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‘ EVATT’ S BASTARD CHILD’ : THE COMMONWEALTH LEGAL SERVICE BUREAUX 1942-51

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I INTRODUCTION

The Commonwealth Legal Service Bureaux (the ‘ LSB’) was the first organised intervention of federal governments into citizens’ legal aid. For over 30 years its staff and associated private lawyers provided legal aid to serving and former members of the armed services and their families. During WWII and in the immediate post-war years the LSB was a significant social presence. Thereafter its role and functions steadily contracted due to lack of support from the Menzies Government, and the restoration of social stability and prosperity. When the LSB was finally absorbed into the Australian Legal Aid Office in 1973 it was a mere shadow of its original self. Nevertheless it remains the most long-lasting Commonwealth institutional response towards citizens’ legal aid. The life of the ALAO was brief in comparison, and the legal aid scene since the 1970s is littered with various institutional transformations of Commonwealth participation in the inter-governmental agreements with the States and Territories.

However we know very little about the LSB, particularly its origins, rationale, and operations in wartime and early post-war Australia. ^[1] There are several reasons for this situation. Ordinary Australian lawyers in the 20th century were not distinguished by a propensity to record their professional lives for posterity, and in the case of the LSB staff lawyers this experience was compounded by high workloads and the restrictions of official employment. Moreover the LSB was never a spearhead of a co-ordinated Commonwealth policy response to the unmet national needs for legal aid. When such a response occurred in 1973-75 its architects understandably concentrated on organizing the future, and not the past, of Commonwealth participation in legal aid. Consequently the LSB and its significance have received only passing acknowledgment in the history of Australian legal aid. Researchers have tended to envisage the LSB as a mid-century way station in progressive

Commonwealth participation in citizens' legal aid, beginning with the poor prisoners' and defence legislation in the 1900s, and the *in forma pauperis* procedures in the High Court Rules in the 1910s. [2] Other researchers have failed to appreciate the volume of work undertaken by the LSB, or adequately acknowledged its theoretical significance. [3] Interestingly some other researchers have simply ignored its presence altogether.

One motivation in undertaking this research therefore was to discover whether evidence existed which would enable us to fill in the gaps in what we know about the LSB. In publishing the results of our research we are not purporting to present a comprehensive history. Instead we concentrate on the story of the LSB from its wartime origins until the decisive changes to its rationale and functions in 1951. Even within this period we do not claim that our research is necessarily the final word. We have researched the obviously relevant files held by the Australian Archives in relation to armed services legal aid from 1939-40, and the LSB from 1942-51. We also discovered to our horror that much of the relevant archival material has already been destroyed. The New South Wales LSB files, for example, were pulped in 1994 only months before we attempted to locate them, and the LSB files in South Australia were subsequently also pulped in 1998. However we are hopeful there may be other material yet to throw light on the early life of the LSB in State and Territory archives as well as libraries. [4]

In 1992 and 1994 we were also fortunate in having the opportunity at different times of interviewing Joe Harkins who joined the Commonwealth Public Service in 1936, and as a young solicitor first worked in the Sydney office of the LSB in 1945, where he remained until the early 1960s. Joe Harkins is therefore a key informant in the history of the LSB, and we each spent many hours recording his recollections of its origins, key personalities, external politics, and early development. [5] We have also researched the Commonwealth parliamentary record, which in one or two instances has added to the weight of Harkins' evidence, particularly his claim that Evatt proposed to make social security recipients eligible for LSB services.

However, we are not historians by trade or inclination. We have each had a long-term interest in investigating the origins and significance of the post-war expansion in citizens' legal aid in many welfare capitalist countries. In 1985 Richard Abel first alerted researchers to the possibility that social experiences triggered by WWII may have been a formative factor in this expansion. [6] Prima facie what we already knew about the wartime origins of the LSB, and the experiments of the Ministry of Post-War Reconstruction in developing Commonwealth social welfare initiatives intended to 'turn victory in the war to the advantage of working-class Australians', suggested that Abel's thesis might apply to the Australian experience. [7] We have each also been sceptical of the orthodoxy explaining the formation of the ALAO solely or substantially by reference to the election of a Labor government in 1972 that happened to contain a visionary, reformist, and activist Attorney General, Lionel Murphy. Thus another motivation in our research was to discover what insights, if any, might exist in the institutional history of the early LSB for better understanding developments in Commonwealth legal aid and policy in the post-war welfare state.

We begin by presenting the results of our research, describing first the new, wartime developments in legal aid that preceded the LSB, including the law society soldiers' legal schemes and the military response. We then recount the history of the wartime LSB, beginning with its origins in 1942 as a response to new and unmet demands for legal advice and minor assistance, and going on to describe its functions and the work of its officers until the end of WWII in 1945. This part of the article concludes by outlining the major developments affecting the LSB in the immediate post-war period, including Evatt's superintendence, statutory recognition, the expansion of its clientele to social security beneficiaries in 1949, and the decision of the Menzies government in 1951 to confine the role of the LSB to the needs of serving and former armed services personnel and their families.

Next we evaluate the explanatory and policy significance of the research in the context of the two investigative motivations outlined above. First, we ask what, if anything, has this research taught us that we did not previously know about the origins, rationale, and work of the LSB? Secondly, we evaluate our research from the perspective of what, if anything, it might tell us about the significance of the LSB in the development of Commonwealth legal aid policy, in the wartime and the post-war welfare state? We conclude by briefly rehearsing what we see as the major contributions of

our research, including demonstrating by reference to other and related research how and why the experience of the early LSB resonated in Commonwealth legal aid until the mid-1970s. In the conclusion we also explain by reference to other research the reasons for a degree of ambiguity and shades of grey in our analysis of the significance of the early LSB in the development of Commonwealth legal aid policy, and briefly explain why those analyses remain relevant to the politics and policies of legal aid in the contemporary welfare state.

II THE WARTIME BACKGROUND

The declaration of war in September 1939 provided the immediate background to the formation of the LSB. Within a few days the armed forces of the Commonwealth were mobilised. Over the next six months large numbers of civilians enlisted for military service. These new military personnel frequently needed legal advice to assist in making the transition from civilian life. In the remaining months of 1939 informal free legal advice schemes operated on a voluntary basis by the State law societies and private practitioners serviced their needs. These schemes appear to have been comparable to the voluntary legal aid services offered by some State law societies in 1914. [\[8\]](#)

These initial arrangements for wartime legal aid were quickly formalised. In February 1940 the Law Institute of Victoria established a legal aid service for soldiers. Free legal advice and other lawyers' services were provided to members of the Australian Imperial Forces who had enlisted for overseas service and to their dependants. Eligibility was subsequently extended to all members of the Commonwealth armed forces, their dependants, nurses training for overseas service, and intending recruits. In July 1940, the AIF Director of Personnel Services at Southern Command in Melbourne wrote to his counterparts in Northern Command, Eastern Command, Western Command and the 7th Military District suggesting that the Victorian scheme might be a 'way in which the services of the members of the legal profession might be utilised'. [\[9\]](#) His suggestion prompted those military officials to encourage the law societies in other States to establish voluntary legal aid schemes for soldiers.

Voluntary law society soldiers' legal aid schemes were subsequently established in New South Wales, Queensland, South Australia, Tasmania and Western Australia. [\[10\]](#) Services were provided by practising members of the law societies in their own offices, or in temporary offices in military camps and recruiting offices. However, solicitors visiting military camps to provide legal aid sometimes encountered unforeseen problems. In September 1940 for example under an agreement with the military the Queensland Law Society provided solicitors to make weekly visits to camps at Enoggera, Grovely and Redbank. [\[11\]](#) This arrangement however proved to be short-lived. The participating solicitors experienced transport difficulties, and the demand for their services was less than predicted. [\[12\]](#) In late November the frequency of their visits was reduced to once a fortnight, and by mid-1941, the Law Society had advised the military authorities in Queensland that its members would only provide legal aid to soldiers at its Brisbane office, and then only on 24 hours notice. [\[13\]](#)

The services provided in the voluntary law society schemes were usually restricted to free legal advice and the preparation of wills and powers of attorney. [\[14\]](#) When necessary, arrangements would sometimes be made for soldiers to obtain assistance from solicitors practising in other States. In New South Wales the law society schemes were complemented by the work of the Public Trustee whose officers also visited military camps to provide legal advice and minor assistance. [\[15\]](#) This practice is very likely to have been repeated by the Public Trustees in other States.

III THE ESTABLISHMENT OF THE LSB

The LSB was established in 1942 at the direction of Dr Evatt, who was then Commonwealth Attorney-General. [\[16\]](#) Our research neither revealed any documentary record of Evatt's decision to establish the LSB, nor the existence of any related preliminary or contemporaneous policy documents. [\[17\]](#) Thus we do not know for certain what motivated Evatt to create the LSB. Our inquiries indicate that several factors were influential. Harkins suggests that in the background were Evatt's commitment to social justice and the civil liberties of citizens. [\[18\]](#) Evatt may also have had in mind the

desirability of including provision for citizens' legal aid in future Commonwealth agendas for post-war reconstruction, and this seems quite likely given developments in the peacetime LSB over 1945-49. [19] However our research indicates that the emergence of two otherwise unmet needs for legal advice and minor assistance were likely to have been the immediate factors prompting Evatt's decision.

The first of these new unmet needs was a product of the regulation of the wartime economy. In March 1941 Cabinet had approved the establishment of a national scheme to advise members of the armed forces and their dependants on the operation of the National Security (War Service Moratorium) Regulations, the National Security (Reinstatement in Civil Employment) Regulations, and comparable provisions. [20] Cabinet appears to have intended that private lawyers should voluntarily participate in this advice scheme. [21] Its minutes contemplate the appointment of State panels of solicitors willing to give free legal advice, and such a scheme was advertised in the press in mid-1941. [22] However Cabinet was unsuccessful in obtaining the support of State law societies. It appears likely that the latter were unwilling to participate because they believed solicitors were already making a sufficient contribution to the war effort via the soldiers' legal aid schemes. [23] Their members may also have been unwilling to participate because by 1941 enlistment in the armed forces had depleted the pool of solicitors available to participate in a new legal aid scheme, voluntary or otherwise.

The other relevant unmet need was the inadequacy of alternative arrangements for legal advice and assistance. The Depression of 1931-33 and the long recovery in the 1930s had stalled developments in legal aid in all States but South Australia. [24] Thus, in 1941 legal aid was only available on a minimal basis, and was generally geared to legal representation for poorer accused and litigants in criminal and family law proceedings. Harkins believes that Evatt was keenly aware of the limitations of the various legal aid schemes in the States. [25] After all Evatt had after all been a lawyer in the 1920s, a High Court judge, and was a native of New South Wales where by the late 1930s the poor persons' schemes were in a parlous condition. [26] Moreover presumably Evatt was aware of developments in local politics, and would have known that by 1941 the McKell Labor Government was already amidst a series reforms designed to ' build a system that will be a tremendous improvement on the existing utterly inadequate arrangements' for legal aid. [27]

Furthermore by 1942 the shortcomings of the law society soldiers' legal aid schemes were also obvious. Indeed, Harkins claims that in practice those schemes achieved very little, and in particular that Evatt knew the soldiers' schemes were not meeting the needs for legal advice of the thousands of women who were wives or partners of men on active service overseas, or stationed away from home within Australia. [28] The problem faced by recently estranged women and their families were a significant new social problem, especially during the early years of the war. Thus, in creating the LSB Evatt, according to Dalziel, was keen to ensure that members of the defence forces and their families were not left to fend for themselves when they needed legal help:

The dependents of men and women who were flooding into the fighting forces were often left in confusion with personal problems which had been created and accentuated through key members of the family being overseas or in some remote part of Australia. The problems often entailed the need to obtain quick legal advice. Matters like tenancy agreements, rents, hire-purchase payments and business commitments were often left to a wife, a near relative, or aged parents. [29]

Evatt's own constituency responsibilities may have first exposed him to the existence of the legal problems faced by service wives and families. Harkins suggests that MPs from other areas of New South Wales notably Newcastle and Wollongong would also ' have been pressing Evatt about the problems of constituents' . [30] However, our research suggests Evatt was told specifically of the scale and level of demand for legal advice in respect of such problems, probably early in 1942. His Sydney office was situated in the Commonwealth Bank Building in Martin Place on the floor above the Commonwealth Crown Solicitor's Office, along with the offices of other NSW Commonwealth MPs. The parliamentarian's offices were important points of contact for constituents seeking help for legal and other personal problems. The proximity of the Crown Solicitor's Office meant that resident MPs frequently referred constituents downstairs for assistance from its staff lawyers. By 1942 therefore the Crown Solicitor's Office had developed a significant unofficial function as sources of legal

advice for the increasing number of women encountering problems generated by wartime social conditions. [31]

Evatt's principal informants were two of the lawyers working in the Crown Solicitor's Office. [32] One was Mr H E Savage, the officer-in-charge, and veteran of World War I and 'a delightful personality, and a man who had warm human sympathies and understanding'. [33] The other lawyer was Mr Frank Wilkins, who, as well as working in the Crown Solicitor's Office, was also a personal friend of Evatt, and, according to Harkins, had formerly practised as a solicitor at Wellington. [34] Evatt appears to have had a close working relationship with both Savage and Wilkins, and on the basis of their first hand experience they are said to have convinced him that he should intervene to establish a legal aid service to assist the wives of servicemen. [35] The role of Wilkins is confirmed by Evatt's private secretary, Allan Dalziel, who himself played a role in convincing Evatt of the desirability of establishing the LSB. [36]

IV THE WARTIME ROLE OF THE LSB

Initially the LSB operated from the offices of the Commonwealth Crown Solicitor, and by 1943 its legal aid services were available in all State capitals. By 1945 it had also opened offices at Newcastle and Wollongong, and Rockhampton and Townsville. [37] The primary function of the wartime LSB was to provide legal advice and minor assistance. Initially its clients were mainly the women whose husbands or partners were serving in the armed forces, but by 1944 serving or discharged members of the armed forces and their dependants were also eligible to access its services. [38]

Advice and minor assistance was provided in respect of any legal problem, although our research suggests that rental, tenancy, and divorce problems ranked high in the caseload. [39] The wartime LSB also provided legal advice to servicemen and their dependants in relation to pension rights other benefits under the *Australian Soldiers' Repatriation Acts 1920-43* (Cth). [40] It also provided minor legal assistance to its clients in matters such as drafting wills, affidavits, contracts, drawing up other documents and preparing divorce pleadings to hand onto a barrister. [41] LSB staff also drafted notices to quit and other notices under the National Security (Landlord and Tenant) Regulations, and the National Security (War Service Moratorium) Regulations, and assisted servicemen making claims to the Repatriation Commission and pursuing appeals to the Repatriation Appeals Tribunal. [42]

Ordinarily the LSB did not provide its clients with legal representation in the courts. Harkins reported that legal representation was not the area of greatest need for legal aid, and that in any event the LSB did not have sufficient staff to represent clients in legal proceedings. [43] Indeed, wartime and early post-war client demand for legal advice and minor assistance appears to have consistently exceeded the capacity of LSB staff to provide sufficient services. Harkins told of arriving in the mornings at the Sydney office to find the lift already full of people seeking assistance, and described how 'the hours were not important, the work just had to be done ... clients would wait patiently their turn – there were no appointments made'. [44]

Nevertheless legal representation was available in a few types of matters. Mr Bruce Miles of the Sydney office for instance regularly conducted minor criminal cases in the police courts for indigent servicemen with a meritorious defence. [45] Generally however criminal cases in Sydney were referred to the Public Solicitor (and presumably comparable referrals were made in the other States). Clients with criminal and divorce cases requiring legal representation were also referred to a small panel of solicitors who agreed to act at 50% of their usual fees, or in hardship cases could be persuaded to represent an accused or litigant gratuitously. In such cases Harkins recalls that that 'Frank Wilkins had a wonderful phrase', telephoning the chosen panel solicitor, and saying 'John, I've got another "love of God" case for you'. If the solicitor agreed to act the act for the needy LSB client, Wilkins would then 'endeavour to balance the ledger by sending the solicitor a more remunerative case on the next referral'. [46] Some barristers in Sydney also represented LSB clients at less than usual fees under a scheme known as the '3 & 1' whereby the LSB would pay three guineas for the first appearance, and one guinea for subsequent appearances. [47] Solicitors and barristers participating in LSB panels were usually either former LSB lawyers or else ex-servicemen. [48] It appears that the LSB offices may also have contracted informal arrangements

with other private lawyers, and perhaps even the law societies, to do divorce cases ' on the cheap' for servicemen. Finally, Harkins recalls the LSB mounting a number of significant test cases related to the needs of defence force personnel and their families, including rent and tenancy cases.

At the very end of the war the LSB had a minor involvement with the Commonwealth Ministry of Post-War Reconstruction, established in late 1942 to plan for the future of the economy and society of the wage earner's welfare state. [49] In September 1945, the Attorney-General's Department agreed with a proposal from the Ministry that the LSB should prepare a legal aid pamphlet, as part of a series of pamphlets to accompany a handbook entitled a ' Return to Civil Life' . [50] The decision to prepare such a pamphlet is probably attributable to Wilkins, who is said to have strongly advocated the view that many people had simple legal problems that could be expeditiously resolved by access to legal advice published in a booklet form. [51] From his perspective a legal aid pamphlet would both advance this ambition, whilst also informing people about the work of the LSB. [52]

The resulting pamphlet was significant development in the work of the wartime LSB. First, ' Establishment Pamphlet No. 7 Legal Aid' was a great success. Four hundred thousand copies, a surprisingly large number, were published in the first printing, most being distributed to members of the armed forces on demobilisation, and the others to LSB offices and voluntary organisations. [53] The pamphlet was so widely distributed that it had to be reprinted and revised, with the assistance of the LSB, to overcome difficulties that had arisen with respect to its advice on tenancy law, notices to quit and taxation law. Concerns had been expressed (probably by senior lawyers in the Commonwealth Attorney-General's Department) that tenants and other ordinary citizens were using the pamphlet as a legal manual, instead of reading it only as a procedural guide. [54] Secondly, the success and role of the pamphlet renewed suspicions amongst senior Commonwealth lawyers that LSB staff lawyers were not engaged in work appropriate to the functions of the Attorney-General's Department and its officers. Thirdly, the publication process demonstrates that the legal aid pamphlet, and the work of the LSB generally, was one of Evatt's pet projects, as his spidery handwriting appears all over the drafts surviving in the archives. Fourthly the existence, success, and ambitions of ' Establishment Pamphlet No. 7 Legal Aid' demonstrates that previous research has misunderstood the fact that community legal education has long been a priority of Australian legal aid, rather than an invention of legal aid activists in the 1970s.

Table 1: Number of People Assisted by LSB, by Office, 1947

LSB Office	Number of People Assisted
Sydney	74166
Melbourne	32129
Adelaide	26302
Brisbane	19077
Perth	16987
Darwin	3026
Hobart	2948
Townsville	1026
TOTAL	175661

Source: Letter from K H Bailey, 30/1/1948, (Australian Archives (ACT), A472/1; W19114 Part 2

The LSB emerged from WWII with a broad base of community support. One obvious source of such support was the enormous numbers of people it had helped with their legal problems. Evatt reported to the Parliament in 1949, for example, that between November 1942 and September 1949 the LSB had provided legal aid to over one million people. [55] In 1947, for instance, a total of 175,661 defence force personnel and their families were assisted by personal interview, letter or telephone at LSB offices: see Table 1 above. Official support from sources such as senior defence force personnel,

politicians, and Legacy and other social services was also instrumental in institutionalising the work and functions of the LSB.

V THE IMMEDIATE POST-WAR PERIOD

In the closing days of the war Evatt directed the Attorney General's Department to change the arrangements governing the operations of the LSB, in response to 'the pressing requirements of servicemen and their dependants'. [56] The practical effect of these new administrative arrangements was to formalise Evatt's supervisory powers the LSB and its work. Whilst the LSB was retained under the administrative umbrella of the Department operational responsibility was vested in Frank Wilkins, as Officer-in-Charge. [57] Wilkins was to continue to take policy direction personally from Evatt as Attorney General, and to remain in Sydney, rather than move to Canberra to join other senior departmental officers. [58]

In changing the administrative arrangements our research indicates that Evatt was primarily concerned to remedy logistical problems. In particular, the LSB was short of office space to accommodate its staff the numbers of which had increased appreciably since 1942. [59] In 1946 for instance it employed 44 lawyers and 63 support staff. Lack of adequate accommodation was especially a problem at the Sydney office, where the LSB was less and less unwelcome as a de facto tenant of the Commonwealth Crown Solicitor. [60]

Moreover relations between Evatt and the LSB and the Central Office of the Attorney General's Department remained strained. Evatt is reputed to have disliked the Department's senior staff, and to have resented what he saw as their intransigence and resistance to his demands. [61] In particular, his oversight of LSB affairs had often been frustrated by lack of policy expedition in Canberra. In turn the senior Departmental staff were known to disapprove of the LSB, and probably Evatt himself. [62] On its part the LSB suspected that the Central Office had consistently delayed its requests for additional staff and equipment. Evatt hoped that his direction would solve some of these problems, if for no other reason that the new administrative arrangements demanded a degree of official recognition for the LSB within the Attorney General's Department, and gave Wilkins a stronger organisational platform in his dealings with Canberra.

Developments in the legal mainstream also influenced the LSB in the immediate post-war period. In June 1945 the Commonwealth Parliament had enacted the *Re-Establishment and Employment Act*. This legislation was an important part of the machinery of civil reconstruction, which was the preoccupation of the Chifley Government as the war dragged to an end. [63] Section 105 of the Act provided inter alia that the LSB was to continue providing legal aid to wartime and demobilised armed services personnel and their dependants, and authorised the Attorney General to establish new offices for this purpose. In 1947 the *Interim Forces Benefit Act*, s 8, expanded the functions of the LSB to cover serving members of the armed forces.

Neither this legislation nor the changed administrative arrangements appear to have been inspired by any specific plans for the peacetime role of the LSB. Harkins was unaware of the existence of any such plans at the time, and our research did not adduce any contemporary evidence of a master plan for the LSB. [64] In fact the available evidence suggests that its administration of the LSB continued to operate on an ad hoc basis. Decisions about its future were reactive, and most likely taken by Evatt and Wilkins, who 'cooked up the ideas together about what to do'. [65] Dalziel also attests to Evatt's continuing interest in the LSB. During the 1945 national elections, for example, he describes how Evatt identified the LSB as one of the government's, and his own, major achievements. [66] As Dalziel explains, Evatt:

made frequent mention of the Legal Service Bureau in broadcasts and in Parliament, and his support of the Bureau always gained for him high marks among ex-servicemen's organisations and from his parliamentary colleagues. [67]

Thus in the immediate post-war years the major function of the LSB was providing legal advice and minor assistance to demobilised armed services personnel and their dependants. Although as ordinary

civilian life was restored and the prosperity of the 1950s set in, the legal problems of this client group rapidly became indistinguishable from those encountered by other citizens. [68] At the end of the 1940s however a development occurred which first caused us to re-evaluate the role of the early LSB in the story of the Australian post-war experience of legal aid. In September or October 1949 Evatt appears to have issued a ministerial directive that its functions should expand to include the provision of legal advice to Commonwealth aged and invalid pensioners. [69] This directive seems to have originated in an agreement reached between Evatt and the Minister for Social Services. [70]

In our research we did not locate a copy of Evatt's directive. When we both interviewed Harkins he was adamant that he had seen the directive, which he believed was a page or more in length. However when he read a draft of this article Harkins realised that he was mistaken. Whilst he clearly remembers that Evatt issued such a directive the document Harkins actually recalls was a copy of a later reference to the directive in *Hansard*. The reference to which Harkins refers appears in *Hansard* in 1952 when Senator Spicer reported to the Parliament that in December 1949 when he assumed office as Attorney General in the first Menzies Government he learnt that the LSB 'had a sort of vague, general charter to give advice to people who received social services benefits'. [71] His colleague the Minister for National Development had also referred to the existence of such a charter in 1950. [72] However, the advice of the Attorney-General's Department was that it doubted if whether Evatt's directive to extend the functions of the LSB to social security recipients was 'ever actually put into operation'. [73] In any event the Menzies Government had no intention of expanding any of the functions of the LSB. From the outset its Attorney-General was concerned that the functions of the LSB 'had been extended beyond statutory limits and ... it was rendering service to certain people without legal authority': [74]

Five years having elapsed since the end of hostilities, the main emphasis of the work of the bureaux had shifted. It was obviously never intended that the bureaux should provide for all servicemen and their dependants, at the taxpayer's expense, the services of a solicitor over the whole range of legal problems of civil life, both in their business and their private affairs. But I found that, unless the bureaux were simply to drift into something very like this position, a clear line would have to be drawn. [75]

Spicer's denouement was probably intended mainly as partisan criticism of Evatt, who was always an unpopular figure with conservatives, and was then Leader of the Opposition. It is unlikely that the Menzies Government came to office with any mandate to oppose the continued existence of the LSB. If it did, at the time Harkins was unaware of such a mandate, and believes that it would have politically unacceptable for it to have adopted such a policy, even if some members of the Liberal Party may have preferred to do so. In the late 1940s the LSB was still strongly supported by senior defence personnel, the RSL, and defence related groups, including Legacy for which it was an important first point of referral for widows and children of deceased servicemen needing legal advice and assistance. [76] Moreover until the early 1950s the national mood was strongly supportive of all measures to advance social reconstruction and rehabilitation. [77]

Neither did our research reveal that the law societies or bar associations were explicitly opposed to the peacetime role of the LSB. Indeed the only evidence that we uncovered was to the contrary. In its Annual Report in 1946 the Law Society of South Australia lauded the work of the LSB in Adelaide, drawing favourable parallels with its own its own legal aid scheme. [78] We do know from other research that other State law societies were reconsidering their role in legal aid in the mid to late 1940s. Evidence of such developments exists in Queensland and Victoria, and change was probably already fermenting in Tasmania. [79] However, the available secondary evidence gives no indication that this renewed interest in legal aid was prompted by the presence of the LSB. Instead it reflected awareness by the law societies and some State governments of developments in legal aid in England, especially the Rushcliffe Report in 1945 and the lead-up to the enactment of the *Legal Aid and Legal Advice Act* in 1949. [80] The revival of interest in the States was also a product of the end of the war, which, like the Depression before it, had stalled developments in legal aid, including the transition from legal aid for the poor to schemes more appropriate to the needs of all citizens. However, neither the Commonwealth nor its LSB appear to have been active or significant participants in this revival.

This is not to say that the role of the LSB in the immediate post-war period went unchallenged. In the Commonwealth Parliament for instance there were a few rumblings of discontent amongst conservative politicians. In both 1948 and 1949 a conservative senator from Queensland, who was also a lawyer, criticised the LSB, and said that it should be subsumed into the State law societies, which he believed were capable of performing its functions. [81] Another parliamentarian voiced similar complaints in 1952. [82] Its parliamentary defenders observed that critics of the LSB were often lawyers, with Senator McKenna in 1949 for instance noting that he trusted the Queensland senator referred to above ' was not advocating the abolition of the bureau out of concern for the interests' of the legal profession. [83] Finally, the decision of the Menzies Government to confine the role of the LSB was almost certainly encouraged, if not inspired, by the mandarins in Canberra. The change of government in 1949 presented them with an opportunity to assert control over the LSB, and to correct what they had always believed to be irregularities in its administration.

In a ministerial statement in 1951 Spicer restated and clarified the peacetime functions of the LSB. [84] Thereafter it was to be confined to the provision of legal aid to serving members of the armed forces, its former wartime members and their dependants. LSB staff were permitted to continue to provide legal representation in rehabilitation and re-establishment matters, including tenancy and moratorium proceedings. [85] In other matters, their work was restricted to the provision of legal advice. [86] Clients who received legal advice, and subsequently also required legal representation were to be advised by LSB staff to obtain the assistance of private solicitors. [87] Those who did not already have access to a private solicitor, or who did not wish to personally make such arrangements, could request LSB staff to place them ' in contact with an ex-service solicitor who is willing to act ... if possible at some concession in respect of fees' . [88] The ministerial statement also foreshadowed the Attorney-General' s intention that the LSB should become more closely integrated with the operations of his Department. [89] Thus ' Evatt' s bastard child' , as Harkins recalls how ' we, who soldiered on, felt about the LSB' , which had hitherto operated on the semi-official fringes of the Attorney-General' s Department and the margins of its post-war legislative warrants was absorbed into the official family of public administration in the federal welfare state. [90]

VI THE EXPLANATORY AND POLICY SIGNIFICANCE OF THIS RESEARCH

We now turn to evaluate and discuss the significance of our research, and do so in the context of the two issues that first drew us to investigate the history of the early LSB. Thus we ask first what, if anything, has this research taught us that we did not previously know about the origins, rationale, and work of the LSB? Secondly, we consider what, if anything, the research might tell us about the significance of the LSB in the development of Commonwealth legal aid policy, in the wartime and the post-war welfare state?

In the first place we can justifiably claim that the research has added considerably to what we previously knew. It convincingly demonstrates that the LSB did not originate in a new, universal policy response of the Commonwealth towards the legal needs of the poor, or even the legal needs of all of its citizens, but in a specific response to the evident plight of the wives, partners, and families of members of the armed forces and those serving citizens themselves who had unmet needs for legal advice and minor assistance. In particular, the research shows that the establishment of the LSB was a semi-official, quasi-personal response of the Attorney-General and a few Commonwealth officials to the needs of these newly estranged and displaced citizens for free and ready access to lawyers to draw wills, obtain divorces, protect their housing, gain pensions, deal with landlords, and undertake other legal procedures necessary to protect or ensure daily well being in wartime.

The origins of the LSB therefore are not to be found deep in the policy-making organs of the wartime welfare state, and cannot be said to evidence a definitive shift in pre-war Commonwealth policy towards citizens' legal aid, an issue to which return below. Instead our research has shown that its establishment was prompted by the existence of four hitherto unacknowledged factors. Clearly one such factor was the immediacy and compelling character of the unmet needs for legal advice and minor assistance described above. These new needs for legal aid were a product both of wartime social disruption, but also of the rapid and all-embracing expansion of the legal fabric of the federal

state for the purposes of socio-economic regulation of the wartime economy, an objective that in early 1942 seemed to be of indefinite duration. The second unacknowledged factor prompting the decision to establish the LSB were the limitations of the existing arrangements for legal aid. The Commonwealth and State poor prisoners' and poor persons provisions, the State Public Solicitors, where they existed, and Public Trustees, the official and de facto law society schemes in the States, and the soldiers' legal aid schemes were institutionally and financially incapable of adequately responding to the new wartime demands for legal aid.

The third factor prompting the establishment of the LSB was the inadequate response of the legal profession to the new and unmet needs of wartime citizens for legal aid. Ideological and political considerations no doubt influenced the unwillingness of the State law societies to participate in the Cabinet plans in 1941 for a national, voluntary panel scheme of legal advice. In the 1920s and 1930s the law societies had been wary of state intervention in legal aid, and our research suggests that the soldiers' free legal advice schemes had met with mixed success. [91] However, in 1941-42 the outcome of the war was far from clear, and the legal profession is unlikely to have permitted ideology and politics to block its full participation in the war effort. Issues of manpower and capacity were probably the major reasons why it declined to participate in the Cabinet scheme. By 1941 the ranks of the legal profession were depleted by the absence of its younger members on military service. Moreover the wartime economy had 'opened up new possibilities' for business, and in 1940-41 'commerce and the retail trade were still expanding'. [92] Thus demand for services by the traditional clients of the legal profession was probably no less than in 1939, and greater state regulation of business was creating remunerative opportunities in new fields of legal work. Private lawyers therefore probably had few incentives to develop a legal aid clientele. Furthermore maintaining the viability of the legal services industry in the challenges of the wartime economy was of far greater strategic concern to governments and the legal profession than servicing the needs of individuals and families for legal aid.

The fourth factor that our research has revealed as prompting the establishment of the LSB was the importance of personalities and happenstance. We are all too often too easily seduced by the attractions of progressive or other grand theories in explaining developments in legal aid. However, individuals can be as influential as inchoate but more easily identifiable and attributable 'social forces'. It was vital to the establishment of the LSB that it was Evatt who held office as Attorney-General, that he was a lawyer, and that he believed in expanding the legal aid quotient of the social justice equation inherent in the ideals of the 'rule of law'. The personality and beliefs of the responsible Commonwealth minister was as important in 1941 as it would prove to be in 1973 in the case of Lionel Murphy and the creation of the ALAO, and again in 1976 with Bob Ellicott and his success in negotiating the legal aid agreements with the States that produced the national scheme.

Other individuals also played key roles in the establishment of the LSB, most notably Savage and Wilkins who first told Evatt of the seriousness of the problems faced by the wives and families of absent servicemen. Happenstance also played an important role. Evatt's friendship with Wilkins was an important factor in prompting him to act when he did, and also in engineering the direction and policies of the LSB over 1942-49. Similarly it was a kind of official happenstance that placed Wilkins, Savage, and the Sydney Commonwealth Crown Solicitors' office in the same building as the MPs to whom growing numbers war affected women came for legal advice, and which thereby facilitated both recognition of the systemic character of their problems, and contained the seeds for the administrative solution which the LSB provided.

The research also supports our earlier claim that researchers and commentators have previously paid insufficient attention to the importance of the LSB. Whilst some may have celebrated the LSB as an example of a successful salaried legal aid scheme, few if any have appreciated the scale of its activities, or its role as a major provider of legal services. The archival records we uncovered give some credibility to Evatt's claim in 1949 that in its first seven years the LSB serviced the needs of over 1m clients, which is a significant performance by any standard. Moreover in the contemporary legal profession industry it was a significant, if not unique, legal services organisation. In 1946 for example the LSB employed 44 lawyers and 63 support staff, and few Australian solicitors' firms operated on such a scale, and none on a nationwide basis. [93] Nor was

the success of the LSB reliant on salaries shared alone. Our research has shown that it relied to a considerable degree on services provided at discounted rates or gratuitously by its panel lawyers who were solicitors and barristers in private practice, and whose participation was inspired by comradeship, public duty and the social service values of modern professionalism.

As well as adding to what we previously knew our research also corrected a misunderstanding of our own. Initially we believed that the early LSB contained a disproportionate number of Catholic lawyers. We speculated that the religious based employment preferment once alive and well in the Commonwealth Public Service, although ' never ... openly discussed, and reliable data impossible to obtain' , may have produced a Catholic ghetto in the LSB. [94] A former Attorney-General's Department officer had also told us that he believed many of its senior officers in the 1940s and 1950s were practising Masons, and antithetical to the advancement of Catholic public servants. [95] We wondered therefore if Protestant sectarianism had contributed to the hostility displayed by the Canberra mandarins to the LSB, as religious prejudice against the Catholic minority shaped other social and political relationships in mid-20th century Australia? [96] If Catholicism was part of its untold history we wondered how the success and survival of the LSB could be reconciled with Abel's and Cousins' thesis that in other countries Catholicism was antithetical to the development of legal aid? [97] In particular, we speculated that they had overlooked the fact that the links between Catholicism and legal aid are not restricted to divorce, but extend to social justice concerns of the kind that were articulated by the Australian Catholic Bishops in the early 1940s? [98]

In the result the research has shown that our suspicions and speculations had no foundation. Harkins, himself a Catholic, rejected the presence of any sectarian bias against the LSB, at least in the case of the Sydney office in the 1940s. He went onto explain that Evatt himself as well as ' Frank Wilkins and Hugh Savage were non-Catholics' , and that the Sydney office was ' staffed by people with a wide variety of beliefs or " no-beliefs" and certainly no preponderance of Catholics' . [99] Although Harkins noted that in the 1970s he became aware that many Catholic lawyers applied to join the ALAO [and] a strong feeling for social justice was evident in the applicants' , but once again was unaware of any sectarian prejudice towards those lawyers or the ALAO itself. [100] Moreover, whilst Harkins notes that, whilst ' we had the occasional panel solicitor who did not accept divorce cases' , because of Catholic opposition to divorce, he ' cannot recall any LSB solicitor who did not give appropriate advice in divorce cases' . [101]

In the other question we posed above we asked what, if anything, does our research into the history of the early LSB tell us about the significance of the years 1942-51 for Commonwealth legal aid policy, in the wartime and the post-war welfare state? We are unable to give a clear and definitive answer to that question. On the one hand the research demonstrates that the social disruptions generated by war were a significant factor in producing a new Commonwealth response to legal aid needs. Via the LSB the federal government like wartime national governments in Britain and the United States assumed special responsibilities for the young men and women who served in the armed forces, and their families. Abel has suggested that in Britain the reason why the central government acted was that war had ' undermined family stability and fostered the penetration of the state throughout daily life' , and our research shows that his thesis has some application to the Australian experience. [102] Yet in Australia the entry of the national government into legal aid for its citizens was not an indelible event. The LSB and Commonwealth provision of legal aid did not deeply penetrate into social welfare policy or the legal services system, unlike Britain where national, state funded provision of legal aid was rapidly incorporated into a revitalised post-war welfare state. Such scheme appears never to have been on the agendas of the Ministry for Post-War Reconstruction or the ministers and public servants inspired by ' the reforming zeal of the Curtin and Chifley Labor administrations' . [103] Moreover, as we discuss below, by the late 1940s any opportunity to include a national legal aid scheme in post-war Commonwealth administration had probably disappeared, as Australians had quickly become intolerant of state action, at least on the scale displayed during WWII. [104]

Nevertheless the establishment of the LSB and its early work were significant events in the story of Australian legal aid. The federal government thereby extended the machinery of legal aid beyond its traditional clientele amongst the poor to citizens whose unmet needs for legal advice and minor assistance resulted directly and indirectly from Commonwealth actions and policies. The

establishment of the LSB and its work for the benefit of citizens over 1942-51 clearly expanded the range of Commonwealth responsibilities towards legal aid. Until then the Commonwealth had not acknowledged that citizen focused needs for legal aid were amongst its governmental responsibilities. Moreover after making basic provision for legal assistance in Commonwealth law and federal administration in the 1900s and 1910s federal governments appear to have taken no interest in legal aid. In 1925 for instance when the Secretary-General of the League of Nations wrote to the Commonwealth seeking details of the provision of legal aid for resident and other indigent foreign nationals the response of the Prime Minister was to refer the enquiry to the States. [\[105\]](#)

It is however a moot point if the wartime expansion of Commonwealth responsibilities towards legal aid through the LSB changed the essential thrust of Commonwealth legal aid policy. Certainly ordinary citizens benefited from the presence of the LSB, but the engagement of federal governments and the Commonwealth with their personal unmet needs for legal aid was a result of extraordinary social circumstances. On one interpretation our research can be said to demonstrate that such engagement is explicable entirely as a reaction by governments to the demands of new, wartime state functions, in the absence of any recognition by the Commonwealth of citizens' access to legal aid as a right or expectation of social citizenship. Alternatively, if the establishment of the LSB can be said to contain glimmers of Commonwealth recognition of a new role in legal aid to maximise legal citizenship, the research suggests that such recognition was momentary, disappearing as quickly as it first appeared. The Commonwealth plans and initiatives for national social welfare reform that emerged over 1943-45 contained no provision for citizens' legal aid. Moreover the pre-war emphasis of Commonwealth legal aid policy was re-asserted when the war ended in initiatives such as the re-establishment and civil reconstruction legislation and the legal aid provisions in the *War Crimes Act* 1945 and the *Conciliation and Arbitration Act* 1949. As this emphasis was also reasserted in the ministerial statement in 1951 officially restricting the LSB to its statutory and civil rehabilitation functions. Interpreted in this way our research suggests that whilst the scope of Commonwealth policy was expanded by the experience of the early LSB it retained its pre-war focus on satisfying otherwise unmet public or state needs for legal aid, and was not therefore the significant step in progress towards citizens' focused legal aid as is widely believed.

Conversely another interpretation can be placed on the results of our research. The story of the early LSB can also be interpreted as evidencing a clear if short-lived change in Commonwealth legal aid policy that saw federal governments accept new and direct responsibilities for the legal well being of citizens. Our research suggests that social justice and a genuine desire to assist his fellow citizens experiencing demonstrable unmet needs for legal advice and minor assistance were amongst the factors prompting Evatt to create the LSB. Similarly early LSB lawyers were not primarily motivated to service the impersonal and distant regulatory needs of the wartime national economy. Wilkins and Savage were motivated by the need to find an effective solution to the legal problems experienced by war-disoriented women and families, and it was the capacity of legal aid to measurably improve the social well being of such citizens that inspired Harkins and the other young Commonwealth lawyers who subsequently worked in the LSB. True it is that Evatt's decision was not solely motivated by issues of social citizenship, and that the presence of social justice ideals amongst the LSB lawyers is insufficient to demonstrate that its establishment and its work over 1942-51 introduced a citizens' focus previously missing from Commonwealth legal aid policy.

On the other hand, Evatt, Wilkins, Savage, and the LSB lawyers were not merely on a frolic of their own, exploiting the opportunities for unofficial policy change presented by a hard pressed administrative system over extended by war. In creating the LSB, defining its functions, and selecting its clientele they acted as agents of the Commonwealth, albeit agents who relied upon irregular or ill-defined sources of ministerial and official authority. Moreover it is an accepted maxim of public policy that government 'inaction, or nondecision, becomes a policy when it is pursued over time in a fairly consistent way against pressures to the contrary'. [\[106\]](#) In 1942 the Curtin government sanctioned or at least acquiesced in Evatt's decision to establish the LSB, and did not intervene in his superintendence of it work in the face of opposition from within the Attorney-General's Department. Neither did its successor, and when the war ended neither the Chifley government nor the Parliament appears to have taken the opportunity to confine or re-define the role of the LSB exclusively in terms of servicing the legal needs of armed services and former service personnel and their families. Similarly, no official action was taken over 1945-49 in

response to concerns expressed about the scope of its peacetime functions, although we concede that resistants were few and muted, and that the opponents of the LSB in the Attorney-General's Department were largely ineffective while Evatt remained the responsible minister. The most convincing evidence in our research that the experience of the early LSB changed the direction of Commonwealth legal aid policy towards a citizens' focus is the late 1949 ministerial agreement to extend legal aid to social security beneficiaries. Although we admit that the policy significance of this agreement is ambiguous as constitutional reform in 1946 had increased Commonwealth powers over social security, and thus the proposed extension of legal aid to recipients of social welfare benefits is as consistent with meeting new unmet public or state needs as it is with supporting an argument that the experience of the early LSB witnessed a significant transformation in Commonwealth policy towards citizens' focused legal aid.

The remaining issue to consider is whether the thwarting of Evatt's plans to provide legal aid to social security beneficiaries was an opportunity lost, irrespective of how we might characterise its policy significance? If it were not for the election of the Menzies government might we have seen the Commonwealth expand the LSB into a federally funded national legal aid scheme for its poorer citizens, thereby pre-empting the developments of the 1970s by 20 years? The realistic answer to this question is probably not, as tempting it is to offer the more romantic alternative. In 1949 legal reform was not on the agenda of the Chifley government which throughout the late 1940s was preoccupied with implementing its social welfare reforms, marketing problems associated with post-war commodity shortages and resolving growing industrial and political unrest. [107] Secondly the Attorney-General's Department remained hostile, and the LSB still operated on the margins of the Department. Its very dependence on the personality and power of Evatt made it vulnerable, and probably a target, in both an administrative and a partisan sense, when the Menzies government was elected. Thirdly, by 1949 popular demand for LSB services had already peaked as the majority of its war-generated clientele successfully re-entered civilian life, and was to soon to share in the unprecedented prosperity of the post-war boom. Fourthly, the direction of the federal welfare state no longer reflected the more far-reaching ambitions of the wartime social democratic planners. [108] By the late 1940s the Chifley government had restored the peacetime regulatory functions of the wage earners' welfare state modified only by new Commonwealth powers over social welfare, and this set the scene for the post-war welfare state until the 1970s. The 1950s were thus 'a period of consolidation and mild reform' in Australian social welfare policy. [109] Those reforms the Menzies government did introduce largely benefited the middle classes, and innovations in social policy benefiting poorer citizens had to await the mid-1960s and 1970s. [110] Fourthly, in 1949 the opposition of the legal profession to the civil conscription issues the subject of the *Pharmaceutical Benefits Case* four years earlier still echoed in Canberra. [111] This doubtless reinforced the predisposition of the Menzies government and its supporters for an independent, private enterprise legal profession and voluntary, non-government solutions to social problems, neither of which favoured the expansion of a salaried, publicly funded legal aid service such as the LSB. [112] Fifthly, in 1949 legal aid remained a matter for the States, the law societies, and practising lawyers, and the 1950s and the early 1960s were to prove to be the zenith of the response of the legal profession to meeting citizens' needs for legal aid on a charitable or semi-public basis.

VII CONCLUSION

As we foreshadowed above our research was unable to uncover the entire story of the history of the early LSB. Other official records and other sources remain to be explored, as we have acknowledged. Yet other sources that would have enabled us to present a comprehensive history of the origins, rationale, and work of the LSB are already gone. Many if not most of its legal officers, such as Wilkins and Savage, are long dead, and the few survivors of the LSB in the 1940s are very old, like Harkins, and any written records of their personal experiences, if they ever existed, are likely by now to have been lost. We were very fortunate in having the opportunity to interview Joe Harkins, and later to have the benefit of his comments on drafts of this article, as his recollections enlivened and enriched our discoveries in the archives files, and elsewhere. Harkins' recollections are inevitably personal and incomplete. Material documenting the story of the early LSB, including any interactions with institutions such as the Repatriation Commission and the RSL, may remain to be

discovered in archival sources, as we indicated above. However it is unlikely that any such documents, if indeed any exist, will contain information that matches the scope or quality of Harkins' first hand recollections, or serve otherwise than to corroborate the substance of his account of the early life of the LSB.

Nor did our research uncover any surviving personal accounts of the tens of thousands of citizens who took their divorce, tenancy and other legal problems to the early LSB lawyers. Most of the clients of the LSB in the 1940s are now also dead or else very old, and generally it is too late to record their versions of its social impact in wartime and early post-war Australia, although opportunities may be available exist within the archives files to attempt demographic and case type profiling. [\[113\]](#)

Its limitations notwithstanding this research has enlightened our understanding of the LSB, adding appreciably to what we already knew, correcting some misperceptions and misunderstandings, and highlighting its role in the institutional and social history of 20th century Australian legal aid. However, the value of the research is not exhausted by its portrayal of the events, social pressures, and personalities, and policies that shaped its origins, rationale, and work 60 years ago. The research is also important because it reminds us of the role of the LSB and its officers in later developments in Commonwealth legal aid.

Contrary to the hopes of its critics and detractors the early LSB did not wither and die in 1951. In 1958 for instance the LSB provided legal aid to 44,717 people in respect of civil re-establishment and rehabilitation matters and a comprehensive range of everyday legal problems such as family law, property, wills, and civil wrongs. [\[114\]](#) Moreover its potential to serve as a national provider of a wider range of legal aid was not entirely lost on the Menzies government. Not all of its ministers saw the role of the LSB in the 1950s as necessarily confined to the needs of ex-services personnel and their families, or accepted the de facto policy of the Attorney-General's Department to gradually rundown the operational capacity of the LSB. Remarkably in 1959 a new Attorney-General, Garfield Barwick, revived the plan to provide legal aid to Commonwealth social security recipients, and wrote to the State law societies proposing that the LSB should serve as the basis of an extended national scheme, along the lines of Evatt's 1949 directive. Barwick proposed that additional LSB offices should be established to 'assist people receiving Commonwealth pensions'. [\[115\]](#) The law societies rejected the proposal. The Queensland Law Society, for example, arguing that its own charitable scheme was adequate, fearing that the expansion of the LSB might encourage the State Labor Government to press its plans for legal aid reform, which might result in a further expansion in the numbers of salaried lawyers. [\[116\]](#) However, even in 1959 officialdom remained suspicious of the LSB, as Barwick did not for instance discuss his plans with Harkins, who was by then Officer in Charge. [\[117\]](#) Whilst Barwick's plan did not come to fruition, it demonstrates that the Commonwealth was not unaware of the shortcomings in the legal aid schemes in the States, and still saw the LSB as an obvious means to develop a new response.

The LSB continued to operate as a crumbling frontline of the Commonwealth response to legal aid for its citizens until 1971-72, when the McMahon government first granted financial assistance to the embryonic indigenous legal services in Redfern and Fitzroy, thereby launching Australia into a new experience of national responses to the problems of legal aid. [\[118\]](#) Its demise came finally in 1973 when the offices and remaining staff of the LSB were subsumed into the ALAO, thereby bequeathing its infrastructure to institutional arm of new Commonwealth policies that three years later resulted in the inter-governmental national legal aid scheme.

Moreover other research we have conducted shows that even then the influence of the early LSB was not entirely spent. Harkins returned to the Commonwealth legal aid scene in mid-1973 as the first director of the ALAO, and played a leading role in establishing its infrastructure and services over 1974-75. Previously he had been a Deputy Secretary in the Attorney-General's Department, and earlier in 1973, probably in January, Harkins, together with the then Secretary of the Department, the late Sir Clarrie Harders, had met with Lionel Murphy, to discuss with him the practicalities of his decision to create a federally directed national legal aid scheme. When asked how such a scheme might be organised, Harkins reminded Murphy of the success of the LSB, and suggested that it provided a proven model on which a new Commonwealth legal aid response might be constructed. Murphy

agreed, and Harkins was sent away with instructions to make the new response work. [\[119\]](#)

In telling us of his meeting with Murphy and Harders, Harkins was at pains to avoid any suggestion that he was in any way detracting from the central role of Murphy in planning and implementing the Commonwealth response, and leading Australia into its own version of the western post-war expansion of legal aid. In Harkins' eyes Murphy was and remains the brilliant innovator of legend. Nevertheless his story demonstrates that Murphy did not act in an historical vacuum, and is another and important illustration of how the experiences of the early LSB resonated even in the 1970s. As it also reminds us of the presence of unique national themes and influences in developments in Australian legal aid in the 1970s that in fact relied far less upon external influences such as the distance images of the War on Poverty in the United States in the 1960s than is generally believed.

Our research also shows that a degree of ambiguity surrounds the policy significance of the early LSB. On the one hand, its establishment and functions in the 1940s are consistent with a policy continuum. From this viewpoint, the LSB gave a new and more popular face to Commonwealth legal aid policy, but its pre-war emphasis was unaltered, remaining focused on servicing public needs, in particular facilitating new, short-term federal functions in the prosecution of the war, and the management of the national economy. On the other hand, our analysis also gives credence to the view that the presence of the LSB also evidences a discernibly different direction in Commonwealth policy, to include the private legal needs of ordinary citizens. In the context of the progressive ideals of legal change and development such as the access to justice metaphors of Cappelletti and Garth that have influenced mainstream Australian perspectives on the evolution of legal aid some readers may find the apparent ambiguity of our findings disappointing or inconclusive. [\[120\]](#) Yet other readers may find our analysis of the significance of the early LSB too be overly ambivalent, with too few heroes, and too few villains, especially amongst the legal profession and conservative governments and politicians.

Our response to such criticisms is twofold. First, research comparable to our own by scholars such as Abel, Cousins, Blankenburg, Paterson and Nelken and Alcock similarly suggests that institutional and policy developments in legal aid in other and comparable countries were shaped by a variety of often competing and contradictory influences, such as genuine attempts to improve social justice for the poor, social welfare administration, social policy, and the political economy and internal politics of the legal profession. [\[121\]](#) It is only the virulence of the ideological orthodoxies that emerged in the 1970s that distorts our recognition and understanding of the diversity of forces shaping legal aid in the policy-making processes of the federal welfare state. Secondly, the ambiguities surrounding the LSB and our inability to definitively characterise conservative politicians and the legal profession as the natural enemies of legal aid are mirrored in other 20th century developments in Australian legal aid, such as the reforms in the States and the factors motivating the law societies to provide legal aid for the poor, both before and after WWII. In the 1900s, 1910s, 1920s, and 1960s the parliamentary record shows that State Attorneys-General and Ministers for Justice in conservative and Labor governments alike supported legal aid, and drew upon a spectrum of ideas such as law reform, social justice, equality before the law, citizenship, and real concerns for the poor to justify reform. [\[122\]](#) Similarly, historically the support of the legal profession for legal aid has exhibited different and contradictory motivations. In advocating the adoption of a semi-charitable legal aid scheme for poorer people in Victoria in 1949 for instance the President of the Law Institute explained to its members that such a scheme would also serve to absorb an anticipated over supply of solicitors, provide young solicitors with 'good clinical experience similar to that gained by doctors at the Public Hospitals', promote self-advertisement and other assistance in establishing new practices, protect the market for solicitors services, and bolster public good will towards the profession. [\[123\]](#)

Moreover our other research into post-war developments in legal aid suggests that comparable ambiguities and shades of grey are evident in the origins of the national legal aid scheme. It is true that Murphy's now famous ministerial statement in December 1973 announcing that Commonwealth policy towards legal aid had changed contained liberal references to improving citizens' equality before the law. [\[124\]](#) However neither improving citizens' access to justice or reforming legal aid was initially a policy priority of the Whitlam government, as Hawker has demonstrated. [\[125\]](#) Furthermore a variety of competing and contradictory factors also influenced Murphy's actions, such

as the presence of a new middle class social radicalism, family law reform, Commonwealth protection of the environment, the inadequacies in the legal citizenship of the poor previously documented by Spigelman, Hollingworth, and others, and the insoluble financial problems faced since the late 1950s by the State law societies and solicitors' practices in sustaining the semi-charitable legal aid schemes. [126] In addition neither the legal profession nor conservative politicians were as opposed to the legal aid policies of the Whitlam government as legend would have us believe. The Law Council had first lobbied the federal government in 1964 to establish a Commonwealth funded, law society administered legal aid scheme, and the meeting between Murphy, Harders, and Harkins referred to above appears to have followed immediately upon an impromptu meeting with a delegation of senior members of the legal profession, who pressed Murphy to establish a similar scheme. [127] Similarly whilst throughout 1975 the conservative Opposition opposed the establishment and role of the ALAO, senior conservative politicians such as Howard and Ellicott supported Commonwealth involvement in citizen's legal aid, and the role of the latter as the final architect of the national scheme remains insufficiently acknowledged. [128] Thus, we suggest that the ambiguity and lack of black and white explanations in our assessment of the policy significance and politics of the early LSB is symptomatic of the true character of the politics of legal aid, its development, and policies in 20th century Australia, as it was in comparable modern societies.

The lessons of our research are not however limited to the shaping of the national scheme in the 1970s, and the even more distant past of citizens' legal aid in wartime and early post-war Australia. Today the national scheme and legal aid policy remains on the fringes of the Attorney-General's Department, and on the margins of social policy in the contemporary welfare state. The financial stringencies inflicted on the national scheme by Commonwealth and State policies in the 1990s mean that we are again confronting unmet needs for legal aid on a scale not dissimilar to that facing Evatt in 1942, and Murphy and Commonwealth policy-makers in 1973. Moreover there are significant parallels between the lives of many ordinary citizens today and those of their grandparents and great-grandparents. The sea changes in national public policy in the 1980s saw the abandonment of the institutionalised social protection that had permeated Australian society since the 1900s produced social transformations on an unprecedented scale, and disrupted and added fresh uncertainties to the already difficult lives of low-wage earners, the poor, and the marginalised. In the context of a comparable period of massive social change and disruption in wartime Australia the federal government recognised the importance of citizen's access to legal aid, and its response convincingly demonstrated the value of access to legal advice, minor assistance, and other types of legal aid. The experience of the early LSB therefore also reminds us of the centrality of appropriate legal aid services particularly for citizens whose social well being is jeopardised by social transformations dictated by forces beyond their control. It also provides a convincing historical and moral precedent for governments, the legal profession, and others in the legal aid community to question the direction of recent Commonwealth policy, and to justify their insistence on federal governments accepting greater financial responsibility for otherwise unmet national needs for legal aid. [129] Finally the experience of the early LSB also reminds us that the story of legal aid is inseparably linked to the politics of the legal profession, the economics of the legal services industry, the capacities and competencies of legal practitioners, and the social values which they bring to the performance of legal work. The political economy of the legal profession in the market capitalist welfare state remains as important to the development of Australian legal aid as it did in the war disrupted wage earners' welfare state in 1942.

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[1] The only published source is J P Harkins, 'Federal Legal Aid in Australia' (Paper presented at the International Colloquium on Legal Aid and Delivery of Legal Services, London, October 25-28, 1976).

[2] For example, National Legal Aid Advisory Committee, *Legal Aid for the Australian Community*,

[3] For example, Susan Armstrong, 'Labor's Legal Aid Scheme: The Light that Failed' in R B Scotton and Helen Ferber (eds), *Public Expenditure and Social Policy in Australia* (1979) vol 2, 220; Geoffrey Hawker, 'The Rise and Fall of the Australian Legal Aid Office' in Sol Encel, Peter Wilenski and Bernard Schaffer (eds), *Decisions: Case Studies in Australian Public Policy* (1981); and more recently Stephen Tomsen, 'Professionalism and State Engagement: Lawyers and Legal Aid Policy in Australian in the 1970s and 1980s' (1992) 28 *Australian and New Zealand Journal of Sociology* 307.

[4] There are probably other archival records, particularly those that might record the Attorney General's Department Central Office version of its relationship with Evatt, Frank Wilkins, and the activities of the LSB. Additional information might also be contained amongst Evatt's official or personal papers, and the papers of less well-known participants. Almost certainly correspondence exists in Law Council and State law societies files recording responses and reactions to the developments in legal aid over 1939-41, and the work of the LSB over 1942-51. Commonwealth Repatriation Commission, RSL and Legacy records may possibly contain information about the work of the LSB.

[5] After he left the LSB, Harkins held senior posts in the Attorney General's Department.

[6] Richard Abel, 'Law Without Politics: Legal Aid Under Advanced Capitalism' (1985) 32 *UCLA Law Review* 474, 592. The relationship between legal aid and the rise of modern welfare states is explored in more detail in a number of essays in our recent co-edited volume. See Francis Regan *et al* (eds), *The Transformation of Legal Aid: Comparative and Historical Studies* (1999).

[7] H C Coombs, *Trial Balance* (1983) 24. Policies designed to assist the defence forces re-integration into society are examined in Stephen Garton *The Cost of War: Australians Return*, (1996). Specific policies have also been examined in detail. For example, see the study of repatriation policy by Clem Lloyd and Jacqui Rees, *The Last Shilling: A History of Repatriation in Australia*, (1994).

[8] Documents in the Australian Archives (Australian War Memorial) indicate that in WWI the Law Institute of New South Wales, the Australian Services Movement and the Australian National Services League cooperated to provide legal advice to soldiers.

[9] Memorandum from the Director of Personal (sic) to N Cmnd, E Cmnd, W Cmnd and 7 Mil Dist, 10 July 1940 in Australian Archives (Australian War Memorial); CRS AWM 60 Item No: 142/1/261 – Free Legal Aid to members of AIF (Australian Imperial Force). See also Helen Gregory, *The Queensland Law Society Inc., 1928-88: A History* (1991) 123-124.

[10] In Queensland, a Legal Aid to Soldiers Committee was established at 113-115 Queen Street, Brisbane. In South Australia and Western Australia, the contact point for soldiers' legal aid was the Law Society. This was probably also the arrangement in New South Wales. In Tasmania, the soldiers' legal aid service was known as the Free Legal Aid Service, and was administered by the Southern Law Society in Hobart – and the Northern Law Society in Launceston: Australian Archives (Australian War Memorial) Series No: A663 Item No: 0130/2/775 Free Legal Aid Service. For Western Australia, see Cth Parl Deb 1942 vol 182, 330.

[11] AMF Memorandum, DCR 142/1/251 Adjutant-General to 24 Infantry Brigade AIF outlining the arrangements for free legal advice reached with the Queensland Law Society.

[12] Military transport was not available to carry voluntary solicitors to the camps, and military administrators were unwilling to authorise the supply of petrol to the solicitors for use in their private cars. Eventually the transport problem was resolved by authorising the free supply of free petrol at the Grovely camp, in the case of one solicitor's car to a maximum of 1-1/2 gallons, and in another case to a maximum of three gallons. When the scheme finally began in late September 1940

twelve soldiers notified they needed legal advice, but only two actually appeared for an interview with the attending solicitors. The embarrassed military authorities sought explanations from the defaulting soldiers, threatening disciplinary action against the responsible officers. It was established that these soldiers had been at the rifle range, having already obtained 'the necessary legal advice from solicitor friends within their units': Australian Archives file Series AWM 60 Item No: 142/1/261.

[13] Letter from the Assistant-Secretary of the Queensland Law Society to Colonel i/c Administration, Northern Command, Victoria Barracks, Brisbane, 18 June 1941 in Australian Archives Series AWM 60 Item No: 142/1/261.

[14] In 1942 for instance Senator Clothier noted that the services provided to members of the armed services by the Law Society of Western Australia were limited to wills and simple powers of attorney. He referred to the *West Australian* as reporting the Law Society and its members to be unwilling to provide free legal advice, assistance with matrimonial matters or advice on property management to soldiers on active service. The newspaper was also said to have reported that a Soldiers Dependents' Appeal Committee in Western Australia was providing a referral service for these unmet needs. The committee would refer deserving applicants to practising lawyers who had agreed to provide free legal advice. One solicitors' firm – Kott and Lalor – was reported as having accepted over 250 referrals on behalf of soldiers serving overseas: Cth Parl Deb 1942 vol 172, 330-31.

[15] The NSW Public Trustee also undertook the administration of estates worth less than £1,000 of members of the armed forces killed in action free of charge.

[16] Evatt never sought to establish the LSB legislatively, which was likely to have been constitutionally problematic. Although legislative provision for legal aid for the armed services and their families would probably have been authorised by the defence power in s 51 of the Commonwealth Constitution. Instead Evatt established the LSB by administration action, directing the Attorney-General's Department to expand its functions to include legal aid, and to make the necessary staffing and other administrative arrangements. The legality of this direction is contestable. Certainly Evatt as the responsible minister possessed inherent common law executive powers to administer the activities of the Attorney-General's Department. But it is a moot point whether such powers extend to authorise expansion of departmental functions beyond those approved for administrative and appropriation purposes by the Executive Government. Particularly when the Commonwealth has no express legislative power with respect to legal aid, and Evatt's decision lacked any express statutory nexus, and was impromptu, apparently without the prior authorisation of the Executive Government.

Against that the precise content of Evatt's direction is unclear. Arguably if the direction was satisfiable by secondment of a few Attorney-General's Department officers to provide legal aid in the Sydney offices of the Deputy Crown Solicitor it fell short of requiring a substantive departure from lawful departmental functions, and thus within Evatt's authority as the responsible minister. As Attorney-General Evatt probably enjoyed additional inherent common law executive powers, notably the right to exercise the prerogative power to administer justice, including the ancient and special responsibilities of the Crown to provide justice to the poor. If so, such powers arguably provided a sufficient legal foundation for his direction establishing the LSB, although not necessarily for expending Commonwealth funds for that purpose. Moreover demonstrably the Commonwealth Attorney-General has authority to establish and administer non-statutory schemes of legal aid in relation to Commonwealth law and Federal matters. Cabinet approval in 1941 of a national scheme to advise armed forces members and their dependants with respect to Commonwealth regulations and the general thrust of its war-time legislative endeavours arguably provided a sufficient blend of executive authority, Commonwealth law and Federal matters to impliedly authorise Evatt to exercise the power of the Attorney-General to establish non-statutory schemes of legal aid.

In any event the Federal Government was empowered to make non-statutory provision for legal aid for armed services members and their families, and other matters associated with its inherent common law executive powers, and to make administrative arrangements for that purpose. If Evatt did exceed his

authority the Federal Government was legally competent to validate the establishment of the LSB *ex post facto*. There is plenty of evidence to suggest that such validation occurred. In 1943-45 the Federal Government allowed the LSB to expand, continued to finance legal aid for armed services members and their families, promoted the LSB as its own and significant initiative and included the LSB in de-mobilisation of the armed services and post-war civil reconstruction. Similarly we have not discovered any evidence that Parliament objected to appropriations for expenditure on the LSB, and in 1945, and again in 1947, acknowledged the role of the LSB in legislation. Indirectly and incrementally the LSB had become institutionalised in Federal law and government, albeit an institution marked by informality and a hazy legality, and an indefinite, semi-autonomous status within the Attorney-General's Department, and as such clearly within the scope of Evatt's ministerial authority, even if he chose to exercise that authority in an unconventional, highly personal fashion.

[17] It would be consistent with the practice followed over 1945-73 that a minute of this direction would have been published. However, the records of the LSB Sydney office were amongst the files pulped in 1994. Any written records of Evatt's direction were thus probably destroyed; although it is possible there are copies elsewhere. Evatt's papers are held at the Flinders University Library, but they arrived at the library and remain in a mess.

[18] Interview with J P Harkins (Canberra, 4 November 1994). See also H V Evatt, *Injustice Within the Law* (1937).

[19] Below 265-269.

[20] War Cabinet Minute, Melbourne, 5 March 1941, Agenda No. 90/141, Voluntary Legal Advice and Assistance to Members of the Forces or their Dependents (*sic*), Australian Archives file series A663/1 Item 0130/2/1270.

[21] *Ibid.* Volunteers were to be sought through the State Directorates of Voluntary Service. The Cabinet Minute records that the ' Director of Voluntary Service [is] to arrange for the Panels of Solicitors so formed to be given due publicity for the information of members of the Forces and their dependents [*sic*] and to make suitable arrangements for the work to be distributed evenly as practicable amongst the solicitors concerned' .

[22] Panels of at least 12 solicitors were to be established in Sydney and Melbourne, with smaller panels in other capital cities. Consideration was to be given to the establishment of solicitor panels in the larger provincial cities; Australian Archives file series A663/1 Item 0130/2/775. This file contains advertisements clipped from newspapers including the *Argus*, *Age* and *Sun*, 2 July 1941.

[23] Above 256-258.

[24] L Mumford, *The South Australian Public Solicitors Office 1926-1933: A Public Salaried Legal Aid Scheme Ahead of Its Time?* (BA Honours Thesis, The Flinders University of South Australia, 1996).

[25] Interview with Harkins, 4 November 1994.

[26] The hopes of the reformers in 1918 for effective civil legal aid through the organised voluntary efforts of private legal practitioners had not been realised. See second reading speech of Mr D R Hall, Attorney-General in the NSW Holman Nationalist Government, introducing the Poor Persons Legal Remedies Bill 1918: NSW PD 1918 vol LXXIII, 2274. The operations of the scheme were described as ' slow and cumbrous, and that only those who are virtually paupers [were] eligible for its benefits, if they may be so called' : see second reading speech of Captain C E Martin, Attorney-General in the McKell Labor Government, introducing the Legal Assistance Bill 1943, NSW PD 1942-43 vol CLXX, 2710-2711.

[27] Second reading speech of Captain C E Martin, *ibid* 2710-2711.

[28] Interview with Harkins, 4 November 1994.

[29] Allan Dalziel, *Evatt the Enigma* (1967) 42.

[30] Letter from J P Harkins to Don Fleming commenting on a draft of the results of our research, 20 October 2000.

[31] Interview with Harkins, 4 November 1994.

[32] Ibid.

[33] Dalziel, above n 29, 42.

[34] Interview with J P Harkins (Canberra, 4 November, 1994).

[35] Interview with Harkins, 4 November 1994.

[36] Dalziel, above n 29, 43; Interview with Harkins, 4 November 1994.

[37] Harkins, above n 1, 3.

[38] Press Statement, ES Pearson, JM Mills, OIC and DCS Perth 17/19 February 1944. Eligibility extended to WWI ex-servicemen and serving and discharged members of the Allied forces.

[39] Ibid.

[40] Ibid.

[41] Ibid.

[42] Ibid. The power of the LSB to assist in Repatriation applications and appeals was contested by the RSSAILA in Perth. This was an ongoing bone of contention and a source of much discussion in LSB and Commonwealth Crown Solicitor files.

[43] Interview with Harkins, 4 November 1994.

[44] Ibid.

[45] Ibid.

[46] Letter from Harkins, above n 30.

[47] Interview with Harkins, 5 November 1994.

[48] Ibid. This referral system continued into the 1950s: Harkins, above n 34.

[49] S J Butlin and C B Schedvin, *War Economy 1942-1945* (1977) 625-679; Yaroslav Mamchak, *The Origins and Early Years of the Australian Ministry of Post-War Reconstruction: an Analysis of the Origins, Development, Performance, and Significance of Australia's First National Economic Policy Organisation* (MAA thesis, Canberra College of Advanced Education, 1980) 143; Geoffrey Sawer, *Australian Federal Politics and Law 1929-1949* (1963) 130.

[50] Letter from the Assistant Secretary, Attorney-General's Department, Canberra to Crown Solicitor, 21 September 1945; Letter from the Ministry of Post War Reconstruction to Mr Lyons, Attorney-General's Department, 26 September 1945 in Australian Archives file series A472/1 Item W19114 Part 2.

[51] Interview with Harkins, 5 November 1994.

[52] Ibid.

[53] Commonwealth of Australia, *Legal Assistance to Members of the Forces and their Dependents* (1945).

[54] The changes were settled by 11 December 1945 and the revised booklet submitted for publication: letter from the Secretary, Attorney-General's Department, Canberra to Mr R T Vinnicombe, Staff Bulletins, 66 Macarthur Street, Parramatta 21 September 1945, in Australian Archives file series A472/1 Item W19114 Part 2.

[55] Cth Parl Deb Hansard, HR, 30/9/1949, 776.

[56] Memorandum from H V Evatt to Secretary, Attorney-General's Department, Canberra, 25 August 1945 in Australian Archives file series A472/1 Item W19084.

[57] Ibid. The revised administrative arrangements included renaming the LSB as the 'Legal Aid Bureau', but this nomenclature was never adopted.

[58] Ibid.

[59] Interview with Harkins, 5 November 1994.

[60] Ibid; Harkins, above n 1, 4.

[61] Ibid; Dalziel, above n 29; Kylie Tennant, *Evatt: politics and justice* (1970). Dr D Hassall, a barrister, Senior Lecturer at the ANU Legal Workshop, and a former senior officer in the Attorney-General's Department, suggests that Evatt's attitude to senior Commonwealth officials may also have been influenced by his reputed dislike of the WWI officer class who were powerful in Australian public life in the 1920s and 1930s. This might well be so, as it appears that some members of this class were prominent anti-unionists: Chris Coulthard-Clark, *Soldiers in Politics: The Impact of the Military on Australian Political Life and Institutions*, (1996).

[62] Interview with Harkins, 6 November 1994 .

[63] Mamchak, above n 49, 143; Sawyer, above n 49, 166.

[64] Interview with Harkins, 6 November 1994.

[65] Ibid.

[66] See also Ken Buckley, Barbara Dale and Wayne Reynolds, *Doc Evatt: patriot, internationalist, fighter and scholar* (1994) 13.

[67] Dalziel, above n 29, 43.

[68] Ibid.

[69] Ibid.

[70] Cth Parl Deb 1949, vol 204, 16 and 775-776: Cth Parl Deb 1949, vol 205, 1210.

[71] Cth Parl Deb 1952, vol 219, 2397-2398.

[72] Cth Parl Deb 1951 vol 213, 618.

[73] Cth Parl Deb 1951 vol 213, 618

[74] Cth Parl Deb 1952 vol 219, 2397-2398.

[75] Ministerial Statement, Senator The Hon J A Spicer, Attorney General, 8 March 1951, Cth Parl Deb 1951, vol 212, 103-104.

[76] Between 1946 and 1957 Sydney Legacy provided assistance in over 3,000 such cases covering a wide range of legal problems, but housing problems predominated. The scheme was a joint venture of its Legal, Family Welfare, Housing and Special Housing Committees. Where practicable, applicants for assistance were referred to the LSB, the Public Trustee or the Public Solicitor. In other matters, problems were referred to private lawyers who provided free assistance or else subject to a financial contribution assessed by the Family Welfare Committee: M H Ellis, *The Torch: A Picture of Legacy* (1957) 125-27.

[77] Interview with Harkins, 5 November 1994.

[78] See extract from Law Society of South Australia 1946 Annual Report in letter from Wilkins, Acting OIC LSB, to Secretary, Commonwealth Attorney General's Departments, September 1946, Series No A472/1; Item No W19082.

[79] Gregory, above n 9, 170-172; 'Poor Persons Legal Assistance' (1949) *Law Institute Journal* 180, 180-181. The Tasmanian Northern and Southern Law Societies established the first of the new post-war semi-charitable schemes in 1954.

[80] Gregory, above n 9, 171; 'Legal Aid in the United Kingdom' (1949) 22 *Australian Law Journal* 405. Lord High Chancellor, *Report of the Committee on Legal Aid and Legal Advice in England and Wales*, Cmd 6641, (His Majesty's Stationery Office, May 1945).

[81] Cth Parl Deb 1948, Debates, vol 199, 2299-2300; Cth Parl Deb 1949-50, vol 203, 1422.

[82] Cth Parl Deb 1952, vol 219, 2401-2402. See also H Repts Deb 1954, vol 4, 1107.

[83] Cth Parl Deb 1949, vol 000, 1422.

[84] H Repts Deb 1951 vol 212, 52-53. There are suggestions elsewhere in the parliamentary debates that the Menzies Government may have been considering changes to the role of the LSB: Cth Parl Deb 1951 vol 213, 149-150 and 617.

[85] Ministerial Statement, above n 75. The question of continuing legal representation before Fair Rents Boards in Sydney was placed under consideration.

[86] *Ibid.* In matters involving complaints about Commonwealth administration, LSB staff were directed to take particulars and request that the relevant department or authority take remedial action.

[87] *Ibid.*

[88] *Ibid.* Referrals were to be made in consultation with professional associations and to be spread fairly and regularly amongst ex-service solicitors. Similar principles were to be followed in briefing counsel, who, in any event, were not to be briefed at Commonwealth expense 'except in cases of substantial financial need, and with the approval of the secretary of the department'.

[89] *Ibid.* Real integration finally occurred in 1959 when Frank Wilkins retired as Director of the LSB. His position was not filled, and the LSB was placed under the control of the Deputy Commonwealth Crown Solicitors in the States: H Repts Deb 1959, vol 24, 873-874.

[90] Letter from Harkins, above n 30.

[91] In Western Australia in 1927-28 the law society had circumvented the establishment of a statutory Public Solicitor. In 1933 the Law Society of South Australia had willingly assumed the role of the Public Solicitor in legal aid, and in 1937 its Victorian counterpart had expressed interest in following its lead. Moreover professional resistance to state intervention was shortly to occur on the national stage in relation to the proposal of the Chifley Government in 1948 for a scheme of medical benefits: Terrey Carney and Peter Hanks, *Social Security in Australia* (1994) 38.

[92] Paul Hasluck, *The Government and The People 1939-1941* (1956) 412, 410.

[93] Harkins, above n 1, 4.

[94] Howard Scarrow, *The Higher Public Service of the Commonwealth of Australia* (1957) 122.

[95] Doug Hassall at the Legal History sub-group at the Australian Law Teachers Association Conference, Canberra, 3-5 July 2000.

[96] See Michael Hogan, *The Sectarian Strand; Religion in Australian History* (1987).

[97] Abel, above n 6, 588; Mel Cousins 'The Politics of Legal Aid – A Solution in Search of a Problem?' (1994) 13 *Civil Justice Quarterly* 111.

[98] See Michael Hogan (ed), *Justice Now!: Social Justice Statements of the Australian Catholic Bishops First Series: 1940-1966* (1990).

[99] Letter from Harkins, above n 30.

[100] Ibid.

[101] Ibid.

[102] Abel, above n 6, 592.

[103] Carney and Hanks, above n 91, 35.

[104] James Gillespie, *The Price of Health: Australian Governments and Medical Politics 1910-1960* (1991) 234. See also W Friedmann, *Principles of Australian Administrative Law* (1950).

[105] See Australian Archives (Mitchell, ACT): Department of External Affairs, Series No. A981, League of Nations – Legal Aid for the Poor, 1925.

[106] Arnold Heidenheimer, Hugh Hecllo and Carolyn Teich Adams, *Comparative Public Policy: The Politics of Social Choice in America, Europe and Canada* (1990) 5.

[107] Sawyer, above n 49, 155.

[108] Gillespie, above n 104, 234. The links between the expansion of state functions and social planning during WW II and the shaping of the post-war welfare state as we knew it in the 1950s, 1960s and 1970s are far less than appear on first inspection. See Michael Anthony Jones, *The Australian Welfare State* (1980) 34-41; Carney and Hanks, above n 91, 35-41; Scott Prasser, J R Nethercote and John Warhurst (eds), *The Menzies Era: a Reappraisal of Government, Politics and Policy* (1995).

[109] Jones, above n 108, 39.

[110] G Gray, 'Social Policy' in Prasser, Nethercote and Warhurst, above n 108, 223.

[111] *Attorney-General (Victoria) (at relation Dale and ors) v Commonwealth* (1945) 71 CLR 237. See also Carney and Hanks, above n 91, 28.

[112] Jones, above n 108, 39-40.

[113] The Australian Archives still holds many client files. However, in the mid-1990s Archives staff refused us general access to those files on privacy grounds, as they believed some wartime LSB clients were still alive. The staff advised that application should be made for access to particular client files, and that each such file could then be vetted for privacy or confidentiality issues. We abandoned our efforts, as it was impossible to ask for a particular file without first sighting it. Moreover, it would also have been very time consuming to take this lucky dip approach.

[114] *Legal Service Bureaux Annual Report* (1958). This report consisted of one A4 page of text and one A3 page of data. It was provided to Francis Regan via a letter dated 16 May 1996 from Mr Mike Cramsie, then Managing Director of the Legal Aid New South Wales, and a former officer of the Commonwealth Attorney-General's Department.

[115] Gregory, above n 9, 172. Garfield Barwick was elected to the Commonwealth Parliament in 1958 after a highly successful career at the Sydney Bar, including representing the airlines and the banks that successfully challenged the constitutionality of nationalisation legislation introduced by the Chifley Government after WWII. Barwick served as Attorney-General in the Menzies Government from 1958 to 1964, when he was appointed as Chief Justice of the High Court of Australia, an office that he held until 1981. His interest in legal aid may come as a surprise. Barwick is remembered as a somewhat reactionary judge and Chief Justice Barwick, demonstrably pro-taxpayer in taxation appeals, and providing advice in controversial circumstances to the Governor-General in the 1975 constitutional crisis. But Barwick was also a law reformer, as Chief Justice encouraging the development of a distinctively Australian common law, and as Attorney-General, introducing matrimonial law reform in the face of public opposition from the churches, and developing Commonwealth anti-trust legislation. See Tony Blackshield, Michael Coper and George Williams (eds), *The Oxford Companion to the High Court of Australia* (2001) 56-58. See also David Marr, *Barwick* (1980).

[116] Gregory, above n 9, 170-172.

[117] Interview with Harkins, 6 November 1994.

[118] House of Representatives Standing Committee on Aboriginal Affairs, July 1980, *Aboriginal Legal Aid*, (1980) 24; Elizabeth Eggleston, 'Aboriginal Legal Services' (1974) 1(4) *Legal Service Bulletin* 93.

[119] Interviews with Harkins, 6 November 1994. Our research re-visiting the origins and significance of the ALAO in 1973-75 is incomplete. We are yet, for instance, to access all relevant records, such as those held by the Commonwealth Attorney-General's Department and the Department of Finance. The available evidence suggests that the decision to establish the ALAO was not documented, and that Harkins' account may be the best direct evidence available. We discuss the results of our research so far, including the links between the LAB and the ALAO, in 'Re-Visiting The Life and Times of the Australian Legal Aid Office 1973-75' (Paper presented at 'Thirty Years Later': The Whitlam Government as Modernist Politics' conference, Old Parliament House Canberra, 2-3 December 2002).

[120] Mauro Cappelletti and Bryant Garth (eds), *Access to Justice: A World Survey* (1978) vol 1 bk 1, x-xi, 7-8 and 21.

[121] See Abel, above n 6, 498-540 and 586-592; Richard Abel, 'The Paradoxes Of Legal Aid' in Jeremy Cooper J and Rajeev Dhavan (eds), *Public Interest Law* (1986); Cousins, above n 97; Mel Cousins, 'Legal Aid Reform in France and the Republic of Ireland in the 1990s' in Regan *et al*,

above n 6, 159; Erhard Blankenburg, 'European Experience in Innovating Legal Services' (1982) 2 *Windsor Yearbook of Access to Justice* 247; Erhard Blankenburg, 'Lawyers' Lobby and the Welfare State: The Political Economy of Legal Aid' in Regan *et al*, above n 6, 1331; Alan Paterson and David Nelken, 'The Evolution of Legal Services in Britain: Pragmatic Welfarism or Demand Creation?' (1984) 4 *Windsor Yearbook of Access to Justice* 98; P C Alcock, 'Legal Aid: Whose Problem?' (1976) 3 *British Journal of Law and Society* 151. See also Francis Regan, 'Are There "Mean" and "Generous" Legal Aid Schemes' in Ministry of Justice, *Legal Aid in the Post-Welfare State Society* (1995) 15; Francis Regan, 'Why Do Legal Aid Services Vary Between Societies? Re-Examining The Impact Of Welfare States And Legal Families' in Regan *et al*, above n 6, 189.

[122] See for instance Qld PD 1907 vol XCIC, 483-484; Vic PD 1927 vol CLXXV LC,t 2999; Qld PD 1965 vol 242 at 2015; NSW PD 1970 vol LXXXVI, 4638- 4640.

[123] 'Poor Persons Legal Assistance', above n 79, 181.

[124] Ministerial Statement, Senator the Hon L K Murphy, 13 December 1973, Sen Deb 1973 vol 58, 2800.

[125] Hawker, above n 3, 62.

[126] In relation to middle class social radicalism see S Encel, 'Capitalism, the Middle Classes and the Welfare State' in E L Wheelwright and Ken Buckley (eds), *Essays in the Political Economy of Australian Capitalism* (1978) vol 2, 145, 162. In relation to the links with family law reform and Commonwealth environmental policy see Sen Deb 1973 vol 55, 38, 208, 215 and 598 and Ministerial Statement, above n 118, 2800, Department of the Environment and Conservation, *Report for period December 1972 to June 1974* (1975) 58-59 and Harkins, above n 1, 15 respectively. See also James Spigelman, 'Poverty and the Law – The Limitations of Australian Legal Aid' (1969) 2(2) *Australian and New Zealand Journal of Criminology* 87; Peter John Hollingworth, *The Powerless Poor: A comprehensive guide to poverty in Australia* (1972). For an account of the financial difficulties that began to confront the law society schemes in the late 1950s see G E Parker, W R Cornish and A C Castles, 'The Crisis in Legal Aid in South Australia' (1960-1962) 1 *Adelaide Law Review* 59.

[127] (1964) 1(1) *The Law Council Newsletter* 8; H Reps Deb 1965 vol 47, 1120; Interview with Harkins, 4 November 1994.

[128] H Reps Deb 1975 vol 97, 1973-1977, 1982-1985 and 2252. See also Liberal Party of Australia, *Federal Platform* (1974) 18. See also Commonwealth Attorney-General, 'Review of Legal Aid' (Press Release, 15 January 1976); Harkins, above n 1, 33-35 and transcript of the special meeting of State and Commonwealth Attorneys-General, Hobart, Thursday, 4 March 1976.

[129] See Don Fleming, 'Australian legal aid under the First Howard Government' (2000) 33 *University of British Columbia Law Review* 343 for a discussion of the legal aid policies of recent federal governments, and the social significance.