


ACCESS TO **JUSTICE & LEGAL AID**

COMPARATIVE PERSPECTIVES
ON UNMET LEGAL NEED



Edited by
ASHER FLYNN AND JACQUELINE HODGSON

B L O O M S B U R Y

Access to Justice and Legal Aid

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The collection brings together expertise from across Australia and the United Kingdom to reflect critically on access to justice and legal aid. Working with these scholars, practitioners and advocates, whose research and practice reveal the limits and possibilities of justice, has been a highly rewarding experience. We would like to thank each of our contributing authors for their diligence and patience, for responding so graciously and positively to critical feedback on earlier drafts, and for the tremendous contributions that their work makes, both within and beyond this book, to advance access to justice for some of the most vulnerable members of society.

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Asher Flynn and Jacqueline Hodgson
May 2016

EDITORS

Dr Asher Flynn is a Senior Lecturer in Criminology at Monash University. Her research applies a critical, socio-legal framework to understand, critique and transform legal policy and practice. Informed by national and international context, her research focuses on how access to justice is negotiated; and the gendered, class-based application and practice of law. Asher has published widely in the areas of sexual violence, access to justice, plea negotiations and prosecutorial discretion, and has contributed to policy-specific research and legal change in early resolution procedures, as well as influencing reforms in homicide and rape laws. Her latest book (with Dr Anastasia Powell and Dr Nicola Henry) *Rape Justice: Beyond the Criminal Law* (Palgrave Macmillan, 2015) examines the potentials and limitations of the law and its processes for responding to experiences of sexual violence.

Asher has been awarded a number of prestigious research fellowships in recognition of her work, which have allowed her to spend time in several Law and Criminology departments in Australia and England. This includes a Monash University Emerging Researcher Fellowship and a three-year Research Fellowship in Law at the Criminal Justice Centre at the University of Warwick. She has received several prizes including the Australian and New Zealand Society of Criminology New Scholar Prize (2013) and the Monash University Excellence in Research by Early Career Researchers Award (2014). She is also an elected member of the executive committee of the Australian and New Zealand Society of Criminology. Asher is currently Chief Investigator on two Criminology Research Council-funded projects—*Negotiated Guilty Pleas: An Empirical Analysis* (CRG 51/14-16), with Emeritus Professor Arie Freiberg (Monash University), and *Responding to Revenge Pornography: The Scope, Nature and Impact of Australian Criminal Laws* (CRG 08/16-17), with Dr Nicola Henry (La Trobe University) and Dr Anastasia Powell (RMIT University).

Professor Jacqueline Hodgson holds an LLB and PhD and has researched and written in the areas of UK, French, comparative and European criminal justice. Adopting a contextual and socio-legal approach, much of her work draws upon her own empirical projects funded by the ESRC, Nuffield Foundation, British Academy, Leverhume Trust, AHRC, the European Commission and the Home Office. She has written extensively on the role of the defence, the prosecution, the trial and sentencing, as well as on miscarriages of justice and terrorism. Key monographs include *Custodial Legal Advice and the Right to Silence* (1993), *Stand-*

ing *Accused* (1994), *Criminal Injustice* (2000), *French Criminal Justice* (2005), *Suspects in Europe* (2007) and *Inside Police Custody* (2014). She has recently completed a major comparative empirical project on safeguards for juveniles during police interrogation, *Interrogating Young Suspects* (2016). She has also researched the work of the Criminal Cases Review Commission (the body that investigates miscarriages of justice) and Prisoners' Penfriends. She has contributed to policy reform through her research for the Royal Commission on Criminal Justice, her evidence to Parliamentary Select Committees (on Europe and on Justice) and a range of EU legislation Impact Assessments. Her expertise has also been sought in the Special Immigration Appeals Commission, a number of European Arrest Warrant cases and the Canadian extradition case of *Diab*. She held a British Academy/Leverhulme Senior Research Fellowship for 2009–10 and was awarded the Social Science Faculty Impact Prize in 2013. In 2013 she was elected to the Council of JUSTICE, and in 2014 she was elected a Fellow of the Academy of Social Sciences.

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Dr Janet Smithson is a researcher in social psychology. She has worked on a variety of United Kingdom- and European-funded research projects, using both qualitative and quantitative research methods. Current research projects include the use of online forums and interventions for health and mental health support, and interactions in therapy and mediation sessions. Other research interests include gender and discourse, life course transitions, qualitative methodologies, and internet-mediated discourse and communication.

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LIST OF ABBREVIATIONS

ABS	Australian Bureau of Statistics
ACOSS	Australian Council for Social Services
ACT	Australian Capital Territory
ADR	Alternative Dispute Resolution
AJAC	Access to Justice Advisory Committee
ALAO	Australian Legal Aid Office
ALSWA	Aboriginal Legal Service of Western Australia
ATO	Australian Taxation Office
ATSILS	Aboriginal and Torres Strait Islander Legal Services
AVL	Audiovisual link
BAME	Black, Asian and minority ethnic
BVT	Best Value Tendering
CAB	Citizens Advice Bureau
CABx	Citizens Advice Bureaux
CBA	Criminal Bar Association
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CLC	Community legal centre
CLSA	Criminal Law Solicitors Association
CNS	Custody Notification Service
CPR	Collaborative Planning Resource
CPS	Crown Prosecution Service
CRPD	Convention on the Rights of Persons with Disabilities
CSA	Child Support Agency
DIY	Do-it-yourself
DLA	Disability Living Allowance

DoJ	Department of Justice
DWP	Department for Work and Pensions
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ESA	Employment and Support Allowance
EU	European Union
GMMAP	Greater Merseyside Money Advice Project
GP	General practitioner
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFVPLS	Indigenous Family Violence Prevention and Legal Services
ILNP	Indigenous Legal Needs Project
JD	Jurisdictional Data
JSA	Jobseeker's Allowance
LA	Local authority
LAA	Legal Aid Agency
LAB	Legal Aid Board
LAC	Legal Aid Commission
LACV	Legal Aid Commission of Victoria
LANSW	Legal Aid New South Wales
LASPO	<i>Legal Aid, Sentencing and Punishment of Offenders Act 2012</i>
LAQ	Legal Aid Queensland
LCCSA	London Criminal Courts Solicitors Association
LSB	Legal Service Bureaux
LSC	Legal Services Commission
LSOA	Lower layer super output area
MCA	<i>Magistrates' Courts Act 1980</i>
MIAM	Mediation Information and Assessment Meeting
MNCC	Mid North Coast Correction Centre
MoJ	Ministry of Justice

NAO	National Audit Office
NGOs	Non-Governmental Organisations
NHS	National Health Service
NLAAC	National Legal Aid Advisory Committee
NPA	National Partnership Agreement on Legal Assistance Services
NSW	New South Wales
NSWALS	New South Wales Aboriginal Legal Service
NT	Northern Territory
PCT	Price-Competitive Tendering
PDS	Public Defender Service
PIP	Personal Independence Payment
PLP	Public Law Project
PSO	Protective Service Officer
PSOs	Public Solicitors Offices
PTSD	Post-Traumatic Stress Disorder
QC	Queen's Counsel
QLD	Queensland
SP	Service Planning
TJ	Therapeutic jurisprudence
UC	Universal Credit
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
US	United States
VHCC	Very high cost cases
VLA	Victoria Legal Aid
WA	Western Australia
WLSV	Women's Legal Service Victoria
WRA	<i>Welfare Reform Act 2012</i>

TABLES AND FIGURES

- Table 1:* Top five legal information service matters
- Figure 1:* Nexus between unmet legal need and social/economic problems
- Figure 2:* Poor outcomes for women unable to access the justice system