FRANCHISING

Jeff Giddings

Making a meal of legal aid.

What does the word 'franchising' mean to you? I had always thought that it related to the right to vote, to participate in the workings of a democracy. In business, franchising seems to have been associated with schemes for making fast money through exclusive use of brand names, especially in take-away food. Well, franchising is set to become a major issue in legal aid in Australia in the near future. It has been the subject of great activity in the United Kingdom (UK) where it has been described as the most significant development in legal aid since the 1945 report of the Rushcliffe Committee on Legal Aid and Legal Advice.[1] There can be no doubt that the concept will be looked at very closely in Australia.

The purpose of this paper is to generate discussion on a range of proposals to change legal aid practice in Australia. While franchising is perhaps the most significant of these, proposals regarding competitive tendering and restricting eligibility to handle legal aid work will also be considered.

My concern is that while these measures are being promoted on the basis that they will improve the quality of legal services, this objective will not be achieved without a range of underlying issues being clarified and substantial resources being devoted to monitoring service quality. Further, there are valuable lessons which can be learnt from the UK experience in terms of measures which can be taken in a positive effort to improve the quality of legal aid services.

What is franchising?

The Legal Aid Board of England and Wales has defined franchising as:

> a system of non-exclusive contracting whereby solicitors and others might enjoy certain benefits and exercise certain delegated powers if they met criteria of competence and efficiency.

That definition differs significantly from that normally used in a commercial context where franchising has related very clearly to the exclusive use of some item of property, generally a brand name, within a certain geographic area. The franchisee pays for this exclusive right. Another difficulty with the definition relates to which groups, apart from solicitors, would be able to participate. Will non-lawyers be able to participate? Why only solicitors and not barristers?

I would suggest the following definition of franchising might be more useful:

> a system of special arrangements made with eligible service providers for the delivery of legal aid services, including the power to grant legal assistance.

Major legal aid changes ahead

Franchising is only one of a number of measures which, if adopted, would result in major changes in legal aid service delivery. The Legal Aid Commission of Victoria (LACV) appears to be taking the lead in this area with Legal Aid Commissions (LACs) in other States and Territories awaiting the outcome of the Victorian pilots before taking action themselves. The LACV is moving on a number of fronts:

Jeff Giddings teaches law and Legal Studies at La Trobe University, is Community Lawyer at West Heidelberg Community Legal Service and is a Commissioner, Legal Aid Commission of Victoria.

The views expressed are those of the author and do not represent those of the Legal Aid Commission of Victoria. This article is based on a paper presented at the National Community Legal Centres Conference in Perth, 1 September 1994.

Franchising pilot project

The LACV released a discussion paper about franchising in August 1993. Following consideration of comments received, the LACV approved development of a pilot scheme limited to the handling of summary criminal cases. The pilot started in December 1994 and involves six selected law firms having the power to grant legal assistance to their clients without referring applications for legal assistance to the LACV. The pilot will run for 12 months. In the UK context, criminal law has been described as 'the one area where it is generally agreed that there is little benefit in having a franchise'.[2]

Tendering out significant cases

The conduct of a pilot project on *Tendering Out of Significant Cases* is the clearest indication of the LACV's intention to make use of its market strength to reduce the cost of representation in major cases. The pilot will proceed in the near future, now that a working definition of 'significant case' has been established. The LACV expects that fewer than five such 'significant cases' will be defined in any one year. The merits of tendering out are far stronger in relation to major one-off cases, which involve either very novel legal issues or very substantial legal aid expenditure, or both. It will be important to monitor any attempts to extend application of the tendering out process to other cases.

The Law Society of England and Wales has been very uneasy about the possible linking of competitive tendering to franchising. The Lord Chancellor has fuelled the Law Society's concerns with references to the possible future introduction of such tendering and to franchises being exclusive in nature. By contrast, the Legal Aid Board of England and Wales (LAB) has stated repeatedly that it has no plans to introduce competitive tendering.[3] Moorhead, Sherr and Paterson have observed that 'the possibility of competitive tendering increasingly emphasises a conflict between the [legal] profession's role as protector of standards and the economic imperative of staying in business.'[4]

Eligibility to do legal aid work

A discussion paper *Eligibility to Handle Legally Assisted Cases* was released in April 1994 and considered the introduction of limitations on the right of solicitors to handle legal aid cases. Solicitors would have to comply with certain Practice Management Standards in order to continue to have the right to handle legal aid cases. The Standards cover such issues as processes for handling complaints, supervision and review of files and keeping clients informed of the progress of their file.

Unfortunately, the discussion paper does not grapple with the difficult issue of quality assurance mechanisms for the work of barristers, stating 'given the nature of barristers' work, practice management and competency standards may not be easily applicable.'[5]

The *Legal Aid Commission Act 1978* (Vic.) has been amended to facilitate the sorts of changes outlined above. During her second reading speech in relation to the *Legal Aid Commission (Amendment) Bill,* the Victorian Attorney-General, Jan Wade referred to franchising as:

> a procedure in which selected private practitioners will be given the power to assess applications for legal assistance, grant legal aid with or without conditions and terminate assistance.'[6]

Quality or cost control?

All of these proposals need to be looked at together. It is impossible to come to a view on the appropriateness and setting of quality assurance mechanisms without knowing whether franchising will be implemented and, if so, in what form. The proposals all involve the introduction of new control mechanisms but we must ask 'what is it that they are trying to control?' Is the focus on reduction of cost (be it direct service delivery costs or indirect infrastructure costs) or improving quality or some combination? Simultaneous control of service quality and cost through one set of mechanisms may not be possible. In 1992, the Judiciary Committee of the United States Congress stated that it was 'skeptical that a competitive bidding model can be developed that will result in legal services of equivalent or higher quality at a lower cost.'[7]

It is positive that moves are being made towards greater quality assurance in the legal aid field. At present, very little is done to review the services provided to legally assisted clients. LACs currently rely on the 'professionalism' of solicitors and barristers and the incentive to perform well so as to attract more legally assisted clients in the future. LACs do not undertake any detailed monitoring of quality of work on files handled by private practitioners. Before moving into uncharted waters, it will be important to ensure the fundamental questions have been answered:

- Is the objective to improve quality, reduce cost, maximise lawyers incomes or some combination?
- Who are the initiatives designed to assist: would-be clients, the lawyers, the legal aid bureaucrats, government or some or all of these groups?

The UK experience

It is important to recognise that the UK legal aid system differs significantly from the Australian system in that it relies entirely on private practitioners to provide legal aid services. Legal aid expenditure in the UK is far greater than in Australia, costing more than 1 billion pounds in 1992-93.

The concept of legal aid franchises in the UK has been said to have undergone a 'complete metamorphosis' since it was first mooted in the late 1980s.[8] Franchising was first thought of as a mechanism for involving agencies which did not employ lawyers to be involved in legal aid service delivery. Now it is potentially a means of excluding certain private lawyers from the legal aid field.

The LAB engaged respected academics to conduct major research in the franchising area. They were involved in the preparation of a set of detailed 'transaction criteria', mechanisms to be used in assessing the quality of work performed by franchise holders. The quality assessment was to be done by way of review of the lawyer's file for any particular matter. The original transaction criteria were published in 1992 and covered nine areas of legal aid practice: crime, family law, employment, housing, debt, personal injury, welfare benefits, immigration, and consumer and general contract.[9] The LAB also commissioned production of a Franchising Specification which was released in mid-1993.

There has also been substantial activity in trying to prepare firms for franchising. Firms have been sold the idea of franchising on the basis that it would involve benefits for them in areas including:

- administrative savings — franchised firms would have the power to grant legal aid in certain types of cases;
- financial incentives — accounts will be paid quicker for franchised firms; and
- marketing advantages — franchised firms will be able to promote their firm as one which has accreditation from the LAB. This has been seen by firms as a major advantage.

The LACV has so far failed to follow the lead of the LAB in terms of using franchising to alter the nature of the services provided by those organisations involved with legal aid clients. In the UK, franchisees have been required to develop expertise in the provision of advice on welfare benefits. 'Given the economic circumstances of many legal aid clients, welfare benefits advice is an important adjunct to legally aided advice and assistance.'[10] In the UK, even where the franchisee does not hold or apply for a specific welfare rights franchise, it must have at least one employee suitably qualified to recognise the need for welfare benefits advice.[11] Requirements have also been included to prevent franchisees from discriminating on grounds of race, sexual orientation, religion or disability in deciding whether to accept instructions from clients, instructing counsel or in the provision of services.[12]

The Birmingham pilot

In 1990, a franchising pilot was established in Birmingham. Twenty-six of the 41 applicants were granted franchises in at least one of the nine available areas of legal work. The franchisees included five advice agencies, not all of which employed a solicitor. The pilot ran for three years and the first franchises proper were granted in early 1994.

Reactions to the pilot were fairly mixed. Surprise was expressed at the high number of refusals of franchise applications. None of the 19 applicants for an employment law franchise was successful. The housing law and consumer law fields each had only one successful applicant. One franchisee in the debt law area found the franchising experience '100 per cent positive'. Simon Johnson, general manager of the Money Advice Service Birmingham Settlement stated:

> The running of the franchise and the delegated powers have been so beneficial in enabling us to maximise our income from green form work.'[13]

Concerns were expressed about requirements that firms must do a certain volume of legal aid work before being able to obtain a full franchise. This is of particular interest in the Victorian context given the LACV's interest in tightening the requirements for eligibility to be a member of the Legal Aid Panel (those lawyers to whom the LACV can assign work). At present, all a solicitor must do is complete a form indicating preparedness to be on the Panel. Barristers do not even need to do this; by signing of the Bar Roll they are deemed to be a member of the Panel.

In its eligibility discussion paper, the LACV noted that the refusal rate on applications for legal assistance was significantly lower for those firms which did large amounts of legal aid casework. For firms which handled between 251 and 500 legally assisted cases in 1992-93, only 8% of total applications submitted were refused. For firms which handled between one and five legally assisted cases over the same period, the refusal rate was 62%. The LACV described these refusal rates as an indicator of how efficiently firms deal with legal aid cases.[14]

Too many players spoil the franchise

It is important to recognise the different players who should be (or who will insist on being) considered in any decision-making process about franchising. Who should decide what is provided by whom to whom at what price and with what conditions attached? It has been noted in the UK that 'The difficulty presented by having a public service mediated by participants in a private market is exacerbated by the Lord Chancellor's Department's increasing control over renumeration'.[15]

The following groups need to be considered:

The clients

The ability of clients to make informed decisions about the legal aid service they receive has been called into question by Sherr and others:[16]

> It is surely unrealistic to expect most clients to be able to assess the depth and currency of their lawyer's legal knowledge or their skills as negotiators, mediators or advocates, let alone their management skills and motivational skills.

The LACV quoted this statement in its discussion paper *Eligibility To Handle Legally Assisted Cases* in the context of the significance which should attach to the right of a legal aid client to choose a solicitor.[17] It is disconcerting that the notion of client input is seemingly limited to this pre-assistance choice (which is a matter of significant interest to private lawyers) and does not cover any post-assistance analysis by the client of the quality of service received.

Consumer input must be given a significant role in the process of evaluating the performance of franchise holders. In May 1993, Gillian Bull from the National Consumer Council in the UK expressed concern about the lack of priority given to the notion of user feedback in the franchising transaction criteria which were then being developed: 'One major problem seems to be the emergence of a mind-set that argues that clients are just not able to judge the quality of legal aid work.'[18]

Research in the UK has indicated that there are significant positive correlations between client satisfaction and low rates of non-compliance by solicitors with the largest section of the transaction criteria used for research purposes during the Birmingham franchising pilot. It was stated that there is 'an important congruence between the lawyer's fact gathering and the client's satisfaction.'[19] Gillian Bull suggested that consumers needed accessible information about what standards to expect, and about those attained, before they could make sensible comments.[20]

The legal aid authorities

Apart from the LAC's role in administering legal aid work by private lawyers, there is also the issue of whether franchise-type arrangements should apply to regional offices and specialist

divisions within LACs. As there is no salaried legal aid service in the UK, we are unable to draw on their experience. In the United States, a requirement that program grants by the Legal Services Corporation be awarded on a competitive basis was introduced by Congress in 1988. Singsen suggests that the use of competition in awarding such grants is likely to prove expensive and destructive. He notes that there is a lack of a consumer-based market for legal services for the poor and that the clients of legal services programs are 'no more than third party beneficiaries' of transactions between programs (as sellers of services) and the Legal Services Corporation (as buyer).[21] Legal aid management may well feel it will be easier to get private practitioners to accept franchise arrangements if similar mechanisms are used for salaried legal aid staff.

Is it appropriate for the streamlining of legal aid administration to be a major objective of franchising type initiatives? One argument put forward by the LACV in support of reducing the size of the panel of practitioners able to handle legally assisted cases was that this would lead to greater control of administrative costs.

The private profession

Proposals such as franchising have the potential to cause a major change in the workings of the legal profession. Moves toward improved accountability and greater control will be perceived as a threat to the profession's independence. To date, there has been very little done to monitor the quality of the legal aid (or other) work done by lawyers. Of course, legal aid authorities would face enormous difficulties in attempting to implement such reforms without at least acquiescence from the legal profession.

The LAB attempted to take 'a user-friendly approach to franchising, initially setting standards low, with the emphasis on fostering a co-operative approach to compliance.'[22] Even so, the Law Society threatened to boycott the Birmingham pilot and then, until July 1994, was advising its members not to enter into franchise arrangements until the Society's concerns over a number of issues were addressed. The nature of the monitoring process used to assess the work performed by franchised firms will be crucial in determining the attitude of private practitioners. However, the monitoring process will also be crucial to the success of franchising. The more stringent the process, the better it will be able to control service quality but the more likely private practitioners will resist it.

The government

In the UK, there have been difficulties caused by the Lord Chancellor taking a different approach to franchising-type developments to that of the statutory body, the LAB. In early 1993, Lord Mackay linked franchising to competitive tendering in a manner that went way beyond the non-exclusive franchise system outlined by the LAB. The interest of government is likely to bring strong cost pressures into play. As Moorhead and others observed:

> Both lawyer and consumer become increasingly powerless to agree on the quality of service because neither party can arrange for the economic support which would be necessary to achieve that service.[23]

Other issues to consider

Exclusivity

There has been strong opposition from the Law Society in the UK to any suggestions that franchised firms should have exclusive rights to handle legal aid cases in a given area. The LAB has stated on several occasions that it has no plans to introduce exclusivity. However, the Lord Chancellor has stated: 'I can envisage that, in some areas and for some work, only accredited firms might be eligible to handle legal aid cases.'[24] This stance is linked to the prospect of competitive tendering in that it is likely that firms will only be prepared to negotiate to do legal aid work at a cheaper rate per case if they can be assured of a certain volume of such work. Naturally, small 'high street' firms and sole practitioners may be lost to the legal aid system. The price reductions which would most likely result from competitive tendering might well make legal aid work too marginal.[25] The introduction of quality assurance mechanisms might also discourage practitioners from continuing to handle legal aid cases.

The LAB has referred to another rationale for introducing exclusivity, albeit on a very limited basis. If it were demonstrated that there was no coverage of a particular area of law in a certain geographic area, the possibility of an exclusive contract might be used as an inducement for a firm or agency to provide a service to cover that area of law.[26]

The LACV has suggested a change which has some similarities to exclusive franchising in the form of the establishment of specialist panels to deal with certain types of complex cases. Examples of complex cases are complex drug or fraud trials and medical negligence actions. One of the three ways in which it has proposed that work could be allocated to members of such special panels is that individual significant cases could be offered by tender to the members. This raises two significant matters:

- Would such a system require referral of cases to the particular practitioner within a firm with expertise in the relevant area rather than simply to the firm itself? Should there be a requirement that the 'expert' practitioner handle the matter personally or would a supervision requirement be sufficient?
- How would a practitioner become a member of a specialist referral panel? The LACV has suggested that accreditation as a specialist by the Law Institute of Victoria could qualify a practitioner for the specialist panel but there are extensive legal areas, including criminal law, for which accreditation is not currently available. Further, the complex cases are likely to require expertise which would not necessarily be held by specialists accredited by the LIV scheme. It would be useful for the LACV to also require a significant level of understanding of the operations of the LACV. If such specialist panels are to work effectively, substantial preparatory work will have to be done by the LACV to devise meaningful measures of expertise.

What level of quality?

The attention paid to the question of the appropriate standard of quality of service to be provided to assisted persons, will increase as a result of the franchising debate. The quality of legal aid services has received insufficient attention in the past so that it is now important to carefully consider the issue.

The connection between costs and quality will be very important. As is currently the case, the reliance on government funds means that there is potential for the quality of services provided to be lowered in financially difficult times. The Chief Executive of the LAB, Steve Orchard has described cost as 'the most visible quality element in privately-funded legal services.' Orchard also asked, 'Can clients, whether legally aided or not, ignore the cost involved? Of course not.'[28] The budget of the UK legal aid system is more demand-driven than its Australian counterparts. A combination of tight type-of-case guidelines,

merit tests and stringent means tests have been used by Australian LACs to artificially suppress demand for legal aid.

An alternative strategy which a legal aid funder could adopt to control costs would be to tackle the average cost of legally assisted cases. However, the private profession would be most reluctant to accept any reductions in renumeration and might only accept such a change if it were coupled with a recognition that a lower quality of service would be acceptable.

In the UK, Sherr, Paterson and Moorhead have suggested a quality continuum for legal services:

*Excellence

*Competence-Plus

*Threshold Competence

*Inadequate Professional Services

*Non-Performance

Paterson and Sherr identified a level between threshold competence and competence-plus as the critical level below which franchised firms could not fall. A higher standard had the potential to endanger access through pushing up cost. Excellence is an aspirational standard whereas threshold competence relates to the extreme lower limit of service quality which the community will tolerate. It is important to consider whether the level of quality expected has been set too low and also whether there is a need for more than five steps on a continuum which runs from non-performance to an aspirational standard.

It has been suggested that it may be possible to confer additional franchise benefits on those achieving higher levels of work quality. On the other hand, concern has been expressed that the levels of quality which are set will act as ceilings rather than floors. An editorial in *Legal Action* suggested that cost competition pressures could result in practitioners operating above the basic level having to reduce their quality in order to retain their legal aid contract.[29]

Steve Orchard has described the franchising regime as an 'attempt to set a quality floor, not a ceiling as [Legal Action Group] suggests, from which it is possible to make rational cost comparisons.'[30] The debate regarding floors and ceilings fails to deal with the fundamental question of 'How solid are the foundations?' In this context, the foundations relate to the level of funding provided by government, the accuracy of the mechanisms used to measure quality and the level of monitoring carried out to ensure that the stipulated standards are met.

The question of who decides what quality of service is to be provided is a difficult one. No doubt, the private legal profession will say that funds must be provided to ensure that an excellent service can be provided to all who require it. Any suggestion of a lesser level of service will be met with antagonism from all quarters except perhaps the funders and may be viewed as acknowledging that legal aid provides a second rate service. It must be remembered that the overwhelming majority of users of the legal system (who do not qualify for legal assistance) cannot afford a top-level service. Cost pressures will, to a large extent, dictate the quality of service they receive. Only the very wealthy would not find the legal costs of a major piece of litigation economically crippling.

Measuring quality

In the UK, the following potential measures of the quality of lawyers have been suggested by Moorhead and others.[31]

- Input measures: for example, qualification and experience. These were described as 'probably weak indicators of quality'.
- Structural measures: while it might be possible for the legal aid authority to promote the type of environment and culture of support needed to encourage quality legal aid work, 'the systems and approaches [currently] adopted by the Board are heavily influenced by supply-side concepts of quality'.
- Process measures: these look directly at what lawyers actually do on legal aid files. As such, they have been viewed as providing a better assessment of quality than input and structural measures.
- Outcome measures: these look at the tangible 'results' of a lawyer's work and as such, 'may provide a better approximation of "real" quality.' A great deal of preparatory work will need to be done before measures which accurately approximate quality can be implemented.

The use of a checklist approach to ensure that stipulated transaction criteria (which are essentially process measures) are met has been criticised as likely to 'standardise and routinise legal practice' and 'will encourage practitioners to place undue emphasis on file maintenance (or even to cheat) rather than concentrating on doing a good job'.[32] A comparison has been made with criticisms levelled at police station custody records: 'What will happen is that practitioners will adjust procedures. Reality becomes what is on paper rather than what actually happens.'[33]

In answer to such concerns, the architects of the transaction criteria have responded that the franchised firms will not be forced to adopt a checklist approach (although the franchise auditors will use checklists). Further, they suggest that those firms which do use a checklist approach are less likely to overlook relevant considerations in advising on a case. 'It comes down to whether the risks are worth running in return for a better guarantee of quality for all clients of franchised firms.'[34]

A great deal of work has been done in the UK to establish appropriate transaction criteria. If franchising is to be used in Australia, similar work will need to be done. The LACV is commencing a franchising pilot which relies heavily on the UK approach but without preparing transaction criteria. While not advocating that the LACV should go ahead and try to reinvent the wheel, care needs to be taken before taking up international developments. In this particular context, it should be remembered that, while a major pilot has been conducted and substantial research undertaken, the UK franchising system is still very much in its infancy. Indeed, the transaction criteria are not yet being used in the granting or monitoring of franchises.

Monitoring compliance

Any system which gives private practitioners power to grant legal assistance must incorporate a system which monitors the use of this power. If, in the process of obtaining the right to grant assistance, practitioners are required to agree to meet certain quality standards, they must be held to such agreements. If the system goes one step further and involves practitioners in competitive tendering for blocks of legal aid cases, quality monitoring will be even more important.

The review process used for assessing compliance in the UK franchising pilot included several facets.[35] Selected client files were reviewed to ascertain whether the various transaction criteria were met. The reviewing officers also provided their view as to the 'intrinsic worth' of the work done on the file. Client views were considered by way of interviews and a

questionnaire. Further, there was a peer review by a lawyer experienced in the relevant field. To use a comprehensive system of this nature on an ongoing basis would without doubt be very expensive. It might well jeopardise the financial viability of franchising arrangements in that the legal aid authorities might find the audit costs outweigh the benefits from franchising.

The expense involved in a detailed process is not clear. It was suggested in the UK that the LAB was reckoning that the audit of one file would take 40 minutes.[36] This would result in either a very time-consuming audit process or a process which based its assessment of a franchised firm on perhaps less than a dozen files. Naturally, the UK Law Society has, in its negotiations with the LAB, emphasised the importance of appeal rights in relation to disputes between the Board and franchised firms over the granting or revocation of franchises.

Legal aid authorities are likely to take a soft line which seeks to make the system more user-friendly. The Quality Assurance Criteria proposed by the LACV for its franchising pilot include requirements regarding appointment of a franchise representative, documented supervision arrangements, financial, personnel and casefile management systems, procedures for documenting advice given and action taken, client care and complaints processes and availability of legal reference material.[37] The emphasis is on the existence of procedures. Unfortunately, the appropriateness of the procedures appears unlikely to be considered in any depth.

There is little point in having such standards in place unless resources are provided to monitor whether those standards are being met. For example, what is the point of a law firm having an elaborate complaints procedure if the procedure is routinely ignored by staff. Further, what is the point of requiring assurances of the existence of such procedures if no real effort will be made to ensure they are complied with. This issue is clouded by the fact that legal aid authorities have given very little emphasis to quality assurance in the past. It is important to separate the issue of the appropriateness of adoption of quality assurance measures from that of the appropriateness of franchising. One theoretical (although I do not think likely) outcome of the franchising pilot would be a move to greater quality assurance but without the franchising system.

During Reagan's presidency, the US Legal Services Corporation was seen to move away from attempting to monitor quality towards monitoring designed to ascertain whether local programs had violated particular rules or regulations. Singsen states:

> The monitoring effort sought to establish a basis for reducing program funding, disciplining program leadership or demonstrating to the Congress that the local services programs were out of control and should be defunded entirely. *It treated questions of quality, effectiveness or value of output as essentially irrelevant.* [emphasis added][38]

Conclusion

There is currently very little monitoring of the quality of legal aid service delivery. Practitioners will say that quality services are provided but there is no way we can ascertain that this is the case. Tightening the requirements practitioners must meet to obtain the right to do legal aid work may be a more appropriate mechanism to achieve an improvement in service quality than the introduction of franchising and competitive tendering.

Competition-driven regimes have only limited value in situations where there is no real 'market' for the good or service in question. A legal aid system which seeks to implement competition along with measures to safeguard quality is vulnerable to manipulation by government. Government might take what it likes of the system (the competition) and discard the rest (the safeguards). Clearly, much care needs to be taken before the types of reforms currently being considered are implemented.

References

1. Smith, Roger, 'Franchising's "running sore"', (1993) *Legal Action*, June, p.4. For a brief outline of the main recommendations of the Rushcliffe Committee, see 'A Strategy for Justice', Legal Action Group, London, 1992, pp.4-5.
2. Bawdon, F., The Birmingham Pilot', (1993) *Legal Action,* May, p.7.
3. See (1993) *Legal Action*, March, p.4, May 1993 and June, p.7.
4. Moorhead, R., Sherr, A. and Paterson, A., 'Franchising: Assessing the Quality of Legal Aid Lawyers?', paper presented at the Conference on Law and Legal Services, Low Wood, England, July 1993.
5. Legal Aid Commission of Victoria, *Eligibility to Handle Legally Assisted Cases*, 1994, p.12.
6. Parliamentary Hansard, Assembly, 31 March 1994, p.777.
7. Smith, Roger, 'Competitive Tendering: The US Experience', (1993) *Legal Action*, June, p.8.
8. Bawdon, above.
9. Sherr, A., Moorhead, R. and Paterson, A., 'Transaction Criteria', HMSO, 1992.
10. Sherr, and others, 1992, above, p. 26.
11. Legal Aid Board, Franchising Specification, 3.9.
12. Legal Aid Board, above, 3.29.
13. Bawdon, above, pp.7 and 8.
14. Legal Aid Commission of Victoria, above, p.17.
15. Moorhead and others, above, p.8.
16. Sherr, A., Moorhead, R.and Paterson, A., 'Franchising Legal Aid: Final Report', 1993, p.23.
17. Legal Aid Commission of Victoria, above, p.8.
18. Smith, above, ref.1.
19. Moorhead and others, above, p.19.
20. Smith, above, ref.1.
21. Singsen, G., 'The Role of Competition in Making Grants for the Provision of Legal Services to the Poor', (1991) 1 *Public Interest Law Journal* 57 at 62 and 65.
22. Smith, Roger, 'Transaction Criteria: The Face of the Future', *Legal Action*, February 1993, p.9.
23. Moorhead and others, above, p.8.
24. Letter to the *Times* from the Lord Chancellor dated 22 January 1993 quoted in 'Legal Aid Moves', *Legal Action,* February 1993, p.4.
25. Hodge, H., 'Nasty and significant changes', (1992) *New Law Journal,* November 6.
26. Orchard, S., 'The Board's Agenda', (1993) *Legal Action,* June, p.7.
27. Orchard, S., above, p.7.
28. 'Franchising: A New Agenda', (1993) *Legal Action*, April, p.3.
29. Orchard, S., above, p.7.
30. Moorhead and others, above, p.9.
31. Paterson, A., 'Quality Assurance and Measuring Professional Competence: Are We Trying To Square The Circle?', paper presented at the Conference on Law and Legal Services, Low Wood, England, July 1993.
32. Smith, above, ref.22, p.11.
33. Smith, Roger, above, ref. 22, p.11.
34. Sherr, A., Moorhead, R. and Paterson, A., 'Transaction Criteria: Back to the Future', *Legal Action*, April 1993, p.7.
35. Moorhead and others, above, pp.10-12.
36. Smith, above, ref.22, p.9.
37. Legal Aid Commission of Victoria, 'Franchising — Summary Criminal Case Pilot', December 1993, pp.10-13.
38. Singsen, above, p.73.