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Law and Public Policy: Taming the Unruly Horse?

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The Australasian Law Teachers Association (ALTA) is a professional body which represents the interests of law teachers in Australia, New Zealand, Papua New Guinea and the Pacific Islands.

Its overall focus is to promote excellence in legal academic teaching and research with particular emphasis on supporting early career academics, throughout Australasia, in the areas of:

- (a) Legal research and scholarship;
- (b) Curriculum refinements and pedagogical improvements in view of national and international developments, including law reform;
- (c) Government policies and practices that relate to legal education and research;
- (d) Professional development opportunities for legal academics;
- (e) Professional legal education and practices programs.

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**INFLUENCING PUBLIC POLICY AND THE LAW: LAWYERS AT THE
INTERSECTION OF POLICY, LAW, POLITICS AND ADMINISTRATION –
WHERE DOES EDUCATION LIE?**

LYNN DU MOULIN*

The purpose of this article is to provide an overview of the role of lawyers in the development of public policy and whether practical legal training provides students with skills and attributes for these diverse roles. Many lawyers are generally unaware of the extent of their actual and potential role(s) in public policy and related processes.

The article approaches this issue by proposing the concept of the construct of the law. The second concept positions lawyers at the intersection of policy, politics, administration and law and briefly describes the segments.¹

The article then considers the frameworks, knowledge, skills and attributes of legal advisers in public policy and considers where opportunities are provided to law students to obtain the knowledge, skills and attributes to help them, as lawyers, understand and work in public policy and the law. It asks where these opportunities are best placed and provides a case study example of teaching students in this area in a practical legal training course at the ANU Legal Workshop and concludes that information and training in this area has a place in practical legal education.

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¹ The paper does not provide detailed analysis of, for example, public policy, which in itself, could be the topic of a conference.

I INTRODUCTION

This article provides an overview of the role of lawyers in the development of public policy and the law and considers whether practical legal training provides students with skills and attributes for diversity in legal practice. As many lawyers are generally unaware of the extent of their actual and potential role(s), the underlying question is where do lawyers acquire the knowledge, skills and attributes to participate in public policy and the law.

This article proposes two concepts to contextualise the place of lawyers in the development of public policy and the law. The first concept is the concept of the construct of the law. The second concept is of the intersection of law, policy, administration and politics. These concepts are relevant to legal practice and to practical legal education to assist legal educators to equip students for diverse legal practice.

II Diversity of Legal Practice

Law graduates, as admitted lawyers, now enter increasingly diverse types (forms) of legal practice, for example:

- large national private firms;
- small private practices;
- government / public sector;
- corporate sector;
- community legal centres; and
- non-government organisations (NGOs).²

As part of their career progression, many lawyers move between various types of legal practice in their careers. They may also move in and out of legal practice.³ From a

² The list does not include those who, although admitted to practice, do not practise as lawyers. However, their legal qualifications have generally assisted them to be offered positions, for example, as policy advisers.

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practical legal training perspective, an issue is whether such training prepares students for this legal practice environment.

Although aspects of the diversity of legal practice was recognised to some extent prior to 1995, the concept that practical legal training should not provide for any one practice model had not been fully articulated. The then Secretary of the Commonwealth Attorney-General's Department noted there to be several valid mainstream forms of legal practice; that practical legal training should not provide for any one practice model but should aim to equip new practitioners with frameworks, concepts, knowledge, skills and attributes, such as:

- the ability to analyse and solve problems in a creative manner to meet client needs;
- the capacity and motivation to continue to learn to fulfill obligations to maintain qualifications; and
- be aware of his/her limitations and to not exceed them.⁴

He saw a key objective of legal education (undergraduate/ graduate and practical legal training) to be 'to equip students with the frameworks, concepts, knowledge and skills which are integral to all forms of legal practice, together with appropriate professional values and ethical standards and the motivation to continue to learn.'⁵

The question then is: what are the frameworks, knowledge, skills and attributes lawyers require for practice in general and government legal practice in particular, and where do they acquire it? At one level, if it is basic practical knowledge and skills, should it be

³ This paper does not consider any further career destinations of law graduates and those who complete practical legal training and are admitted to practise. Various studies over the years have considered aspects of career destinations.

⁴ The committee was established in 1994 by resolution of the Council of the Australian National University, in accordance with the policies and procedures for Department Reviews in the Faculties. The committee was known as the Campbell Committee (chaired by Susan Campbell). The observations were made in a submission to the committee. Neither the submission nor the report is a public document. However, these observations are as valid today, if not more so, as they were in 1995.

⁵ The Committee report, 1995: 12.3 General principles underlying the Workshop course. That the ALTA Conference in Perth, 2007 placed lawyers in public policy and the law as the conference theme is perhaps evidence of the changes in thinking in regards to lawyers and their professional roles.

provided in practical legal training or should it also be part of introductory law courses (first year); part of general knowledge (civics education) at another level (high school and / or college) or perhaps it is better placed in a general first degree.⁶

III BUILDING BLOCKS: CONCEPTS OF CONSTRUCT AND INTERSECTION

To be able to influence public policy and the law, lawyers must have some idea of where they are, in terms of context when they provide legal advice on public policy.

This article proposes two concepts as relevant to this issue. Both concepts relate to place, processes, procedures and relationships and provide a framework from which to consider the knowledge, skills and attributes required by lawyers practising in government law and public policy.

The first concept proposed is that of the construct of the law: that is, the period of time before a policy idea becomes settled policy or law as enacted legislation.⁷

The second concept, that of intersection, is a term used to help the lawyer understand where he/she is positioned in the construct of the law and their related role in the development of public policy and its progress to enacted law or settled policy.

A The Construct of the Law

The first concept is the construct of the law. The phrase is defined by its ordinary meaning. The Macquarie Dictionary defines 'construct' 'to form by putting together parts; build; frame; devise'. It also defines it to be 'a complex image or idea resulting from a synthesis

⁶ This article does not examine introductory law course curricula to assess whether this information (or similar) is already taught there or whether this would be the best place for information to equip lawyers to play a positive role in public policy. It does, however, provide a few thoughts on its place in practical legal training.

⁷ 'Construct of the law' has been used over many years by Cleaver Elliott, Clerk-Assistant, Department of the Senate, Parliament of Australia in his seminars and presentations on legislative process and related topics, including his sessions for Government Law Practice in the Graduate Diploma in Legal Practice, ANU Legal Workshop, ANU. I acknowledge Cleaver's work as one of the underlying concepts of this paper.

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by the mind'⁸. In turning policy ideas in legislation, the construct of the law could be described as a synthesis by many minds.

Another interpretation is 'to build up (a theory or hypothesis) from pieces of evidence'.⁹ This definition has parallels in the construct of policy (a hypothesis) from pieces of evidence (from party policies, policy communities etc) as later evidenced in legislation.

The concept of the construct of the law enables the lawyer to consider the concept of the development of the law as that period of time before the law is passed or made, that is, before the Act is passed. Thus, the construct of the law allows a line to be drawn to separate two parts. Where public policy does not end up as legislation passed by parliament, the construct stands alone as there is no 'law as made' in the form of an Act passed by the Parliament. If appropriate, the policy may be moved elsewhere in the legislative framework, for example, as subordinate legislation under another Act already in place (if this is possible under the subject matter of the Act). Another option is that the policy may be moved outside the legislative framework, for example, be an industry-based voluntary code of conduct or other form of self regulation.¹⁰

The construct of the law includes:

- institutions (Parliament, department, government agencies etc);
- people (Ministers, politicians, public servants, representatives of various sectors and interests) who are or who represent stakeholders;¹¹
- other agencies and institutions (also stakeholders); and
- documented processes and procedures for managing the process of developing public policy to law.¹²

⁸ The Macquarie Dictionary. Federation edition, The Macquarie Library, 2001

⁹ The New Penguin English Dictionary, London, Penguin, 2000

¹⁰ Whether voluntary codes and self regulation - to which compliance is voluntary and may be non-enforceable - can (or should be) be considered to be 'law as made' is subject for further discussion elsewhere.

¹¹ This paper cannot do justice to a discussion of stakeholders (policy communities) or provide a detailed analysis of the myriad processes and procedures. However, the lawyer's awareness of stakeholders is important, arguably as much as knowledge of the law.

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The concept of construct also includes another dimension – that of relationship, possibly in a more emotional sense than is conveyed by studying and understanding the institutions and their place in the framework. From a relationship perspective, the construct of the law means lawyers must be aware of:

- who's involved – who are the stakeholders, their numbers; their level of influence and the interconnectedness of numbers and influence (which may be disparate);
- what are the stakeholders' interests and the source(s) of those interest(s);
- how stakeholder interest and influence might impact on the proposed policy and ultimate legislation (for the lawyer, this translates into 'what are the legal issues?');
- what stakeholders may do to get their views across, for example, use of the media, lobbying (to who and how); and
- the levels of influence (high or low) of stakeholders and who may push for change and who is more likely to follow.

The concept demonstrates that legal issues are integral to the construct of the law and that lawyers must:

- know of, and be aware of, legal issues – including an awareness of future legal issues;
- think about the possible legal issues that stakeholders and their interests are likely to bring, directly and indirectly, to the construction of the policy and of the law; and
- think about options, alternatives and solutions. Clients want lawyers to be the problem solvers, able to provide legal solutions to often complex issues.

An issue is whether students are formally exposed to this concept of the construct of the law, either integrated into their learning and understanding of legal systems and process; of legislation needing to be passed by parliament. This is an aspect to be further considered elsewhere.

¹² Examples of the 'management' books include the Legislation Handbook and the Cabinet Handbook. For these go to the Commonwealth Department of Prime Minister and Cabinet website: www.dpmc.gov.au.

B Intersection

Within the concept of the construct of the law is another concept. This concept is demonstrates the interrelationships between the key elements in policy development and the law. When constructing the law, lawyers (and the other participants) are at the intersection of law, policy, politics and administration.¹³

Policy

This term, as used here, includes the development stages of the policy, usually through the policy departments (those departments providing policy support to their Ministers).

It also includes policy (as announced).¹⁴

Law (creating) and (making)

These stages refer to the development of the policy through to legislation as passed by Parliament.

Law creating and law making refers to the period before the 'law is made'; that is, the Act is enacted.

Note also that law may be by Act of Parliament, legislative instruments or guidelines or principles made under legislation.

Politics

Lawyers work in a political environment when they provide legal advice in the

Administration

Implementation of the policy / law by the relevant government agencies and

¹³ This concept was developed by Elizabeth (Liz) Allen (deceased) and I to explain policy development and the construct of law to students undertaking the Government Law Practice course in the Graduate Diploma of Legal Practice (GDLP) program at the ANU Legal Workshop.

¹⁴ Policy as a concept, policy development itself and implementation are not discussed in this article.

¹⁵ For example, where legal services are provided to a government agency by a private law firm often contracted to provide such services.

construct of the law.

Where the lawyer is in-house counsel in a government agency or is otherwise providing legal advice to the agency.¹⁵ the lawyer should be aware of politics, but must not be political. (he /she must be apolitical).

other entities.

Administration of the policy and the law.

Here, lawyers interpret legislation, for example, to assist in its implementation through service delivery or in setting up any new regulatory scheme as set out in the Act(s).

Here, the lawyer is in the more traditionally acknowledged role of providing legal services through statutory interpretation, advisings etc on law as enacted.

IV GOVERNANCE FRAMEWORK AND EXPECTATIONS OF LAWYERS

A Framework

The governance framework within which the Commonwealth government obtains legal advice is relevant in public policy and law and is important to the roles and responsibilities of lawyers working in public policy.

Government agencies obtain legal services from:

- in-house lawyers. These lawyers are usually public servants, employed under the Australian Public Service conditions (or those conditions set out in the relevant Act(s) establishing the government entity) and are usually located in an in-house counsel / legal unit under a General Counsel of Manager, Legal Services or similar;

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- Australian Government Solicitor (AGS). Some work is 'tied', that is, it must be done by AGS (unless otherwise approved by the Office of Legal Services Coordination (OLSC) or the Attorney-General). This is set out in the Legal Services Directions.¹⁶ Apart from 'tied' work, AGS competes in the market place with the private law firms for legal work from government agencies;
- private law firms, who are usually on panels of legal service providers; and
- expert advisers, groups or committees.

Government agencies usually go to the market for legal services through a Request for Tender (RFT) procurement process to seek responses from legal firms to provide legal services in the areas of law and types of legal work identified in the RFT. The agency evaluates the RFT responses and selects a number of firms to be on a panel of legal service providers. The successful firms enter into a panel deed arrangement with the agency setting out the general terms and conditions and period (usually 2-3 years) of the engagement. The agency has responsibilities under financial legislation and the LSDs to manage and report on the contract.

1 Legal Services Directions

Lawyers providing advice to or acting for Commonwealth government agencies (including the Parliamentary departments) must be familiar with the Legal Services Directions (LSDs) as they set the parameters within which the Commonwealth must act when managing legal matters. The LSDs have the force of law.¹⁷ They are not guidelines which may be ignored.

The LSDs were first issued on 1 September 1999 by the Attorney-General under section 55ZF *Judiciary Act 1903 for 'legal services to the Commonwealth and its agencies, including for Commonwealth litigation and for legal advice to Cabinet.'*¹⁸ The purpose of

¹⁶ Legal Services Directions are located on the Office of Legal Services Coordination, Australian Attorney-General's Department website: <http://www.ag.gov.au/legalservicesHome.nsf>

¹⁷ Office of Legal Services Coordination. <http://www.ag.gov.au/www/legalservicesHome.nsf>

¹⁸ Op cit, page 1

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the LSDs is 'to ensure that the Attorney-General can discharge his duty to protect the public interest in relation to legal services to government.'¹⁹

The Appendixes to the LSD set out:

- directions on tied areas of work. Tied areas include constitutional, Cabinet, national security and public international law. These are areas which must be undertaken by AGS, unless approval is given to obtain advice elsewhere;²⁰
- the Commonwealth's obligation to act as a model litigant (Appendix B);
- handling of monetary claims (Appendix C);
- engagement of Counsel (Appendix D); and
- assistance available to officials for legal proceedings (Appendix E).

B Expectations

The roles, responsibilities, skills and competencies of lawyers practising in government law in Australia and in particular, providing legal advice in relation to public policy, has limited coverage outside of government lawyers' forums.²¹

What is required of government lawyers in terms of skills and attributes is a list that looks something like this. Lawyers providing legal advice to government, whether for policy development or legal advice generally must be:

- problem solvers;
- strategic thinkers;
- know the business;
- able to communicate;

¹⁹ Ian Govey, *The Legal Services Directions: Obligations and Compliance Strategies*. Paper given to the Integrating Conformance with Performance Conference, 7 September 2000, Canberra. page 2 of 8. <http://www.ag.gov.au/Archived/agd/olsc/LSD_Obligations_and_Co>.

²⁰ Op cit, paragraph 2 and Appendix A

²¹ Bradley Selway, *The duties of lawyers acting for government*. Public Law Review, 10(2) June 1999: 114 – 130; *Retiring Government Solicitor breaks silence*. Law Institute Journal, June 2000: 24 – 28. ACLA – the Australian Corporate Lawyers Association – provides annual in-house counsel forums. State chapters provide seminars to support in-house counsel (government and other sectors, for example in-house corporate)

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- able to listen; and
- client focused.

Knowledge of the law is a given.

Government agencies expect private sector lawyers providing legal services to them to know government business and the agency's business as well as context, processes and procedures; the pressures on the agency and to have a high level of knowledge and expertise in the law. Not only are these lawyers providing legal services to government in the 'traditional' areas of law such as commercial and property law, they are increasingly expected to be able to provide advice at the construct of the law and understand and be able to work at the intersection of policy, politics, law and administration.

Government agencies have also come to expect that lawyers acting for private clients in their legal dealings with government will know how government does business and the legal framework within which that business is conducted. Thus, the expectation is that lawyers acting 'for the other side' also know and understand government processes, policies and frameworks and their impact on its legal dealings.²²

C Lawyer's roles as legal adviser in public policy

The lawyer's role in the policy team is to provide legal advice, identify legal issues arising from the policy proposals (and the legal issues will change – policy evolves and that brings different and changed legal issues) and provide legal solutions to problems. The solutions must be legally defensible and support the policy agenda.

In advising on the construct of the law, the key areas the lawyer requires knowledge and understanding of:

²² For example, at federal level, contracts between agencies and suppliers are required to have clauses relating to security and privacy which may contractually bind the supplier to legislation and policy as if it was a government agency, for example, the IPPs under the *Privacy Act 1988*.

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- the framework of government / machinery of government (and governance) beyond basic knowledge of the institutions as set out in the Constitution. That is part of it, but the bare bones.
- working within and managing the accountability and responsibility framework that underpins public policy and public sector legal work. This is sometimes called ‘**non-judicial accountability**’ and refers to the financial and governance requirements set up under, for example, the *Financial Management and Accountability Act 1997* (FMA Act) and regulation and guidelines made under the FMA Act; the *Commonwealth Authorities and Companies Act 1997*, the administrative law package of legislation, the *Public Service Act 1999* and various other acts establishing statutory authorities and providing for secrecy and non-disclosure, amongst other things.
- policy and policy development, which may not be considered in detail in a law degree where the focus is, generally, on ‘law as made’ in terms of legislation and development of the law through cases. However, policy and policy development is an essential part of the construct of the law. Public policy underlies legislation as passed by parliament.
- the complex and varied rules, processes and procedures that apply to policy development, including those set out in the various Handbooks,²³ Standing Orders etc.
- the legislative process is more than the mechanics of passage of legislation. It includes processes and procedures (set out in handbooks such as the Legislation Handbook, parliamentary procedure materials etc) and agencies and people (stakeholders).

V KNOWLEDGE – EDUCATING STUDENTS FOR GOVERNMENT PRACTICE

²³ For example, the Legislation Handbook and Cabinet Handbook: at www.dpmc.gov.au or for parliamentary materials at www.aph.gov.au

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'Government practice' as a term, encompasses many areas of law. Traditionally, 'public law', 'constitutional law' and 'administrative law' are the predominant areas of law linked to government. However, the size and complexity of government includes these areas of law and more, for example, procurement, commercial, health, welfare, industrial relations, communications, intellectual property and information technology.

Anecdotally, from teaching the Government Law Practice course and related electives for over 10 years, it appears that many students have little background knowledge of government, policy, public administration or government legal practice, or of the context in which lawyers may act for government clients. Many appear to not have studied political science or public administration or similar courses as undergraduates or elsewhere. Many have not worked in government.

Because Government Law Practice is not a separate law degree course, from a practical legal training perspective, many students undertaking the Government Law Practice course will not have the same level of basic knowledge that they otherwise have for the LACC areas of practice, for example, property/real estate; commercial; family; wills and probate and civil practice generally taught in the law degree.

From a prospective employer's perspective (whether that employer is the public sector or the private sector), it is fair to say many new lawyers may be less skilled in some areas of government legal practice than they would be for some areas of law in private practice.

Consequently, the basic information provided is in more detail in the Government Law Practice course than might otherwise be necessary in those practice areas which are taught in law degrees. Therefore, more background information on frameworks, processes and procedures is provided in the content book – with introductory materials, references and extracts from relevant manuals²⁴ and examples of drafted documents²⁵. This provides

²⁴ A federal level, these manuals or rules include the Legislation Handbook, the Cabinet Handbook, the Federal Executive Council Handbook, Guidance on Caretaker Conventions and others: see

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resources to the student who is than able to use time to practice identified transferable skills in a different practice area.

VI COMPETENCIES, SKILLS AND ATTRIBUTES

The question is whether students in practical legal training programs have sufficient opportunity to practise generic, transferable skills in the area of public policy and government law. Should practical legal training provide this opportunity? If we look at growth in the diversity of legal practice, in the recognition of government legal practice generally, and, at Commonwealth level, the value of the legal spend by government agencies for legal services provided by the law firms and the bar to those agencies²⁶, the answer is yes. And that is without considering either the number of lawyers practising as government lawyers within government agencies or the value of their work or those lawyers acting for clients who are doing business with government.

The generic skills and attributes required of new lawyers in government practice (legal practice generally) can be categorised as follows – lawyers should be:

<http://www.dpmc.gov.au> and go to 'publications' for a full list of policies, procedural requirements and handbooks. As important, for parliamentary law and practice are the Standing Orders of both the House of Representatives and the Senate; Pettifer's House of Representatives Practice and Odgers Senate Practice. Go to <http://www.aph.gov.au> for publications of both houses and the Department of Parliamentary Services (includes the Parliamentary Library).

²⁵ The content book for the Government Law Practice course has chapters on framework (machinery of government, Administrative Arrangements Order (AAO), LSDs) policy development processes, legislation processes as well as chapters on purpose, requirements and drafting of documents, for example: minutes, memoranda, Cabinet submissions, drafting instructions, explanatory memorandum, submission to inquiries etc.

²⁶ According to a report in the Australia Financial Review (Matthew Drummond, 'Razor gang to slash legal costs', *Australian Financial Review*, 8 February 2008, 1 and 61), the value of Commonwealth agencies legal spend (that is fees paid to private sector law firms and barristers) in 2006-2007 was \$413 million, up from \$349 million the previous financial year. While this does not identify the actual number of lawyers practising as lawyers in government agencies (Commonwealth, State and Territory), nor does it attribute any financial value to those services, as part of the overall picture, the figures do provide an insight into the amount of government legal work which in turn, indicates that there are lawyers working in the area and not all will be located in Canberra alone (Commonwealth work).

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- communicators – able to elicit information, to listen, to interview clients, to provide clear and concise oral and written information, both suitable for the purpose and legally accurate.
- problem solvers – strategic thinkers able to provide guidance and direction to agencies in managing legal risk, not merely avoid risk. Lawyers are expected to be able to say something like “*You cannot legally do A (because of ... / without major legislative change; however, if another approach is taken – for example, via route x, y, and z – you can do B*”. Often B will be sufficient to enable work to progress on policy development or policy implementation pending amending legislation being prepared, introduced and passed or other administrative action being taken.
- analysts with skills to provide clear, timely and accurate advice and guidance on how to apply in practice the sections of an Act, a regulation or guidelines, on portfolio policy proposals to a discrete area of law.
- drafters – able to adapt drafting styles to satisfy purpose, structure and formats for a variety of documents and be able to provide clear and concise drafts using active voice. Generic drafting skills are part-way there; but do not give the breadth of exposure to the range of different types of documents, for example commercial contracts, advices, policy papers, media materials, speeches, drafting instructions, submissions, explanatory memoranda etc.

A How Best to Equip for Diversity in Practice?

If preparation for legal practice includes preparation for diversity of legal practice, how can (or should) practical legal training providers and other stakeholders determine:

- the levels of competency that students should demonstrate; and
- the skills and values in which that competency should be demonstrated

as preparation for legal practice?

This is difficult, given the diverse areas of law within government practice itself. Where is the best opportunity to provide students with experiences in legal practice skills and values

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that are not addressed in other courses, build on knowledge, skills and attributes achieved through other practical legal training courses? One model is a separate course. This was the option selected by the ANU Legal Workshop in 1995 with its separate Government Law Practice course, provided as an elective course in the Graduate Diploma in Legal Practice program,

In developing the Government Law Practice course, these were some of the questions asked in relation to skills: communications (interviewing, writing, drafting, and negotiation); problem solving; research and management to determine what was necessary to practice in government legal practice, the construct of the law and the elements of the intersection concept. Some questions and proposals included:

- what communication skills were²⁷ being developed in other courses?

It seemed that interviewing and other communication skills were taught with an 'immediate' client perspective. What was not being considered was communicating with/to/for the next level(s) – the ultimate client(s). From a government law perspective, the lawyer should be aware to ask the question – who will ultimately hear this speech (especially a second reading speech), read this media release, this advice, and this s.37 statement and who is my client?

- what experiences with drafting and writing were provided for students and with what type of documents?

Many of the documents pertinent to government practice were not directly covered in other courses, for example, how to draft advices as memoranda; prepare drafting instructions, explanatory memoranda, media materials and submissions.

- what were student experiences in thinking, analysis and research in other courses?

²⁷ Although 'were' is used, the questions are actually considered each year, if not for each course.

In legal policy work at the construct of the law, strategic thinking is crucial – lawyers must be able to think beyond the law – for example, what are the social, economic implications of a proposal and how will they impact on the legal issues and how can those legal issues be solved / managed?

- what are student experiences as members of teams?

Legal advice for government is often provided by lawyers as members of multi-disciplinary teams. The role of the lawyer is as legal adviser, but the boundaries can be blurred at times and the lawyer has to manage being a legal adviser and knowing whether he/she is about to ‘step out of that role’ – which may compromise his/her role as legal adviser.

The objective was to provide students with learning environments to practice skills and in doing so acquire knowledge for legal practice, whether they practised within government or provided legal services to private clients in their dealing with government.

B The construct of the Government Law Practice course

The course was developed to meet these objectives of providing students with learning experiences to prepare them for government practice. The readings, exercises and assessment tasks brings together aspects of the content of the course and requires knowledge and practical application of the frameworks, rules, processes and procedures to provide opportunities for students to practise skills in a different legal practice environment. Examples of implementation in communications, drafting and analysis demonstrate the different practical application of legal practice skills.

1 Communications

Student communication skills are practiced and assessed through a speech plan and participating related online discussion. Students prepare a speech plan and in doing so, consider the audience (immediate, ultimate, demographics etc); the time and place; the topic (within a set scenario (see below)); the structure for their argument (for example, domino, map, target, scales); provide possible quotes and title for the speech. Plans are peer reviewed and students reflect on those reviews.

Online discussion is managed through instructor-selected topics and with instructor participation. This provides students with opportunities to gain and exchange ideas, knowledge and experiences as well as practising online communication skills for professional purposes.

2 Drafting

Drafting an advice, or brief or submission, is principally a drafting exercise, but is also a communications exercise in that students demonstrate written skills as well as analysis and research capabilities.

The level of competency to be achieved by students is that of a good final draft: a draft a supervising practitioner may edit, but which is properly laid out, spellchecked, covers the issues at the appropriate level and is logically organised.²⁸ The content book provides 'how to draft' information with checklists and examples.

3 Analysis and research

Although the scenario is set by the instructor, students usually have a choice as to the type of major document they draft for one assessment exercise. Options usually include a legal advice or brief to a minister or a submission to a parliamentary inquiry. Whichever option

²⁸ Where the assessment exercise requires students to prepare a Cabinet Submission, it must comply with the requirements of the Cabinet Handbook, which requires adherence to layout, headings, content, length etc.

students choose, they still have to think through the scenario and its implications for their 'client' from a legal perspective. Good students also analyse the scenario from other angles for issues that may impact on their client.

Depending on the scenario and the amount of scenario material provided, students research their chosen client and interests in the scenario. Their submission must be relevant for that client and cover the legal issues raised in the assessment materials.

4 Teams

Students work in small teams to prepare the submission exercise. Teams may be randomly selected using WebCT or students may find their own team. If this option is provided, a 'find a team member' topic is provided on the discussion board. This can become a 'desperate and teamless' column for those whose time management is of the last minute style.

In many cases, not only do students experience self management (finding a team and managing team interactions and work) but also managing other's working habits and expectations, usually in an on-line environment. Team members will probably be anywhere in the world – it is unusual for a team (randomly selected or formed by students) to be in the one locality.

Teamwork attempts to replicate aspects of teamwork in practice. Because other assessment exercises are individual student work, the possibility of any one student not preparing assessable work is minimized.

VII CONCLUSION

Despite providing as much information as possible with regard to course outlines and objectives; practice requirements; purpose of content and assessment; criteria on which

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assessment is marked, government law practice is often a surprise to students – in concepts, subject matter and in skills development.

No matter how simplified the materials are, there is still a huge quantity of knowledge and concepts to be aware of. The processes and procedures are complex. Charts, tables, diagrams and a game (using the snakes n' ladders game format as a model) are provided to take students through the mass of information and help them understand the construct and where they are (the intersection).

Government law practice is a mainstream form of legal practice, diverse both in areas of law and in types of legal work. Although some of the subject areas in government legal work overlap or are covered by the courses required to be completed by students undertaking practical legal training, there are 'core areas' of government law practice that are different from those areas of practice for which the APLEC / LACC competencies are in place.

Skills (drafting, writing, interviewing, problem solving etc) taught in practical legal training should be transferable across all areas of practice. However, government law is an important area of legal practice for which students should have the option to achieve levels of competence for practice as entry level practitioners, irrespective of the form of legal practice they enter, in the same way as they do for the areas of practice offered under the APLEC/LACC model of practical legal training as electives. The ANU Legal Workshop Government Law Course does provide students with this opportunity.

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ATTACHMENT A: COMPETENCIES

As Government Law Practice is not a Priestly 12 practice area, it does not have APLEC/LACC competency standards. As an exercise in applying APLEC/LACC skills and values to Government Law, I developed the following draft, using the Administrative Law Practice competencies as a model.

| Element | Performance Criteria |
|---|---|
| 1. Skills | <p>Demonstrate competencies in:</p> <ul style="list-style-type: none"> • Communications <ul style="list-style-type: none"> ○ Written and oral ○ Consultation ○ Client management • Problem solving and analysis • Drafting and Writing • Knowledge and ability to apply processes and procedures • Ethical behaviour and professional responsibility |
| 2. Obtain, manage and disseminate information | <p>As instructed by the supervising lawyer / manager:</p> <ul style="list-style-type: none"> • Research, prepare, draft all relevant documents • Manage all communications, including internal and external stakeholder consultations |
| 3. Provide representation | <p>The criteria as noted for Administrative Law Practice also apply (in general terms and slightly amended) to Government Law Practice.</p> <ul style="list-style-type: none"> • identify alternative means of managing the matter and discuss them with the client(s). • complete all preparation as required by law, |

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| | <p>processes and procedures, good practice and the circumstances of the matter.</p> <ul style="list-style-type: none">• represent the client(s) effectively at all forums, including but not limited to:<ul style="list-style-type: none">○ meetings○ inter-agency / inter-government○ consultation○ committees. |
|--|---|