

Chapter 1

Why social work and law?

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At its core, social work is about the development, maintenance and use of relationships. The most critical of a social worker's attributes – more so even than the social worker's professional knowledge and skills – is 'developing and sustaining respectful relationships with clients [which] is fundamental to good social work activity' (Bland et al 2006: 43). As Mullaly (1997: 99) concluded, '[s]pontaneity and personal qualities of the social worker are more important than theory'.

Nonetheless, social work, as a profession, exists in a contested domain, within a framework of rights and duties that are defined by law, by employers, and by professional codes of conduct (Papadaki and Papadaki 2008: 164).

Social workers operate in 'a collection of competing and contradictory discourses that come together at a particular moment in time to frame the task of social work, defining not just its capabilities, but also its potential' (Cree 2003: 4; see also Cree 1995). Political, ethical, technical, practical and – especially considered in this volume – legal issues are involved in most decisions in social work (Banks 1995). Social work's principal constituency is 'the person', whose presentation to social workers is defined by an interweaved matrix of individual, structural and community perspectives, shaped by socio-political influences, and by the constraints of culture, difference, resource availability and the exercise of power (Beckett and Maynard 2005; Camilleri 1999; O'Connor et al 2003). The power of social workers is:

socio-legally ascribed ... [and] emanates from social workers' expertise and specialised knowledge, professional licensure, and social status and forms the power of the organization in which they are employed (Regehr and Antle 1997: 304)

and they need to be cognisant of the considerable power that they frequently exercise over the lives of service users (O'Sullivan 1999).

At the same time, contemporary social work practice is characterised by a concern with risk management. Employment frequently occurs in 'settings dominated by risk as the key rationality' (McDonald 2006: 111), where the question of what is to be offered to the service user, and the focus of the proposed intervention, may be only marginally more important than ensuring that standards of practice, quality of service or professionalism are not exposed to the risk of challenge.

It has been argued that social work seeks to achieve:

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effective, and to seek to use them for the betterment of the community as a whole, and their clients in particular. At the same time, the understanding which social work brings to the interactions between people, and to a commitment to justice, rights and empowerment, must remain central to social work practice. The practice of neither law nor social work is value neutral, and practitioners in both professions need to consider the consequences of their interventions – and their failures to intervene (Rand 2006). Each needs to be ‘a champion of the underprivileged and dispossessed’ (Cull and Roche 2001: 15). The tension between the here and now, on the one hand, and the future arrangements by which the community is managed, on the other, is inherently contested and political (O’Connor et al 2003: 234), and is fraught with uncertainty:

Practice that is about genuine empowerment can never be certain of where it is heading, but ... it can, and indeed must, proceed in a way that takes account of universal value, moral and ethical principles, even if the way in which these are defined and operationalized will vary over time and across cultural settings. (Ife in Pease and Fook 1999: 222; see also Adams et al 1998: 60)

At times, legal remedies will be appropriate to enforce rights and ensure justice and fairness, particularly for groups and individuals who are marginalised and disempowered in the contemporary social order with its focus upon individualism, corporatisation, user-pays mentality, and a retreat from the universality of rights (Bryson 1992; McDonald 2006). The challenge for social workers – and, arguably, for legal practitioners, too – is ‘to address the tension and dilemmas inherent in social work law, in the relationship between social work, social policy and the law, through a legal, policy and organisational literacy’ (Adams et al 1998: 66).

Social workers have an ethical and moral responsibility to challenge inequality and the disharmony it produces, and to encourage and support self-sufficiency while challenging the existing political, environmental and societal barriers to participation and full citizenship (Brooks 2005: 528). This will require a partnership between law and social work encompassing different but compatible skills, values, knowledge and frameworks of understanding. That is the challenge.

Additional reading

- Hudson, W and Kane, J, 2000, *Rethinking Australian Citizenship*, Cambridge University Press, Cambridge.
 Lister, R, 1997, *Citizenship – feminist perspectives*, Macmillan, Hampshire.

References

- AASW, 2010, *Code of Ethics*, Australian Association of Social Workers, Canberra.
 Adams, R, Dominelli, L and Payne, M, 1998, *Social work themes, issues and critical debates*, Macmillan, London.
 Allars, M, 1991, ‘Neutrality, the Judicial Paradigm and the Tribunal Procedure’, 13 *Sydney Law Review* 377–413.

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- Balen, R and Masson, H, 2008, 'The Victoria Climbié case: social work education for practice in children and families' work before and since', 13 *Child & Family Social Work* 121–32.
- Banks, S, 1995, *Ethics and Values in Social Work*, Macmillan, Basingstoke.
- Beckett, C and Maynard, A, 2005, *Values and Ethics in Social Work – An Introduction*, Sage Publications, London.
- Bland, R, Laragy, C, Giles, R and Scott, V, 2006, 'Asking the Customer: Exploring Consumers' Views in the Generation of Social Work Practice Standards', 59(1) *Australian Social Work* 35–46.
- Brooks, S, 2005, 'Practicing (and teaching) therapeutic jurisprudence: importing social work principles and techniques into clinical legal education', 17 *St Thomas Law Review* 513–30.
- Bryson, L, 1992, *Welfare and the State*, Macmillan, London.
- Camilleri, P, 1999, 'Social Work and its search for meaning: theories, narratives and practices', ch 1 in Pease, B and Fook, J, 1999, *Transforming Social Work Practice – Postmodern Critical Perspectives*, Allen & Unwin, Sydney.
- Charlesworth, S, Turner, JN and Foreman, L, 2000, *Disrupted Families – The Law*, Federation Press, Sydney.
- Collingridge, M, 1991, 'Legal Risk, Legal Scrutiny and Social Work', 44(1) *Australian Social Work* 11–17.
- Cree, V, 1995, *From Public Streets to Private Lives: The Changing Task of Social Work*, Avebury, Aldershot.
- Cree, V, 2003, *Becoming a Social Worker*, Routledge, London.
- Cull, L-A and Roche, J, 2001, *The Law and Social Work – contemporary issues for practice*, Palgrave, Basingstoke.
- Dalton, T, Draper, M, Weeks, W and Wiseman, J, 1996, *Making Social Policy in Australia*, Allen & Unwin, Sydney.
- Fawcett, B, Goodwin, S, Meagher, G and Phillip, R, 2010, *Social Policy for Social Change*, Palgrave MacMillan, Melbourne.
- Furman, R, Sanchez, T, Langer, C and Negi, N, 2007, 'A qualitative study of immigration policy and practice dilemmas for social work students', 43(1) *Journal of Social Work Education* 133–46.
- Hardin, M, 2005, 'Role of the legal and judicial system for children, youth, and families in foster care', in Mallon, G and McCartt-Hess, P (eds), 2005, *Child welfare for the 21st century: A handbook of practices, policies, and programs*, Columbia University Press, New York.
- Ife, J, 1997, *Rethinking Social Work – Toward Critical Practice*, Longman, Australia.
- Ife, J, 1999, 'Postmodernism, critical theory and social work', in Pease, B and Fook, J, 1999, *Transforming Social Work Practice – Postmodern Critical Perspectives*, Allen & Unwin, Sydney.
- Litowitz, D, 1997–98, 'Legal Writing – its nature, limits and dangers', 49 *Mercer Law Review* 709–40.
- Lynch, R and Brawley, E, 1994, 'Social Workers and the Judicial System: Looking for a better fit', 10(1/2) *Journal of Teaching in Social Work* 65–82.
- McDonald, C, 2006, *Challenging Social Work – the Context of Practice*, Palgrave Macmillan, Basingstoke.
- McDonald, C and Coventry, L, 2009, 'Uses and Abuses of Case Management – A Critical Analysis of Contemporary Practices', ch 18 in Moore, E (ed), 2009, *Case Management for Community Practice*, Oxford University Press, Melbourne.
- Morgan, J and Graycar, R, 2002, *The Hidden Gender of Law*, 2nd edn, Federation Press, Sydney.
- Mullaly, R, 1997, *Structural Social Work – Ideology, Theory and Practice*, 2nd edn, Oxford University Press, Ontario.
- Munro, E, 1998, 'Improving Social Workers' Knowledge Base in Child Protection Work', 28 *British Journal of Social Work* 89–105.

SOCIAL WORK IN THE SHADOW OF THE LAW

- O'Connor, I, Wilson, J and Setterlund, D, 2003, *Social Work and Welfare Practice*, 4th edn, Pearson Longman, Sydney.
- O'Sullivan, T, 1999, *Decision Making in Social Work*, Macmillan, London.
- Papadaki, E and Papadaki, V, 2008, 'Ethically Difficult Situations Related to Organizational Conditions: Social Workers' Experiences in Crete, Greece', 8 *Journal of Social Work Education* 163–80.
- Pease, B and Fook, J, 1999, *Transforming Social Work Practice – Postmodern Critical Perspectives*, Allen & Unwin, Sydney.
- Preston-Shoot, M, Roberts, G and Vernon, S, 2001, 'Values in Social Work: Strained Relations or Sustained Relationships?', 23(1) *Journal of Social Welfare and Family Law* 1–22.
- Rand, S, 2006, 'Teaching law students to practice social justice: interdisciplinary approaches for help through social work's empowerment approach', 13 *Clinical Law Review* 459–504.
- Regehr, C and Antle, B, 1997, 'Coercive Influences: Informed consent in court-mandated social work practice', 42(2) *Social Work* 300–6.
- Sheppard, G, 1985, *The Needs of the Ethnic Communities in the Court's Management Change Program*, Attorney-General's Department, Melbourne.
- Thornton, M, 1996, *Dissonance and Distrust – women in the legal profession*, Oxford University Press, Melbourne.
- Vandervort, F, Gonzalez, R and Faller, K, 2008, 'Legal ethics and high child welfare worker turnover: An unexplored connexion', 30 *Children and Youth Services Review* 546–63.
- Wilkinson, M, 1994, 'The Social Work and Law Debate – Implications for Social Work Education', *Advances in Social Welfare Education* 65–70.