<sup>5</sup> Griffith Law School, Clinical Legal Education Programs Strategic Plan 2003 -2007, 1.

<sup>6</sup> Jeff Giddings recounts that in '1994, Fitzroy Legal Service (FLS) developed a comprehensive (and impressive) proposal, drawn up in collaboration with senior MLS academics, for a clinical program at Melbourne University'. Ultimately, the proposal was not endorsed by MLS and was shelved; Giddings, above n 3, 145.

<sup>7</sup> National Pro Bono Resource Centre, Information Paper, *Clinical Legal Education and pro bono programs in Australian law schools*, August 2004 <[http://www.nationalprobono.org.au/publications/documents/PUBLISHEDVERSION\\_000.doc](http://www.nationalprobono.org.au/publications/documents/PUBLISHEDVERSION_000.doc)>, 10.



## **V. MORE QUESTIONS (THAN ANSWERS) – NEXT STEPS**

This paper is intended to be the beginning of a discussion, rather than a final plan. Accordingly it seeks to raise questions rather than make conclusory recommendations. Volunteering in CLCs has a long and successful history, and there is much to be learned from those experienced in running such programs. However the UMSU Legal Service is distinctly different from a typical CLC and has more in common with other student legal services than a typical CLC in the community. The fact remains, there are very few student organisation based legal services that feature volunteer programs. Those that do tend to offer volunteer opportunities on an ad hoc basis with little or no developed program.

However there is considerably more the Legal Service could do with greater resources and there is a substantial demand from students for greater volunteering opportunities. In this context it is difficult to ignore the obvious fit between increasing service capacity and the use of volunteers. Moreover UMSU is currently reviewing the best model for a centrally coordinated volunteer program which could inject considerable resources into the establishment of a functional program in the Legal Service.

Literature on the subject suggests that program establishment is aided by starting small and informally. However a strategy must be developed for moving from the informality that enables establishment in uncertain times to the more structured and integrated approaches that are likely to foster longer-term sustainability.<sup>8</sup> The question is, if we proceed with a small and informal volunteer intake – can we still get some assistance from the local law schools to support our volunteers in any way?

Given the availability of a number of Public Interest Clinical Education subjects for MLS students,<sup>9</sup> is it reasonable to make the successful completion of a clinical subject a prerequisite to volunteering at the Legal Service? This would ensure volunteers are both well versed in the theory related to clinical legal practice and have the requisite familiarity with professional standards and duties inherent in legal practice.

## **VI. RECOMMENDATIONS**

### ***A Establish a Steering Group for the Project***

Given the wealth of experience in the University and broader community – some of these questions are best explored and hopefully answered by a small steering group. The membership would ideally include both students from the University – such as those involved with the Public Interest Law Network at the MLS – as well as a staff member from the MLS and someone with experience at a CLC or on a CLC management committee. Draft terms of reference for the steering group is at Appendix A.

### ***B Establish Appropriate Resources***

Ideally the service must develop its policies specifically detailing its obligations with respect to the supervision of students; student – student confidentiality; and student – student conflicts of interest.

Additionally a volunteer manual needs to be developed and a suite of appropriate precedents generated. Perhaps our inaugural volunteer or intern can work toward this?

### ***C Finalise NALC Accreditation***

NALC Tier 2 Accreditation should be finalised in November 2014. The accreditation process has been fundamental to ensuring we are confident in our risk and practice management approaches prior to extending the Service in any way.

### ***D Evaluation***

Set up a method for continuous evaluation to ensure adequacy of supervision and risk management.

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<sup>8</sup> Giddings, above n 3, 158.

<sup>9</sup> See < <http://www.law.unimelb.edu.au/pili/pili-subjects/public-interest-law-in-practice/about>>.

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## APPENDIX A - DRAFT TERMS OF REFERENCE FOR THE STEERING GROUP

<b>1.0 Purpose</b>	
<p>1.1 The UMSU Legal Service Capacity Building Steering Group will work towards the determination of the most appropriate model for student engagement with service provision to grow capacity and foster sustainability into the future.</p> <p>1.2 The UMSU Legal Service Capacity Building Steering Group sets out to plan for sustainable development of the UMSU Legal Service.</p>	
<b>2.0 Objectives</b>	
<p>2.1 The UMSU Legal Service Capacity Building Steering Group will provide guidance on:</p> <ul style="list-style-type: none"> <li>• The type of volunteering opportunities the UMSU Legal Service may appropriately offer – e.g. student paralegals undertaking: <ul style="list-style-type: none"> <li>○ intake/assessment interviews;</li> <li>○ legal research and supervised file follow up;</li> <li>○ projects and community legal education activities.</li> </ul> </li> <li>• The quantity of volunteers required;</li> <li>• The ideal time commitment required;</li> <li>• The infrastructure required to adequately support the programme; and</li> <li>• Any other matters related to the good governance of the project.</li> </ul> <p>2.2 With the following objectives:</p> <ul style="list-style-type: none"> <li>• to implement and operate a system that provides the Legal Service’s solicitor with volunteers to assist in the operation of the service;</li> <li>• more specifically, to implement and operate a system that allows for the recruitment of volunteers who have the necessary experience and skills to work in a clinical-based legal practice;</li> <li>• to ensure volunteers assist the operation of the Legal Service by performing the tasks equivalent to a paid paralegal in private practice. This includes receiving instructions from the solicitor to draft documents, document management, communicating with clients and undertaking legal research;</li> <li>• to ensure that the operation of the program does not burden the solicitor to the extent of compromising the solicitor’s ability to fulfil his or her primary role as a legal advisor to both the Union and students generally;</li> <li>• to operate with minimal cost to the Union. This includes costs in terms of finances, resources, paid labour, office space, etc.;</li> <li>• to ensure that recruited volunteers work in a professional manner and are able to carry out the obligations consistent with working in a service that provides legal advice. These obligations involve to a high degree the duty of confidence and to a lesser extent the duty to avoid conflicts of interest;</li> <li>• that the program is able to operate under its own coordination, so that it is independent of the staffing arrangement of the legal service at any given time;</li> <li>• to provide practical work experience to students currently undertaking legal education.</li> </ul>	
<b>3.0 Membership</b>	
<p>3.1 The UMSU Legal Service Capacity Building Steering Group comprises TBD.</p> <p>3.2 The executive Officer is ...TBD</p> <p>3.3 Location of each meeting will be TBD.</p>	
<b>4.0 Meetings</b>	
<p>The UMSU Legal Service Capacity Building Steering Group will meet (TBD – monthly; bi monthly?) for (two hours or more, specify) at a regular time.</p>	
<b>5.0 Resources</b>	
<p>The FCLC Capacity Building Project, Final Report &amp; Action Plan 2006.</p>	