

Law and the Human Services: Together and Apart



CHAPTER OBJECTIVES

In this chapter we aim to:

- › demonstrate the significance of law in all aspects of human service work
- › explore the uneasy but critical relationship between law and the human services
- › explain the ways in which knowledge of law and a legal approach can enhance human service practice
- › promote a perspective in human service thinking and practice which both acknowledges and utilises the reality of the law human services nexus.

Client problems and beyond

It is readily accepted that human service workers do come into contact with substantive law through the lives of clients. Workers may experience criminal law, discrimination law, social security law, or child protection law for instance, with and through their clients. Certainly many human service clients have significant legal problems, but this is only one dimension of the relationship between law and human services. To begin with, much human service work does not involve direct contact with human clients. For example, in policy, project, research, administrative, consultancy, and management jobs, workers may not be directly servicing individual human clients. Thus human service work can be represented on a direct and indirect service continuum. On this continuum, identifiable human clients are serviced at the direct services end, while, at the indirect services end, the focus is on policy, organisations, and systems (which, it is true, may all involve organisational clients). Of course, many roles in the human services involve a mixture of these things and thus fall around the middle of the continuum. Law is relevant, with varying degrees of visibility, all along the continuum.

Preston-Shoot and his colleagues (1998a, 1998b) have proposed yet another continuum in their explorations of the nexus between law and social work practice. At one end of their continuum, legal language, procedures, and culture dominate, while at the other end, social work understandings and interventions prevail. In the middle, a mixture of legal and social work understandings and processes apply. This continuum also asserts the presence of law in social work, and it is argued in all human service practice, even though the balance between the legal and human service ethos shifts from job to job and function to function.

The service, and the law–social work, continua as presented in Figure 2.1 are orthogonal, demonstrating the presence of law to greater or lesser degree, in all types of human service work. A number of possible jobs in the human services are placed at specific points in each quadrant of the figure to illustrate this point and their positioning is explained below. Their positioning relative to the axes and each other may be arguable, depending on the criteria used to assess ethos and the directness or otherwise of service delivery. Particular jobs may move in position over time as legislative and organisational changes take effect. Where each job is located is less important for our purposes than demonstrating the presence of law across the spectrum of human service work.

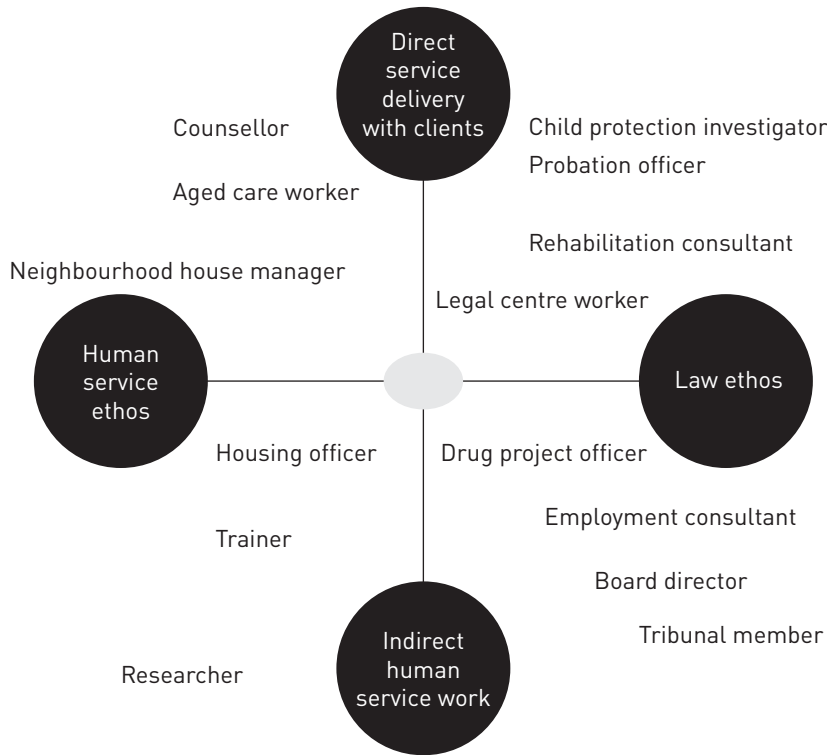
Explaining the quadrants

Figure 2.1 locates human service positions in terms of directness of service (from indirect to direct) and characterisation of the prevailing ethos (legal or human services).

Law/direct service quadrant

- Child protection and probation jobs could be situated in the upper area. Individual clients are being processed here within obvious legal parameters.

FIGURE 2.1 RELATIONSHIP BETWEEN THE LAW AND HUMAN SERVICE WORK



Human service language and understandings are significant in this work, but the ethos of law is pervasive through extensive statutory regulation and court scrutiny of work.

- In the lower and more legal part of this quadrant, the rehabilitation consultant might attend in part to specific injured workers. However, their work might be characterised by a business and legal perspective through its location in an insurance and workers compensation system.
- The legal centre officer is placed at the centre of the human service–law continuum in this quadrant because the work may be carried out in an agency environment that reflects the mixed ethos referred to by Preston-Shoot and his colleagues (1998a, 1998b). This worker is also placed at the centre of the direct–indirect service continuum because the job may involve a mixture of case and policy work.

Law/indirect service quadrant

- In the outer area, a worker may be a member of a tribunal (for example, Civil and Administrative Appeals Tribunal) or a director of a company engaged in human service related activity (for example, provider of fee for service aged care services). In these functions, activity can be dominated by legal language, culture, and constraints even if carried out by human service workers, some of whom will retain a strong human service perspective.

- In contrast, the drug project officer may be relatively removed from direct service delivery to clients and engaged in writing policy documents or drafting legislation. This work may even be done by a lawyer or graduates of other disciplines but within a professional context attuned to human service needs and interests; and so it is further from the legal end of the continuum.
- The employment consultant may be a human service worker, but the job may require the development of business networks within a heavily legislated and contractualised private employment market. Thus the language of law and legal interests might prevail.

Human service/direct service quadrant

- Located in the outer area might be a private counsellor whose experience is almost entirely comprised of apparently relatively unregulated human service intervention through relationship development with individual paying clients. Even so, the counsellor is subject to some law, for example, mandated notification and consumer protection responsibilities and civil liability.
- Neighbourhood house managers may have a strong community development orientation and do some direct work with community members. But they also have legal responsibilities to staff, to service users, and for financial accountability. For this reason, this job is placed on the human services side of the continuum but moving towards the law end.
- The aged-care worker in this quadrant may attend mostly to individual clients but within a context permeated increasingly by law, for example, adult guardianship, eligibility for aged care services, and nursing home accreditation imperatives.

Human service/indirect service work quadrant

- In the extreme outer area might be a researcher reviewing client files to assess the extent to which they reflect an individualised client focus in the organisation. This task involves no direct contact with agency clients and attends purely to a question of service ideology. However, the research activity is probably conducted within the constraints of contract law.
- A trainer who delivers induction programs, for instance, for new employees in a non-government organisation (NGO) may fall more towards the centre in this quadrant. This job may be removed from individual human clients and carried out in a human service, perhaps even faith-based milieu, but there will be some focus on the responsibilities of workers many of which are legally based or mandated.
- A housing officer, on the other hand, may have closer connections to direct service delivery and their work may also be more strongly pervaded by a legal world view, say through a focus on residential tenancy legislation.

For most human service agencies and workers, different jobs and tasks at different times will reposition them on each continuum and between quadrants. For example, the counsellor may also be on the board of a counselling training and consultancy company. The vocational rehabilitation claims assessor may also do some private counselling.

An aged-care worker who makes guardianship applications to a tribunal may then adopt a quasi-legal approach in their work. The trainer may assume a more legal orientation when developing training packages about writing court reports, for instance.



Reflect ●●

In relation to Figure 2.1, consider examples of jobs of interest to you and position them relative to the axes. What do you conclude from this personalised exercise about the presence of law in human service practice?

Three important points flow from Figure 2.1:

- Law is not just a matter of dealing with client difficulties. The law impacts on human services work and workers beyond direct service concerns.
- In many areas of human service work—for example, those in the right-hand quadrants, a legal ethos is evident, and it is accepted to greater or lesser degrees that law is integral to the work. However, in other areas of human services, where a legal ethos does not exist, the law is no less significant to the work.
- While Figure 2.1 declares the importance and variable visibility of law in human service work, it reveals nothing about the nature, quality and complexity of the relationships between the two realms. This relationship is explored in this chapter.

Integration: Who, what and why?

So what is meant by integration? Integration implies the weaving together of separate things so the result is more than the sum of the parts. The position taken here is that the effectiveness of human service agencies and workers is dependent on their recognition of the reality of the interdependence of law and human services as shown in Figure 2.1. Moreover, it is asserted that deliberate engagement with, as opposed to avoidance of, this reality is required. This engagement enhances human services actors' capacity to provide informed and seamless service delivery. So while human service workers are not responsible for integrating what is already integrated, they are responsible for acknowledging and consciously working to improve the processes and outcomes of this integration.

Engaging with integration requires more than superimposing legal information on human service activity. It implies more than merely interacting with the law (Preston-Shoot, Roberts & Vernon 1998a). It requires human service thinking, decision making, and practice in which legal, social and political systems are conceptualised as interdependent. This is not promoting legalism, or an uncritical response to the law, nor a view that human service practitioners should become pseudo-lawyers. Rather it posits that they should consciously locate and analyse their practice within interacting layers of contextual and often contradictory factors,

including legal ones. In addition, it suggests that welcoming new learning from law will extend the repertoire and sophistication of practitioners' thinking, actions, and influencing skills.

This appreciation of integration is important to effective service delivery for the following reasons:

- First, issues and problems faced by clients, workers, and agencies, are characterised by social, legal, psychological, organisational, service delivery, and other elements that are all woven together. Appreciation of and responses to these problems that privilege one or some elements only are dangerously incomplete. Integrated problems demand integrated responses.
- Second, legal and human services increasingly intersect and overlap. That is, the central area representing a mixed law/social work ethos in Figure 2.1 is expanding. Workers who embrace legal perspectives in their thinking will be more competitive and functional in these new work and service environments.
- Third, the human services can learn much from law (and vice versa, as shown later in this chapter and in Chapter 3), quite apart from substantive law, which can be used to strengthen its own procedures and practices generally, and its impact in the legal system more specifically.
- Fourth, the human services now function in a risk society partly driven by anticipation of and responses to legal reactions to unsatisfactory service processes and outcomes. No aspect of human service activity is immune from preoccupations with risk control. Agencies and workers who have some appreciation of the way in which the law operates are in a stronger position to navigate, challenge and sometimes even co-opt the risk phenomena in the interests of their work and their clients.

Human service client, worker, and agency issues

Clients

It is obvious that many human service clients have legal problems, and some of the law relevant to these problems is examined in later chapters. An adult prisoner, a juvenile offender, and a mentally ill patient subject to a community treatment order, for instance, may only have human service client 'status' as a result of legal action. Other clients may also have legal issues that dominate in the entangled set of circumstances bringing them into the sphere of human service activity. Workers alert to legal issues and aware of the potential for law to both advance and restrict human rights are better placed to reframe individual problems and to address collective client concerns and needs (Braye and Preston-Shoot 2006). Workers who are alert to legal issues are also better placed, with individual clients, to make assessments and

develop service plans that are more substantive and meaningful than they would otherwise be. For example:

- Imagine a family characterised by substance abuse, neglect of children, and family violence. The family support worker here should be assessing needs and developing and monitoring service plans that have legal, medical, and human service components. For instance, on the family violence matter, they may be making referrals to community legal and medical centres, advocating for immediate police and legal assistance, briefing a lawyer, referring a partner to an anger management program, collaborating with a children's worker, and supporting a parent seeking a restraining order. The legal and other parts of this work are indivisible. The worker is not giving legal advice but ensuring that it is available, and just as importantly, that it is given in accordance with the safety, social and emotional needs of family members. No matter how impassioned and committed they are, a worker who is intimidated by or ignorant of the relevant law and legal processes will be providing a poor service to this family.
- Imagine a culturally divided rural community in which youth offending is prevalent, some business and community leaders are demanding more severe police and court responses, while other community members claim that unemployment, discrimination, and police harassment of young people compound the problem. The youth workers here may be mediating community conflict, promoting mutual understanding, developing youth programs, and collaborating with and advocating in youth court and police services. They are not lawyers, but to function well they must weave knowledge about discrimination law and the juvenile justice system into their practice analyses and responses. Their influence and impact will be diminished if they cannot engage with others confidently and, above all, accurately, on questions of legal rights and procedures. This legal expertise, then, is an integral part of their general human service skills and knowledge.

Other clients present with difficulties in which legal possibilities are less obvious.

For example:

- Imagine a client with an intellectual disability who has troubled interpersonal relationships at work, gets into fights, loses jobs, and self-harms. Here human service workers may be thinking about interpersonal skills training, or job preparation programs, or additional job supports, or referral for medication review. But perhaps workplace discrimination, bullying or unfair dismissal are also involved, in which case legal options must be incorporated into the package of human service response strategies.
- Imagine a frail aged person with worsening dementia, who lives alone, resists any form of alternative accommodation, and refuses essential medication. Some obvious human service work is to be done here around risk assessment, and exploration of client and family resources and preferences. But a set of legal questions may also be part of a full understanding of the situation and the appropriate response to it. For example, should legal substitute decision-making procedures be initiated? What licensing or other quality assurance regimes apply in relevant alternative accommodation? Financial and asset considerations may

also be relevant under aged care, banking, administration, and perhaps social security law.

Workers

The experiences of human service workers, inclusive of and beyond client concerns, are similarly permeated with legal possibilities, both obvious and not so obvious. Workers themselves may be injured at work, sacked, not promoted, impugned by colleagues, or make mistakes; they may have legal responsibilities and rights through their membership of professional and other bodies, they may be self-employed and responsible for their own indemnity insurance, they may chair meetings and enter contracts with others; they will handle sensitive information; they may work in tribunals and courts; they may develop policy and draft legislation. In all these and many other matters, legal and human service elements are enmeshed. Competent human service workers are attuned to the personal and professional legal risks and potential in all work experiences, and know the source, authority, and full scope of their duties and powers. For example:

- Imagine a human service worker told that they are ineligible for a job. On the face of it, this is a simple personal disappointment. But who set the eligibility criteria for the position, with what authority, and how were those criteria promulgated and applied? There are legal elements to each of these questions, and while a legal quest may not solve this particular problem, it may help clarify it and reduce the chance of repeat upsets.
- Imagine a human service worker who, as a result of study pressures, forgets to inform their supervisor about a client's threat to a family member. Supervision, teamwork, and agency communication procedures are relevant here—but this scenario also raises allied legal questions. Could the family member bring a legal action if hurt and if so, who would they sue? Could the worker be dismissed? How can the tangle of risks and obligations be unpicked?
- Imagine a worker who establishes an influential advocacy group. What risks might accompany this achievement? Is the worker personally liable for group debts? How can the continuity of the group be ensured? The answers lie in strategic planning combining political, legal, and interpersonal factors.

The potential for workers, even the most committed ones, to find themselves embroiled in an unfortunate range of employment related and other legal difficulties, independent of their work with clients, is well illustrated by the scenario outlined in the (incomplete) set of cases below. This linked set of cases also demonstrates how critical the law is in determining a worker's rights, and professional and personal future.

LAW IN PRACTICE

After an internal audit investigation, a social work manager in a family and child welfare government department was alleged to have been involved in suspicious financial transactions amounting to \$1.3 million. The worker was suspended without pay and the employer reported the worker to the police who commenced their own investigations. Criminal charges were laid against the worker in 2010.

The worker denied the allegations but resigned shortly after being suspended. She asserted that she was suffering from work-related stress and depression which preceded the allegations made against her. The worker made a claim for work-related psychological injury. Her employer claimed that the worker had an entrenched gambling habit and that her disability was attributable to being given notice that she was suspected of money appropriation.

The worker's injury claim was initially rejected but the Workers Compensation Tribunal found her on appeal to be entitled to compensation. The State appealed to the Full Bench of the Workers Compensation Tribunal and was successful in having the orders for payment of compensation set aside. The worker appealed to the Supreme Court. It was decided that there was no right of appeal. The worker sought judicial review and was successful in having the decision of the Full Bench of the Workers Compensation Tribunal quashed and the original decision of the Tribunal in her favour reinstated.

Meanwhile, the worker successfully sought a stay on the criminal proceedings on the grounds that they conflicted with consideration of the workers compensation matter. The Full Court of the Supreme Court rejected the stay of criminal proceedings in 2011. In 2013, the social worker was found guilty of 271 counts of falsifying accounts and was jailed for five years (Dowdell 2013).

Dalton v South Australia (Department for Families and Communities) [2007] SAWCT 58

Dalton v South Australia (Department for Families & Communities) [2010] SASC 45

R v Dalton [2011] SASCF 125

Agencies

Human service agencies similarly function within a context of interconnected imperatives. They are employers; they have a range of legal duties to their workers, service users, and funders; they have contractual obligations and rights; they have liabilities; they may have accreditation or licensing requirements; they are accountable in various ways to various authorities and the community. The list is endless. For example:

- Imagine a service receiving government funding to run foster care and family support programs. It seeks to serve families well, but it may be preoccupied with ensuring its continued funding; with staff selection, supervision, and appraisal processes; with fundraising; and with its relationship with its host organisation. Legal dimensions loom large in all of these preoccupations. Balancing administrative and service delivery activities so that legal obligations in both areas are met is not easy.
- Imagine an agency that supports minors caring for parents with mental health and substance abuse problems. It may share the concerns of the foster care agency. It also faces questions about reporting possible child abuse and neglect and drug-related offences. What does the law require of it and how will it develop helpful human service support processes while also accommodating legal imperatives?

- Imagine an agency in which a worker who was assaulted at work some time ago is now avoiding contact with clients and requiring extra support from co-workers. The agency may be concerned about the state of this worker and keen to promote their recovery. But as an employer, it faces issues of public accountability and it also has legal responsibilities to clients and other workers. It may also have mandatory notification obligations under health professional regulation law. What are the competing imperatives in this situation, which are legal, and how might they be balanced?

Intersection and overlap between law and human services

Commonalities of interests

The human services and the law have always had interests and ideals in common even though they may function in parallel, even antagonistically. At a number of levels, they are both concerned with rights and advocacy, even though these may not mean the same things in each area (Preston-Shoot, Roberts & Vernon 1998b). Human service workers and lawyers both commonly 'function in the context of individual cases' (Staller and Kirk 1998, p. 93), even though the human service role in relation to clients may be characterised by greater ambiguity and a 'multiplicity of accountability' compared with that of a private practice lawyer at least (Preston-Shoot, Roberts & Vernon 1998b, p. 145).

MYTHS AND REALITIES

Myth: Human service workers and lawyers have little in common, and, for human service workers, contact with lawyers and the law is always troublesome.

Reality: This is a common but unhelpful refrain in the human services. The relationship between lawyers and human service workers can be difficult. However, human service personnel have a tendency to take the victim role in these fraught relationships and in doing so to appear weak and ineffectual. Moreover, lawyers and human service workers often seek the same outcomes or changes, especially in relation to disadvantage and protection of vulnerable people. Human service workers can form powerful partnerships with lawyers who have valuable advocacy skills to further common goals, and there is often an ethical mandate to seek relationships of this kind. Subclause 1.2, dot point 6 (page 8) of the Australian Association of Social Workers (AASW) Code of Ethics states that the social work profession is committed to: 'working with individuals, groups and communities, through both advocacy and policy reform initiatives, in the pursuit and achievement of equitable access to social, economic, environmental and political resources'.

It is not uncommon to see lawyers taking on what might be seen as human service work with clients. For example, solicitors in local courts may organise emergency

accommodation before they apply for bail for clients. They may seek community resources to support asylum seekers released from detention centres. Many are very actively involved in case planning and referrals to services in support of their parent clients in child protection matters (Walsh and Douglas 2011). They may also work in human service organisations or roles, either as solicitors or in policy and project jobs that may also be open to human service applicants. As lawyers they may take on functions such as legal training in the human services and law reform submission writing along with the more traditional legal advisory role.

Similarly, human service workers often interact closely with the law. Some workers accompany young people being questioned by the police—and while not lawyers, they may be adept at monitoring the legal rights of their clients in these situations. Clients might be cross-referred and even worked with jointly, for instance in collaborative family law, where lawyers, psychologists, and their shared clients work together in developing property settlements and making arrangements for children after parental separation.

Workers both in human services and law interpret and apply law in their work, and they sometimes actively cooperate on projects of mutual interest. For example, a number of Australian refugee advocacy groups concurrently mount legal challenges and seek social services through the combined work of legal and human service workers (for example, see Fiske and Kenny 2004, Kenny and Fiske 2014). Even in the absence of immediate shared interests, workers can, and some do, see the rich potential in each other's expertise. In some fields and roles human service and legal workers both contribute to the drafting and amending of laws in the interests of those whose legal rights or protections are inadequate. Expertise, methods, and roles may differ, but aspirations are generally congruent. Both Dickens (2008) and Walsh (2012), in discussing child welfare and community legal centre work respectively, recognise tensions and understandable wariness in the relationship between law and social work but stress the compatibility of their aims, and their essential interdependence.

Enterprising human service workers cultivate resources and contacts, including legal ones, wherever possible. They nurture mutually beneficial relationships with lawyers and others in the legal system, such as court sheriffs and police prosecutors, so as to smooth work pathways and extend their own productive capacity. They see legal connections as part of their total stock of resources, not optional extras. Alliances and networks of these kinds are more likely to flourish where the human service workers, at least, understand that law is integral to their work, and are attuned and open to the legal possibilities in human service situations.

**Reflect** ●●

Some human service workers claim that it is insincere to seek to form relationships with people just because they happen to be lawyers or have some other useful legal role. What is your view about this proposition?

New developments and possibilities

Interdisciplinary approaches such as therapeutic jurisprudence that attend to the impact of legal activity on emotional and psychological well-being (Wexler and Winick 1996; Winick and Wexler 2003) have emerged in the legal and human services. Therapeutic jurisprudence aims for changes in justice and court systems that are psychologically constructive for the participants as well as serving the social imperatives of law. This approach is being applied in some Australian courts and other justice programs (for example, King and Auty 2005; Douglas 2007; Freiberg 2011, Spencer, 2014, Madsen and Holmberg, 2015). Similarly, an increasing range of policies and programs blur traditional boundaries or at least stipulate joint action between legal and other services. Two major examples are new court systems, and ways of resolving disputes beyond the traditional legal adversarial approach. In both of these developments, which reappear in Chapter 6 and other later chapters, the legal system has been opened up to what might be called the human dimensions of legal problems and sometimes to human service interventions and practitioners. Dispute resolution approaches such as negotiation, mediation, conciliation and facilitation have been incorporated into the processes of a number of legal decision making bodies.

Diversionary programs attempt to keep people out of formal court processes while attending to their particular life circumstances. For instance, family or group conferencing is now a common feature in juvenile justice systems (Daly and Hayes 2001), and in child protection (Walsh and Douglas, 2012), and special courts employ new practices and collaboration between agencies while 'seeking to achieve therapeutic outcomes' (Payne 2006, p 2).

These developments, although fashionable, are not without controversy. For example, doubts have been voiced about family conferencing and the extent to which clients really can and do participate fully and voluntarily, (for example, Blagg 1997; Daly and Hayes 2001, Walsh and Douglas 2012) and about power imbalances in mediation (for example, see Roper 2015). The associated integrated team approach is often fraught with difficulty, as Cull and Roche (eds 2001), for example, show in relation to family conferencing in the United Kingdom, and Freiberg (2002) says of Australian drug court teamwork. Limitations of therapeutic jurisprudence are also being raised (for example, Bartels and Richards 2013).

Nevertheless, these emerging examples of convergence between law and the human services are a fact of life and in some universities they are reflected in new double-degree programs in law and social work. These developments offer employment possibilities for legal and human service workers alike, and they do provide opportunities for the latter to enter and influence the world of law directly. A large legal firm in Australia has employed social workers to assist in managing the human and emotional dimensions of its clients' legal matters (Gountras 2010; Slater and Gordon 2011). Law bodies with community education mandates have advertised for community programs coordinators to improve understanding of the law in schools. Increasingly there are roles for human service workers in courts

and other justice-related services. In Australia now it is not uncommon to see job advertisements for Family Court counsellors, family support workers in coroners' courts, victim support workers in a variety of courts and bail support and other special program workers in magistrates' courts. Competitive and credible human service applicants for these jobs will no doubt be legally literate, and will integrate legal knowledge in their practice. In similar vein, lawyers are being sought by refugee and youth services, public advocacy groups, and in research and law reform areas such as domestic violence, criminal law and human rights and child protection and in professional misconduct investigatory roles.

Learning from and using a legal orientation

The third reason for seeing law as an integral component of human service practice is that a number of things can be appropriated from the law to significantly improve the quality of human service practice.

Proper process and procedure

Preoccupation with proper process and procedure is a fundamental feature of the law. This is particularly reflected in administrative law, an area very relevant to the human services. Administrative law is concerned with government decision making about the rights of individuals or legal entities to challenge those decisions.

Human service workers are not as alert to the significance of formal processes and procedures in decision making as they might be, and are commonly confused or frustrated by what they see as pedantry and unnecessary attention to detail. For example:

- Imagine a client has been refused further service by a human service agency on solid human service grounds. Why does it matter how this decision was made or how the client was informed about it?
- How could a local authority refuse permission to hold an exciting community event because the appropriate forms were not completed and signed properly?
- Why should a culpable worker have grounds for complaint about their transfer to another section of the organisation when there have been convincing complaints about their bullying of other workers?
- How could a worthy grant application be rejected because it did not reach the funding body by the advertised deadline and another less impressive application succeed?

In all of these instances, the process or procedural issues have legal implications. Human service workers can save themselves frustration, time, and effort if they have a better appreciation of these implications. But there are other, more important, reasons for understanding the significance of process and procedure, and becoming sensitive to them. For example:

- Workers can improve their effectiveness as client advocates. For instance, a worker liaising with Centrelink on behalf of a client is more likely to achieve

results for the client if they rely on relevant evidence that the agency has not complied with its own policies rather than making an emotional plea for aid because of the client's parlous financial state, even though the latter may be of most concern to them.


- Workers alert to procedural issues are in a better position to review, improve and defend their own work practices constantly. They are also more likely to have the confidence to challenge their co-workers and organisations, in their own and their clients' interests, when processes are compromised.
- Human service workers exercise power themselves and make important decisions about others' lives. Many of these decisions will be made in private and go unchallenged, and for this reason these decisions more than most should be made in accordance with principles of procedural fairness.
- Perhaps the most important reason is that the basic elements of administrative law are entirely consistent with and affirm good human service practice principles. It can be empowering for human service workers to realise that good practice is not in conflict with the law in this area and that in fact they can utilise the law to support and sustain their own positions in the face of poor processes elsewhere.

Proper process and procedure, particularly as it relates to the work of individual human service workers, is further explored in Chapter 3.

Normality of disagreement and robust debate

The Australian legal system is an adversarial one in which parties do battle through their lawyer advocates. Dispute and debate are normal phenomena in the legal culture, as is mental preparedness to defend or attack either side of a case or argument, and a desire to win, about which more will be said later in this chapter. These things are not the norm in the human services. If anything, they are feared (Staller and Kirk 1998) or taken as indicative of failure in relationships. But human service workers who are willing to entertain open and regulated conflict management and to value mental agility can benefit enormously. Their intellectual resourcefulness in their own work can be extended, their work outcomes accentuated, and they are less likely to reject or be injured by different perspectives and opinions.

Reflect



Everyone knows about lawyers who disparage each other in court and then drink together afterwards. Is this hypocritical behaviour? What do you think about the following argument? From within a lawyer's frame of reference, challenging another's argument is not hypocritical but appropriate. Effective court advocacy requires lawyers to separate the way they see their case from the way they see opposing counsel. Human service workers who develop this capacity spend less energy protecting themselves from conflict and have more freedom to move within and beyond their familiar professional spaces.

Approach to evidence

Both human service and legal practice are founded on evidence, albeit from different perspectives. In courts, the accuracy, reliability, and precision of evidence become paramount. Later chapters show that the human services are not as sharp about information management as they might be, and valuable lessons can be learned from some aspects of the law's exactitude. More attention to detail in the human services will assist in improved practice, as well as being useful if evidence is to be given in court.

Normality of appeal or review

The right of appeal is fundamental in law. It is an accepted part of the legal system that decisions made by an adjudicator may be appealed to a superior one, and legal work is always done with an eye to this possibility. Administrative justice, so relevant to human service work, may be protected or sought through judicial review, merit review of certain administrative decisions, Ombudsman review, and human rights bodies review. These options are part of the normal functioning of law. The law also accepts the right of claimants to investigate all review possibilities and pursue the one that is most likely to produce the desired result.

MYTHS AND REALITIES

Myth: Human service workers should focus on people and relationships and fussing about the detail of decision making detracts from their real work.

Reality: Human service workers constantly make decisions that not only affect their clients but have legal and ethical implications. The AASW Code of Ethics includes a whole section on Ethical Practice and Decision Making (section 4), which mirrors and reflects many administrative law principles about proper process, fairness, transparency, full information and so on.

The notions of formal appeal or review—or even complaint—have come relatively recently to the health and human services, but these processes are now widespread and are examined elsewhere in this book (see, in particular, Chapters 7 and 10). Ombudsmen, complaints commissioners, and other investigatory and review bodies are increasingly visible in human service experience, with agencies generally expected to have grievance procedures in place for staff and clients. Nonetheless, complaint and review processes do not sit easily in the culture of human services, where interpersonal relationships are so significant and complaints or appeals are often taken, if not intended, personally.

Complaint or grievance processes are often specific to an agency. They may be informal or formal, may or may not have the force of law, and may or may not result in a decision being reviewed. Appeal processes are generally more formalised in law, can review action in some way, and cannot progress unless legislative grounds are satisfied, including that the matter is within jurisdiction. For example, a Commonwealth government public servant has relatively wide rights of review about actions related to their employment, under s 33 of the *Public Service Act 1999* (Cth).

But termination of employment is not reviewable under this section; other legal avenues must be pursued for that action.

The very complex cultural issue of response to dissatisfaction cannot be explored in detail here. However, assimilation of a legal orientation by human service agencies and workers can help ameliorate the traditional trauma caused by complaint or appeal. Four suggestions may assist:

- 1 Function with the idea of appeal or review always consciously in mind and to know what bodies may review the various decisions made. If decisions are made, procedures applied, and documents maintained by agencies and workers in the knowledge that they may be scrutinised later by a review body, they are likely to be more defensible. This approach can both improve practice and reduce the risk of legal or other negative reactions.
- 2 Genuinely accept that people always have rights, inclusive of the right to appeal human service decisions or intervention. Despite adherence to the idea of self-determination, many human service workers find it hard in practice to admit that their clients may seek satisfaction beyond, or even in opposition to, their own efforts.
- 3 Strive for less subjective responses to complaints and appeals. This is always difficult when the professional medium, as is so often the case in the human services, involves personal, private, and perhaps intense relationships. Complaints should always prompt introspection, but workers who cannot put some emotional distance between themselves and the complaint may suffer significant personal distress.
- 4 Understand the differences between grievance or appeal processes in different realms and at law, and how they work. Human service workers assisting others to appeal or complain, or who themselves are aggrieved, may be passionate about the situation, but vehemence alone does not persuade, or carry legal weight. A dispassionate and informed head is useful in thinking through desired outcomes, the review options available, the procedural requirements and limitations of each, and strategic choices of action.

It's important to find out if the complainant is seeking a new or different decision or are they mainly interested in having their discontent with some aspect of an agency or its service heard? Once the basic aims are clarified, the most appropriate choice of complaint or appeal process can be made. It may be that in many situations the best results can be obtained by approaches to the original decision maker rather than making use of formal grievance or appeal processes. Whichever type of process is chosen, the grievance itself needs to be formulated convincingly and the desired outcomes articulated clearly. There is an empowering benefit to human service workers in being confident and strategic in using complaint and appeal mechanisms. This important area is revisited in the next and later chapters.

Human services in a risk society

Much has been written about the risk phenomena (for example, see Parton 2001; Kemshall 2002; Titterton 2005; Webb 2006; Connolly and Ward 2008; Carson

and Bain, 2008; Carson 2012), its origins, and its effect on human service work: a few observations only are offered here. The preoccupation with negative risk means that legislators, funders and agencies increasingly promulgate laws and policies that constrain, direct and monitor worker and client activity. In this context, social workers are seen as ‘assessors of risk, at risk and as a risk’ (McLaughlin 2007, p. 1263).

Human service workers are now obliged to devote a great deal of their time and attention to determining risk rather than needs priorities for their clients, complying with occupational safety policies that may be incompatible with responsive service delivery and accounting for their own actions. The operation of the law is both a cause and effect of the risk culture. Increasingly law regulates human service activity, and fear of legal repercussions is an all pervasive presence in human service life. Agencies and workers who have some appreciation of the way in which the law functions are less likely to feel aggrieved and victimised by contradictory forces. They are better positioned to challenge examples of the mechanical operation of risk aversion policies and to explain the potentially negative effects, and thus greater risk, that these policies pose for services and clients. They are also better placed to weigh up the relative power of and risks presented by the conflicting and competing imperatives, including legal, on their decision making and to demonstrate and advocate for positive risk-taking in respect of work with clients (see Carson and Bain 2008; Carson, Nash & Clift 2013). Decision making is revisited in Chapter 3.

Law and human services: An uneasy coexistence

Despite the beneficial connections between the law and human services argued for above, there remain very significant differences and tensions that test and challenge those who work in each domain. These tensions are increasingly both revealed and exacerbated by intense media scrutiny, a volatile political and policy context, and rationed resources (for example, see Jones, 2014a and 2014b). A considerable amount of literature explores human service worker’s uncertainty about legal matters and legal knowledge and their inattention to legal issues (for example, Braye and Preston-Shoot 2010; Braye, Preston-Shoot & Wigley 2013; Preston-Shoot 2011). Closed or less-confident human service workers may erect self-protective barriers against the law and its processes.

In turn, many lawyers do not seek to penetrate these barriers or lack patience with them. Some lawyers may be reflecting ‘law’s tendency to make claims to truth and thus to discount the validity of knowledges outside of law’s frame of reference’ (Graycar and Morgan 2002, p. 422). Lawyers of this persuasion are likely to think that they can do whatever a human service person can do. Other lawyers may be largely unaware of the human services.

The histories, cultures, and rituals of law and human services are dissimilar, as are many of the roles and functions of lawyers and human service workers.

They operate under different ethical and practice imperatives in respect of work with individual clients (Castles, 2008; Walsh 2012). There are significant status differentials between law and social work. Van Wormer (1992, p. 123) has surveyed what she calls the contradictory professional attitudes of law and social work. In her comparison, law's historical origins lie in professional combat, and it values attack, 'tricks of the trade', and winning through battle; it is concerned with clients' civil rights; it aims to shift responsibility for client behaviour to others; its knowledge base is precedent; lawyers have been largely private practitioners; and traditionally it has been male-dominated, privileged, and elitist. In contrast, the origins of social work lie in charitable work, and it emphasises both means and outcomes, resolution through negotiation, individual responsibility, and client rehabilitation; its knowledge base is in social science research; workers have been largely public employees; and it is female-dominated with attendant low social status.

While the social stereotypes of both lawyers and human service workers are, fairly or unfairly, generally negative, again they are dissimilar, and each group appropriates and embellishes the poor image of the other. The image of the villainous and soulless lawyer is common in society (Ross 2009). When the authors have asked human service students or workers about lawyers, predictable words such as greedy, smart, untrustworthy, rich, well-dressed, amoral, and conceited constantly appear. The human service worker title is less well known than that of social worker so it is the public image of the latter that prevails. Social workers do not have a particularly positive public image in general (see Kennedy 2009) and social workers are described by lawyers as, among other things, 'vague' (Bell and Daly, 1992, p.40), bleeding hearts, lefties, paternalistic, and insufficiently attuned to matters of procedure and conflicts of interest (Walsh 2012). While superficial stereotyping about both law and social work is evident in these attitudes, the general point about the degree and extent of difference between the realms is nonetheless valid.

Other commentators have pursued the question of divergence more critically in relation to things such as values, ethics, knowledge, training, and methodologies (for example, see Walsh and Douglas 2011, 2012). It is beyond the scope of this book to explore them fully but a few salient points can be raised. While Staller and Kirk (1998) would challenge van Wormer's (1992) claims about the extent to which social work knowledge develops systematically from a social science research base, they agree that it is dissimilar in many respects from that of law. It derives, they say, from a scattered and uneven mix of things such as practice wisdom, research findings, and policy; and it is not compiled anywhere into an integrated or accessible whole. Others have lamented that social work's areas of expertise remain ill-defined and easily trivialised (for example, Lymbery 1998; Green 2006). Its ambivalent attitude to knowledge and the 'conceptual muddle' of its value base have also been noted (Preston-Shoot, Roberts & Vernon 1998a, p. 73; Jones 2014a). Stoesz (2002) argues that human service education, grounded in this uncertain knowledge base, is generic, inferior, and underwhelming, and sets low expectations about performance.

The knowledge of legal practitioners on the other hand, evolves through analysis of precedent and is accumulated into a comprehensive universal case classification

and retrieval system, known as case law. Legal education, according to Staller and Kirk (1998, p. 97), often utilises the Socratic method to prepare lawyers to face critical questioning and ‘equate[s] preparation and performance with professionalism’. Challenging questioning techniques that test cognitive skills are the norm, and clever verbal manoeuvring is prized. So in summary, existing at the extremes is a confident group of lawyers, honed to perform in public, to win and impress, and in contrast, a human service group uncertain about its social mandate, status, and methods.

Another line of commentary focuses on posited differences in reasoning and approaches to practice. Hacker (1999) contrasts thinking and practice in medicine and law, but some of her conclusions resonate for human services and the law. In her analysis of adversarial legal thinking, everything is open and anything can be relevant or irrelevant, depending on its value in a particular argument in a particular case. So any fragment of information might be utilised to reify or dichotomise or disparage a position, and ultimately to persuade. The particularity of facts in any one case and the interests of the individual litigant will dominate legal thinking and drive action. Conversely, inquisitorial medical thinking seeks the most correct answer as determined by the current state of research knowledge in an area. Medical and other similar non-legal thinking is subject to shades of grey and qualified assertions. Competing duties and interests may have to be prioritised and an individual client’s position may not be the sole determinant of action.

In medical thinking, according to Hacker (1999), and arguably also in human service thinking, mistakes will happen and are normal. In legal thinking, mistakes instead mean that someone may potentially be to blame and thus legally liable. In summary, law deconstructs, seizes weaknesses, explodes arguments, while medicine and arguably the human services attempt to construct, ‘put things back together’ (Hacker 1999, p. 7), fix what is damaged, or explain what is experienced. Carson (2011) on the other hand in discussing the epistemologies of psychologists and lawyers warns against overplaying differences by putting too much focus on the court room rather than the broader arena of shared work and interests. He also argues that both professions are concerned with understanding human behaviour and that both seek reliable methods of inferring from evidence.

Where does all this lead? It confirms that there are both real and perceived obstacles to mutual understanding and cooperation between the human services and the law; and for many human service workers the results are entrenched feelings of inferiority, intimidation, and hostility in relation to law. It is argued here that the differences must be both accepted and understood but not permitted to block engagement. Proactive human service workers do confront their own negative stereotypes of the legal system and lawyers, and challenge the latter’s stereotypes of them. They are also open to the positive images of lawyers—for example, as fighters for justice. In turn they present themselves to the law as practical managers and clarifiers of complex human need situations. Lawyers also have responsibility to open themselves to others’ ways of thinking and acting and there are calls from within that profession for a greater focus on listening to and learning from others, including social workers (for example, Galloway, 2012; Hyams 2012; Walsh 2012).

Improved relationships can begin with small and local action. Individual human service and legal workers can seek some form of personal reconciliation between the two realms in the interests of productive partnerships with each other. Dickens (2005) emphasises the importance of 'reasonable' interpersonal behaviour, that is, basic civilities and courtesies, by individual lawyers and human service workers in developing constructive working relationships. Castles (2008) proposes a series of organisational models which might be used by lawyers seeking to manage ethical conflicts in their multidisciplinary work in the human services. Those human service workers who achieve a degree of mental equilibrium about these two arenas are commonly excited by their interactions with the law and see how it can extend and improve their own practice. The very differences that may cause distress to human service workers can also be perceived as invigorating, challenging, and, in the longer term, confirming. Practical ways in which integrated thinking and practice might be enhanced, and some form of personal reconciliation achieved by human service workers, are considered in the next chapter.



Reflect ●●

Some human service workers would argue the preceding material implies that human service workers should accept law and the legal system uncritically. This raises a complex and important issue. In summary, flexibility and open mindedness are being promoted here, but certainly not uncritical acceptance. Human service workers (and ideally lawyers) must maintain an analytical and informed perspective about both the human service and legal systems. Without this they will not be motivated or able to engage in effective systemic advocacy and change. But on a practical daily basis, differences and frustrations will be faced and have to be managed without too much dissipation of energy. Human service workers will benefit if they develop a serviceable mental set that helps them to both cope and develop. If this book were directed primarily at lawyers rather than human service workers, it would challenge them to do likewise in relation to the human services. What is your view, and why, about the following quote: 'Criticism of the law is valid and useful; but working outside the law is unacceptable' (Brayne, Carr & Goosey 2015, p. 45)?

Key points for practice

- An appreciation of law must be integral to analysis, decision making, and practice in the human services because legal and other elements are integrated in the context and substance of human service work.
- Client problems both collectively and individually often have legal dimensions, but even beyond these, all aspects of agency and worker functioning also have legal components.
- Human service workers are wise to engage with the law as they share interests with lawyers, may be in competition with them for jobs or working with them in new developments, and can learn very useful things from a legal orientation to appeals, process, debate, and evidence.
- In contemporary risk culture, human services agencies and workers with some appreciation of the functioning of the law are better placed to negotiate and even challenge risk-averse policies, procedures and practices that impinge negatively on service delivery.
- This engagement by the human services will not be without its challenges as the cultures, traditions, approaches, and styles of law and the human services are quite different. Difference must be understood and accepted before genuinely integrated thinking and practice are possible.

Some useful websites

A selection of bodies in which legal, justice, human rights and human services interests are combined:

www.alrc.gov.au	www.piac.asn.au/ projects/homeless- persons-legal-service/ introduction	www.sistersinside.com.au
www.anzappl.org	www.refugeecouncil. org.au	www.slatergordon.com. au/more-services/ social-work-services
www.humanrights.gov.au		www.welfarerights.org.au
www.naalc.org.au		

References

- Australian Association of Social Workers (AASW) (2010). 'Code of Ethics.' Retrieved 23 November 2014, from www.aasw.asn.au/document/item/1201
- Bartels, L. and Richards, K. (2013). Talking the talk: Therapeutic jurisprudence and oral competence.' *Alternative Law Journal* 38(1): 31–3.
- Bell, M. and Daly, R. (1992). 'Social workers and solicitors: working together?' *Family Law* 22: 257.
- Blagg, H. (1997). 'A just measure of shame? Aboriginal youth and conferencing in Australia.' *The British Journal of Criminology* 27(4): 481–501.
- Braye, S. and Preston-Shoot, M. (2006). 'The role of law in welfare reform: Critical perspectives on the relationship between law and social work practice.' *International Journal of Social Welfare* 15: 19–26.
- Braye, S. and Preston-Shoot, M. (2010). *Practising Social Work Law*. 3rd edn. Houndmills Basingstoke, Palgrave Macmillan.
- Braye, S., Preston-Shoot, M. & Wigley, V. (2013). 'Deciding to use the law in social work practice.' *Journal of Social Work* 13(1): 75–95.
- Brayne, H., Carr, H. & Goosey, D. (2015). *Law for Social Workers*. 13th edn. Oxford, Oxford University Press.
- Carson, D. (2011). 'Investigative psychology and law: Towards collaboration by focussing on evidence and inferential reasoning.' *Journal of Investigative Psychology and Offender Profiling* 8: 74–89.
- Carson, D. (2012). 'Reviewing reviews of professionals' risk-taking decisions.' *Journal of Social Welfare and Family Law* 34(4): 395–409.
- Carson, D. and Bain, A. (2008). *Professional Risk and Working with People*. London and Philadelphia, Jessica Kingsley.
- Carson, D., Nash, M. & Clift, S. (2013). 'Responsibility for public protection and related risk decision-making.' *The Police Journal* 86(4): 307–20.
- Castles, M. (2008). 'Possibilities for multidisciplinary collaboration in clinical practice: Practical ethical implications for lawyers and clients.' *Monash Law Review* 34(1): 116–46.
- Connolly, M. and Ward, T. (2008). *Morals, Rights and Practice in the Human Services*. London and Philadelphia, Jessica Kingsley Publishers.
- Cull, L.-A. and Roche, J. (eds) (2001). *The Law and Social Work: Contemporary Issues for Practice*. Houndmills Basingstoke, Palgrave.
- Daly, K. and Hayes, H. (2001). *Restorative Justice and Conferencing in Australia*.

- Trends and Issues in Criminal Justice No. 186. Canberra, Australian Institute of Criminology.
- Dickens, J. (2005). 'Being "the epitome of reason": The challenges for lawyers and social workers in child protection proceedings.' *International Journal of Law, Policy and the Family* 19(1): 73–101.
- Dickens, J. (2008). 'Welfare, law and managerialism: Inter-discursivity and inter-professional practice in child care social work.' *Journal of Social Work* 8(1): 45–64.
- Douglas, K. (2007). 'Therapeutic jurisprudence, restorative justice and the law.' *Alternative Law Journal* 32(2): 107–8.
- Dowdell, A. (2013). 'Former bureaucrat Anne Dalton jailed for stealing emergency money to feed pokies addiction.' *The Advertiser*, 6 September. Retrieved 8 March 2015, from www.adelaidenow.com.au/news/south-australia/former-bureaucrat-anne-dalton-jailed-for-stealing-emergency-money-to-feed-pokies-addiction/story-fni6uo1m-1226713163791
- Fiske, L. and Kenny, M. A. (2004). "'Marriage of convenience" or a "match made in heaven": Lawyers and social workers working with asylum seekers.' *Australian Journal of Human Rights*. Retrieved 18 March 2009, from www.austlii.edu.au/au/journals/AJHR/200421.html
- Freiberg, A. (2002). 'Drug courts.' *Alternative Law Journal* 27(6): 282–6.
- Freiberg, A. (2011). 'Myers Lecture 2010.' *Psychiatry, Psychology and Law* 18(2): 297–314.
- Galloway, K. (2012). 'Thinking like a lawyer.' *Alternative Law Journal* 37(4): 298.
- Gountras, O. (2010). 'Social workers and lawyers: A multidisciplinary approach for better client outcomes.' *Swift: AASW NSW News Branch Newsletter* Autumn: 22–3.
- Graycar, R. and Morgan, J. (2002). *The Hidden Gender of Law*. Sydney, Federation Press.
- Green, L. (2006). 'Pariah profession, debased discipline? An analysis of social work's low academic status and the possibilities for change.' *Social Work Education* 25(3): 245–64.
- Hacker, S. (1999). 'Prescription vs litigation: Doctors and lawyers—pervasive paradigms and clashing cultures.' *Psychiatry, Psychology and Law* 6(1): 5–11.
- Hyams, R. (2012). 'Multidisciplinary clinical legal education.' *Alternative Law Journal* 37(2): 103–6.
- Jones, R. (2014a). 'The best of times, the worst of times: Social work and its moment.' *British Journal of Social Work* 44: 485–502.
- Jones, R. (2014b). *The Story of Baby P: Setting the Record Straight*. Bristol and Chicago, Policy Press.
- Kemshall, H. (2002). *Risk, Social Policy and Welfare*. Buckingham and Philadelphia, Open University Press.
- Kennedy, R. (2009). *Duty of Care in the Human Services: Mishaps, Misdeeds and the Law*. Melbourne, Cambridge University Press.
- Kenny M, A. and Fiske, L. (2014). 'Refugees and asylum seekers: Social work practice with refugees and asylum seekers.' In S. Rice and A. Day (eds), *Social Work in the Shadow of the Law*. 4th edn. Sydney, Federation Press, pp. 322–42.
- King, M. and Auty, K. (2005). 'Therapeutic jurisprudence: An emerging trend in courts of summary jurisdiction.' *Alternative Law Journal* 30(2): 69–74.
- Lymbery, M. (1998). 'Care management and professional autonomy: the impact of community care legislation on social work with older people.' *The British Journal of Social Work* 28(6): 863–78.
- Madsen, K. and Holmberg, U. (2015). 'Interviewees' psychological well-being in investigative interviews: A therapeutic jurisprudential approach.' *Psychiatry, Psychology and Law* 22(1): 60–74.

- McLaughlin, K. (2007). 'Regulation and risk in social work: The General Social Care Council and the Social Care Register in context.' *British Journal of Social Work* 37(7): 1263–77.
- Parton, N. (2001). 'Risk and professional judgement.' In L.-A. Cull and J. Roche (eds), *The Law and Social Work: Contemporary Issues for Practice*. Houndmills and New York, Palgrave, pp. 61–70.
- Payne, J. (2006). *Speciality Courts: Current Issues and Future Prospects*. Trends and Issues in Crime and Criminal Justice No. 317. Canberra, Australian Institute of Criminology.
- Preston-Shoot, M. (2011). 'On administrative evil-doing within social work policy and services: Law ethics and practice.' *European Journal of Social Work* 14(2): 177–94.
- Preston-Shoot, M., Roberts, G. & Vernon, S. (1998a). 'Social work law: From interaction to integration.' *Journal of Social Welfare and Family Law* 20(1): 65–80.
- Preston-Shoot, M., Roberts, G. & Vernon, S. (1998b). 'Working together in social work law.' *Journal of Social Welfare and Family Law* 20(2): 137–50.
- Roper, I. (2015). 'Mediation. Good faith, bad faith.' *Alternative Law Journal* 40(1): 50–2.
- Ross, Y. (2009). *Ethics in Law: Lawyers' Responsibility and Accountability in Australia*. 5th edn. Sydney, Lexis Nexis.
- Slater and Gordon (2011). 'Slater and Gordon's social work service breaks down barriers between legal and medical worlds.' Retrieved 5 November 2011, from www.slatergordon.com.au/media/news-media-releases/vic-act-sa-tas-nt/social-work-service-breaks-barriers
- Spencer, P. (2014). 'From alternative to the new normal: Therapeutic jurisprudence in the mainstream.' *Alternative Law Journal* 39(4): 222–6.
- Staller, K. and Kirk, S. (1998). 'Knowledge utilization in social work and legal practice.' *Journal of Sociology and Social Welfare* XXV(3): 91–113.
- Stoesz, D. (2002). 'From social work to human services.' *Journal of Sociology and Social Welfare* XXIX(4): 19–37.
- Titterton, M. (2005). *Risk and Risk Taking in Health and Social Care*. London and Philadelphia, Jessica Kingsley Publishers.
- van Wormer, K. (1992). 'No wonder social workers feel uncomfortable in court.' *Child and Adolescent Social Work Journal* 9(2): 115–29.
- Walsh, T. (2012). 'Lawyers and social workers working together: Ethic of care and feminist legal practice in community law.' *Griffith Law Review* 21(3): 752–71.
- Walsh, T. and Douglas, H. (2011). 'Lawyers, advocacy and child protection.' *Melbourne University Law Review* 35(2): 621–50.
- Walsh, T. and Douglas, H. (2012). 'Lawyers' views of decision-making in child protection matters: The tension between adversarialism and collaborative approaches.' *Monash University Law Review* 38(2): 181–211.
- Webb, S. (2006). *Social Work in a Risk Society: Social and Political Perspectives*. Houndmills and New York, Palgrave Macmillan.
- Wexler, D. and Winick, B. (eds) (1996). *Law in a Therapeutic Key*. Durham, Carolina Academic Press.
- Winick, B. and Wexler, D. (eds) (2003). *Judging in a Therapeutic Key*. Durham, Carolina Academic Press.