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**THE ACCIDENTAL TOURIST IN THE LAND OF THE LAW
Legal self-help for the unadventurous**

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*Really, I just don't want to look like an idiot. I don't need to know the history...I just need to know what forms to use, what bits to fill out and which floor I need to go to to hand them in.*¹

"...I want to put out a guidebook for commercial travellers....We'd call it something catchy, I don't know: Reluctant Tourist . . . And you're the fellow to write it."

"Me?"... "But I hate to travel."

"I kind of guessed that," Julian said. "So do businessmen. I mean, these folks are not running around the country for the hell of it, Macon. They'd rather be home in their living rooms. So you'll be helping them pretend that's where they are."²

While formal legal self-help services have existed in Australia for more than 40 years and have enjoyed considerable growth, there has been no comprehensive and accessible research conducted which considers whether those services actually meet the needs of legal self-helpers and what factors might exist which impact upon the self-helper's experience of undertaking legal self-help by reference to those services. This paper draws upon some of the initial findings of research conducted by the authors in relation to self-help legal services³ in Australia. Funded by a Discovery Grant from the Australian Research Council we are currently engaged in a large scale research project which seeks to explore the utility of a range of legal self-help services and to examine the circumstances which impact on the appropriateness of expecting lay people to undertake for themselves some or all of the legal processes associated with a specific legal problem or transaction. The research is significant in that it seeks to explore the utility of self-help primarily from the perspectives of self-helper, supplemented by the observations of others including service providers and stakeholders in the particular legal transaction.

This paper explores a range of observations arising from a case study conducted as part of the research relating to the role of the private for-profit provider in the development and delivery of legal self-help services. Specifically, we will seek to explore a particular approach to the provision of legal self-help services adopted by a

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¹ SCT Consumers' Case Study Interview Transcript #6

² Tyler, A., (1985) *The Accidental Tourist*, Vintage U.K. Random House, 87

³ For the purposes of this paper we define legal self-help services as any form of service (or product) which is designed to encourage, guide or aid the user in taking personal responsibility for the completion of some or all aspects of the legal tasks associated with a transaction.

private provider which was considered highly useful by self-helpers in their journey through unfamiliar legal terrain. Very little is known about private for-profit providers of legal self-help services and the ways in which their motives (which are vastly different to those of more traditional legal self-help providers) and resulting services may impact upon and shape the experiences of the legal self-helpers in dealing with a particular legal matter or transaction.

We will suggest that the experiences of the reluctant self-helper in unfamiliar legal terrain are not dissimilar to those of the reluctant business travellers represented in Anne Tyler's award winning novel *"The Accidental Tourist"*⁴. There are significant parallels between the type of legal self-help kit which is the subject of our case study and the popular and highly useful guide books for the reluctant business tourist produced by traveller writer, Macon Leary. We will posit that "provider motivation" in terms of both the traditional motivation of "empowerment" and the more recent motivation of "profit" potentially impact upon both the content of self-help services and self-helpers own assessment as to the utility of those services as they navigate a remote and sometimes hostile legal terrain. We will suggest that the private for-profit provider's approach to the development of legal self-help services (in the context of our case study) may provide valuable insights into how such services can be tailored in ways which meet the actual legal needs of the reluctant legal traveller and highlight the possible insights that other providers of legal self-help materials might garner from that particular service.

In advancing these observations we will briefly sketch the landscape and experiences of the land of the Law from the perspective of the legal self-helper before outlining the broad nature of our larger research project. We will then turn to consider the specific case study of the private non-profit provider and an analysis of the data generated from that case study as it relates to the self-helpers observations about the utility of the service. We will examine the motivations of the private for-profit provider in developing legal self-help services and distinguish it from the motivation of empowerment relied upon by more traditional providers of legal service help. Finally, we will extrapolate from the case study a series of observations made by self-helpers who used the private provider's legal self-help service as to the utility of that service in order to identify the insights that other providers may draw upon in developing future legal self-help services.

Reluctant travellers

The reluctant lay visitor to the land of the Law, like Macon Leary's business traveller, has ultimately one purpose in mind – to quickly and efficiently transact their business in foreign territory and to leave just as quickly and efficiently. Both enter the landscape as aliens, unfamiliar with its customs and cultures, infrastructure and language. Like the business traveller who is interested only in the city or cities in which their business is being transacted, the self-helper as reluctant legal tourist is interested only in the ultimate destination rather than the side-trips which might be had on the way. Neither has time for nor interest in discovering the full extent and boundaries of the landscape nor of immersing themselves in an oft-times unfriendly environment – the most popular tourist destinations in Central London are of little interest to the busy business traveller in much the same way that the history of a court and its jurisdiction are of little consequence to the legal self-helper. Their mutual journeys are ones of necessity rather than of luxury, both reluctant in the sense that they would rather be elsewhere. As Macon's publisher Julian notes of the intended audience in explaining the armchair with wings which is to become the logo of the series of reluctant traveller guides "... (t)hese folks are not running around the

⁴ Tyler, A

country for the hell of it, Macon. They'd rather be home in the living rooms. So (in writing the guides) you'll be helping them pretend that's where they are".⁵

Most significantly, both travel alone in climes more accommodating of the traveller who is accompanied by at least another. "*Lone diners, (Macon) supposed, were an embarrassment here. He might be the first they'd ever had. The array of silver at his single place could easily serve a family of four*".⁶ That sense of isolation and dislocation is not dissimilar to that of the legal self-helper sitting alone on one side of a court room table and glancing across at the other party who is accompanied by an instructing solicitor and a barrister. The sense of being out of place is echoed and reinforced as much in the vacant chairs at the dining table or the bar table as in the wait staff's words "dining alone Madam?" or in the magistrate's enquiry "you have no representation?"

Ultimately, Macon Leary produces travel guides for his intended audience which seek to give effect to the specific needs of the business traveller. His commercial success depends entirely on his ability to focus in on those pieces of information that his readers don't know but will need to know. Whether reporting that the business traveller can now buy Kentucky Fried Chicken in Stockholm, giving instructions about the most appropriate and accessible forms of transport or recommending hotels that provide breakfast cooked like it had come from home, Macon deftly makes the unfamiliar familiar, the uncomfortable comfortable. Nothing is left to chance, or indeed the imagination for those travellers who rely upon Macon's guidance. The choices are limited, and as safe and fail-proof as possible, the traveller's journey unchallenging and largely unmemorable. It is an approach devoid of notions of self-discovery and focuses solely on giving the business reader exactly what they require in order to journey through unfamiliar and inhospitable terrain in comfort. It is an approach which potentially has something to say to those who produce self-help guides for the reluctant tourist in the land of the Law.

Research background and context

The landscape of legal self-help services has, with some limited exceptions⁷, remained relatively uncharted and unexplored territory in the Australian legal environment. Despite compelling evidence that there has been significant growth in both the need for and frequency with which consumers engage in legal self-help, significant increases in the number of legal self-help resources available and changes in the range of providers developing and distributing those resources⁸, there has been little research conducted which explores the utility of legal self-help services as a way in which people engage with the legal system. There is little or no research which explores that issue of "utility" from the perspective of the legal self-helper.

In Australia and indeed elsewhere, the "effectiveness" of legal self-help services has tended to be measured through individual, service or product based evaluations which take as their starting point the ways in which those services meet the aims or

⁵ Tyler, A p87

⁶ Tyler, A p157

⁷ See for example Robertson M and Giddings J., (2002) "Legal Consumers and Coproducers" 40 *Family Court Review* 63;

⁸ Giddings J and Robertson M., (2002) "Lay People for God's Sake! I should be dealing with lawyers?" Towards an assessment of self-help legal services in Australia (2002) 11 (s) *Griffith Law Review* 436

objectives of the service provider or government funding body⁹. While such evaluations have merit, their purpose and design is largely directed towards informing those matters of importance to the service provider or funding body rather than those matters which may be of greater importance to the legal self-helper. It is a salient point – the very existence of a legal self-help service involves a presupposition by the provider that the service is both necessary and has utility but it is a presupposition which is influenced by considerations of greater relevance to the provider than to the user – the need to stretch limited legal aid resources in order to assist as many people as possible,¹⁰ to make greater use of emerging technologies¹¹ or to encourage within Australian citizens a sense of needing to take at least partial responsibility for participation in one's own legal transactions through self-empowerment¹². Such evaluations tend to be driven by the motivations of the service provider in developing the legal self-help service and seek therefore to measure how effective and efficient the service provider has been in meeting those motivations.

Our research project is based upon a series of six in-depth case studies examining a range of legal self-help services available to potential legal self-helpers. Each of the case studies has been selected in order to highlight contrasts in relation to three key variables which we have characterised as follows:

- The *context* in which a person may engage in legal self-help. While this variable specifically considers whether the context is litigious or non-litigious, it also extends to the broader environment in which legal self-help is undertaken and the external factors which may impact upon the performance of the legal self-helper – for example, the availability of informal supports or the attitudes of judges in dealing with legal self-helpers as well as the nature and type of legal-self help services provided. The context variable also incorporates consideration of the different types of providers who are currently involved in the development and delivery of legal self-help services in Australia. We have deliberately sought, in developing our case studies to consider the full range of existing providers, from the more traditional community legal centres and legal aid bodies to newly emerging providers in the form of government agencies, the courts and tribunals and the private for-profit provider of legal self-help services. In so doing, we have not intended to explore whether the approach of one type of provider in developing and delivering legal self-help services is to be preferred over the approach of another type of provider, but rather to consider whether, from the perspective of the self-helper's measures of utility any differences can be gleaned.
- The *complexity* of the different tasks which may need to be undertaken by the legal self-helper in working towards resolution of the legal issues. This

⁹ In Australia, for example many self-help products and services developed and provided by community legal centres are evaluated by reference to a standard form prepared by the Commonwealth Attorney-General's Department reflecting that funding body's concerns in relation to numbers of people accessing the service or product, period of delay in receiving the service or product and ease in obtaining access to the product or service which might be more appropriately categorised as measures of "service or product efficiency" rather than the utility of those services or products to the legal self-helper.

¹⁰ Giddings J and Robertson M., (2002) at 448-449

¹¹ Scott, S and Sage C., (2001) Gateways to the Law: An Exploratory Study of How Non-profit Agencies Assist Clients with Legal Problems, Law and Justice Foundation of New South Wales 108-109

¹² Commonwealth Attorney-General's Department (1995) The Justice Statement, Office of Legal Information and Publishing, Attorney-General's Department. Goriely, T., (1999) Making the Welfare State Work: Changing Conceptions of Legal Remedies Within the British Welfare State in Regan et al (1999) 89

variable takes into account not only the particular legal tasks which may need to be performed by the legal self-helper but also analysis as to the types of skills, both legal and non-legal that may be required in order to successfully undertake the task. Again our case studies have been chosen to reflect the different levels of complexity of skills which may be required from simple legal registration processes to complex court-based transactions; and finally

- The *characteristics* of the self-helpers themselves having regard to factors such as socio-economic background, age, geographical location and education levels. Within this variable we also seek to consider the influence of factors which go to the legal self-helper's coping and decision making abilities – whether for example they have access to a network of friends and family who are able to assist them in completing the legal transaction as well as the “emotional” pull of the particular legal transaction.

We note that these three variables are merely analytical tools, constructs which we have developed in order to shape our research and provide a vehicle for us to make sense of the data generated. We are mindful that there are many factors which may impact upon a self-helpers perception of whether a particular legal self-help service has been or is useful to them personally and have sought to provide a framework in which those factors may be considered and their implications studied. While seeking to illuminate broadly the landscape of self-help legal resources in Australia, our primary research focus has been an exploration of the ways in which the confluence of “context”, “task complexity” and “characteristics” impact upon and inform the legal self-helper's experiences in navigating their way through unfamiliar legal terrain.

Within each case study we have used a variety of research tools including critical textual analysis of the specific legal self-help resources where those services are provided in the form of written or recorded materials, comparison with similar legal self-help services and resources, semi-structured narrative interviews with those who have sought to rely upon and utilise the service, interviews with the providers of the legal self-help service as well as interviews with the broader stakeholders relevant to the particular legal transaction or task. While we have primarily sought to consider utility from the perspective of the legal self-helper, we have also relied upon data collected from others. Such data gives an added dimension to the self-helpers' own experiences, indicating junctures at which their lived experiences accord with or differs from the external observations of others. The textual analysis of self-help materials gives further dimension to the research in identifying the messages the provider seeks to convey to the self-helper and provides opportunity for us to consider whether those messages are reflected in the self-helper's journey through the legal landscape.

Legal Kits of Victoria – A case study

Rationale and methodology

One of our case studies has examined a comprehensive 79 page self-help guide for people seeking to make application for probate in the Supreme Court of Victoria. The guide, *How to apply for probate in Victoria with no lawyer* (the Probate Kit) is produced by Legal Kits of Victoria (LKV), a private for-profit provider of a range of largely written products designed to assist the legal self-helper through processes of conveyancing, will making, estate administration and powers of attorney.¹³

¹³ LKV has its origins in the now defunct Consumers' Law Reform Association (itself an offshoot of a political party) which during the 1970's sought to challenge the monopoly of lawyers in relation to conveyancing practices in Victoria by producing and distributing a self-help conveyancing kit. The Probate Kit was developed in the early 1980s for the purpose of supplementing LKV's financial

The Probate Guide is available for purchase directly from LKV or from selected bookshops for \$77.00. It is supplemented by a series of forms and templates which are specifically tailored to meet the legal self-helper's needs. That tailoring process occurs through a simple telephone based process in which the self-helper is asked a series of questions by LKV staff who use a checklist to determine exactly which forms are required – a process which LKV describe as “sampling”. The process “ensures the consumer gets only what they need and also saves on printing costs”.¹⁴ Notably, the legal self-helper is relieved of the need to make any decisions about what forms are required and what information needs to be provided by having access to sample forms specifically tailored to meet the particular circumstances of their proposed application for probate. For an additional \$50.00, users can access a telephone support service provided by LKV as they work through the process of applying for probate. Typing services and document preparation are also available to potential probate applicants for an additional cost from LKV.

While there are a range of providers of legal self-help services (from community legal centres to the Supreme Court of Victoria itself) which distribute freely available materials providing background information about the need to apply for probate or the broad processes of making an application for probate, we are aware of only one other provider which distributes a product comparable in its breadth to that of the Probate Kit although the cost of the written resource (\$200) and ancillary support services including document checking (a further \$200) is significantly greater than that charged by LKV.¹⁵

We selected the Probate Guide as a case study based upon the potential data it might yield in relation to the three key variables identified previously. Having regard to the context variable, the case study presented an opportunity to explore a fairly low risk legal transaction which was court based but not necessarily adversarial nor litigious in nature. We categorise the transaction as “low risk” in the sense that even significant mistakes made by the legal self-helper in undertaking the transaction would not be fatal to the eventual outcome of the process, a view shared by LKV.¹⁶ A probate application that has not been accepted by the Supreme Court of Victoria can always be modified and resubmitted. The case study also provided an opportunity to consider the implications from the legal self-helper's perspective of a written resource provided by a private for-profit provider which was supported by a range of purely optional ancillary services also offered by that provider.

In terms of task complexity the case study yielded the opportunity to consider the potential implications of tasks which might be categorised as essentially paper-based and which required the legal self-helper to draw heavily on a range of non-legal skills such as time-management and organisational abilities. It also allowed us to consider the ramifications for the self-helper of a service which by its design limited the need for him or her to exercise significant legal decision making abilities (for example, the decision about which legal form was required depending upon the individual circumstances of the application) or to develop an intimate understanding of the relevant law.

resource base as other largely private providers moved into the field of self-help conveyancing services.

¹⁴ Probate Guide Case Study Interview - Interview with Dale Sedgman

¹⁵ Aussie Legal “Handling Probate” and “Handling Probate Plus” services
http://www.aussielegal.com.au/probate_splash.htm accessed on 30 April 2008

¹⁶ Probate Guide Case Study Interview - Interview with Dale Sedgman

Finally, the case study was selected for its potential to illuminate what personal characteristics might influence the self-helper's ability to complete a low-risk and largely paper-based legal transaction in an environment which, while non-litigious, still carried the gravitas of being court-based. It also provided an opportunity to consider the implications of a legal transaction which in many respects is very personal and in which the self-helper may still be affected by feelings of loss and grief.

We conducted individual semi-structured interviews with 21 users of the Probate Kit in late 2007 and early 2008. Study participants were recruited through a cooperative process between LKV and ourselves whereby a letter from the research team inviting past and present Probate Kit users to participate in the study was mailed by LKV to 100 users. Participants were assured that their confidentiality would be maintained and that the research was being conducted cooperatively with but independently of LKV.

Interviews were recorded and transcribed, with all 21 study participants indicating that they wished to remain anonymous. In addition to a brief questionnaire designed to elicit demographic data, our interview questions of the users sought to elicit information about:

- prior knowledge of the process of applying for probate;
- prior experience in undertaking legal self-help,
- reasons for undertaking legal self-help in the process of applying for probate;
- the self-helper's experiences of and feelings about the process of applying for probate; and
- their views on the utility of the Probate Kit as well as their access to other forms of legal and non-legal support.

A copy of the data collection tool for the semi-structured interviews of legal self-helpers is attached at Appendix A.

In addition to interviewing legal self-helpers who had used the Probate Kit in making their own applications to the Supreme Court of Victoria, we also conducted an extensive interview with the Director of LKV, Dale Sedgman. That interview sought to elicit background material about the history of the self-help service, LKV's motivations in developing the Probate Kit as well as the service provider's reflections on how legal self-helpers fared through the process of applying for probate. We also conducted interviews with personnel from the Probate Office of the Supreme Court of Victoria seeking their views on the efforts of applicants who applied for Probate without a lawyer (including both applicants who used the Probate Kit and those who did not) and the attitudes of the Court in relation to legal self-helpers in probate matters.

Findings of the case study

All of the study participants were applicants (either solely or jointly with another family member) in the making of the application for probate. All but one successfully obtained probate through legal self-help, the exception being a participant who engaged a lawyer when a dispute arose about the validity of the will.

Demographic information provided by each of the 21 study participants was relevant in informing factors our analysis of the influence of the personal characteristics of the legal self-helper. The starkest finding of this aspect was the degree of homogeneity within the group of legal self-helpers who had used the Probate Kit and who agreed to participate in the study. That homogeneity was reflected not only in terms of personal characteristics such as age and education levels but also in their similar

employment backgrounds which might accurately be categorised as “white collar”. With only one exception, almost all study participants indicated that their current or immediate past employment involved dealing with and processing high levels of paperwork and following clearly defined administrative processes.

The degree of homogeneity is reflected in the following table which briefly summarises the demographic details provided by each of the study participants:

FIGURE 1 – LEGAL KITS OF VICTORIA – PROBATE KIT - DEMOGRAPHIC SUMMARY OF INTERVIEWED SELF-HELPERS

Gender		Education Levels		Income Levels (Annual household)		Employment Background	
Male	36%	Completed high school	23%	\$35-\$50,000	8%	Admin/Clerical	33%
Female	68%	Diploma or training	42%	\$50-\$75,000	39%	Management	25%
		Degree	27%	>\$75,000	53%	Banking/Finance	26%
		Post-graduate	8%			Other	8%
						Education	8%

Potentially, little turns upon the relatively small age range of study participants. While the Supreme Court of Victoria does not maintain data about the ages of applicants for probate, it would not be unreasonable to suggest that many applicants tend to fall within the 50 years plus range given that it is at this time in life that parents and siblings and friends are most likely to pass away.

More significantly however the homogeneity in relation to educational levels and primary employment backgrounds may suggest that those who are most open to the idea of or are more aware of the possibility of engaging in legal self-help in making an application for probate are people with some advanced level of schooling and employment experience which lends itself to the processing of paper-based transactions. Because no data is maintained by LKV about the numbers of people purchasing the Probate Kit and the numbers of people subsequently making their own application for probate in reliance on the product, it was not possible to test the degree to which an alternative interpretation may or may not be true – that is that the Probate Kit itself, both in terms of its marketing and usability is most often directed towards people with reasonably high levels of education and experience in working through administrative and paper-based processes. Certainly, there is nothing in the Probate Kit itself which would suggest that these characteristics are necessary attributes that the legal self-helper must possess in order to work through the process of applying for probate without a lawyer, although the fact that the Probate Kit is a written resource necessarily implies that a reasonably advanced level of literacy (and numeracy) is required.

Similarly, in terms of personal characteristics all study participants indicated during the course of semi-structured narrative interviews that they were personally related to the deceased and considered their relationship with that person prior to death to be either “close” or “extremely close”. Most participants indicated that during the course of making the application for probate they were still dealing with levels of grief and emotional distress which were at times heightened by the need to reiterate in forms the details of the death and the nature of the deceased’s assets, although many commented that while the process was at times distressing it was also useful in being

“cathartic” and “healing”. With only two exceptions, participants indicated that they had the emotional support of other family members in working through the process of applying for probate.

In terms of personal motivation most participants indicated that they chose to make application for probate because of a desire to save money and because they felt, after obtaining and reading the Probate Kit that it was something they could do. None expressed the view that they were unable to afford legal representation. Several participants commented that engaging a solicitor would have been less emotionally involving or time consuming but all were comfortable with their decision to self-help and would do the same again if the opportunity arose.

With only one exception, the study participants found the Probate Kit to be comprehensive and easy to both read and use. None were able to identify information that they needed to access from other sources nor did they feel there was unnecessary information included in the materials provided to them. Only two participants consulted a solicitor during the course of the application – one because of a dispute in relation to the contents of the will, the other because she felt the need to clarify the process with a solicitor because she “couldn’t believe it (the process) could be that easy”.¹⁷

At the level of task complexity, study participants generally found the individual tasks associated with the transaction to be straightforward with a number commenting that they were unable to identify why lawyers were required in order to complete basic forms. Most indicated that the most useful aspect of the service was the sampling of forms tailored to meet individual needs which obviated the need for them to understand the law in order to identify which forms were required in their particular circumstances. Most identified that the skills they thought were most important in completing the process were not “legal” in nature but practical – common sense, an ability to follow instructions and organisational skills in managing paperwork.

At a contextual level, almost half of the participants indicated that they were initially dubious about undertaking legal self-help in obtaining probate because it involved a court but that those doubts diminished when, after reading the Probate Kit it became apparent that they were not required to appear before a judge. Most participants who were asked if they would have self-represented if they had had to appear before a judge in order to obtain probate indicated that they would if the process was a simple procedural one with an almost foregone conclusion (that is, that probate would be granted) but would reconsider their position if it required them to argue for probate or if the judge had a significant degree of discretion as to whether probate should be granted or not. All expressed the view that the staff of the Probate Office of the Supreme Court were courteous and did not appear to judge them or treat them differently based upon their decision to engage in legal self-help. It is however not clear whether this was the result of a general acceptance by the Probate Office of the validity of legal self-help in probate matters or whether it was the result of each of the study participants being well-schooled through reading the Probate Kit as to what could and should be expected when presenting their application to the Office for filing.

Perhaps within this variable of context, the most interesting observations arising from the case study relate to the interface between the legal self-helper and the self-help legal service itself. None of the legal self-helpers interviewed sought to purchase the additional telephone support service (several did obtain limited telephone guidance

¹⁷ Probate Guide Case Study Interview #16

from LKV) although slightly more than half used the typing and document preparation service. Almost all participants indicated that they felt well-supported by the service provider through the process of making their applications for probate, even though they did not draw necessarily upon all or any of those ancillary services. Participants spoke with high praise about the Probate Kit being “value for money”, “pitched at just the right level”, “no nonsense”, “conversational”, “full of practical tips and guidance” and “exactly what was needed to do the job”. Most commented on the lack of what they saw as “law” or “legal content” in the Probate Kit and felt that it was entirely possible and appropriate to complete the transaction without developing a “lawyer’s understanding” of the process.

Those views strongly parallel the primary motivation of LKV in developing the kit. As its’ Director noted “We aim to make money. We only make money if we give the consumers what they want. They want clear, simple answers and processes, we give it to them”. Certainly, those who participated in our study seemed to suggest that the Probate Kit was successful in meeting their needs and in giving them clear, simple answers and processes. The findings suggest that at least in the context of a fairly low risk legal transaction LKV has been able to successfully develop and deliver a legal self-help service which accords with the self-helper’s own measures of utility. There is potentially a high level of synchronicity between the motivations of the for-profit provider in this case to make money and the needs of the legal self-helper to receive clear, simple assistance in reaching their ultimate destination.

It is within that context then that we sought to explore with the study participants the implications of at least one other motivation which is often cited by legal self-help providers in developing services to assist the solo traveller in the land of the Law – that of empowerment. With one exception all of those interviewed indicated that they were not interested in being “empowered” through the process of self-help, that their primary focus was on following the series of steps required to complete the transaction in order to reach their sole goal of obtaining a grant of probate. While there was a sense of personal satisfaction, of strength or confidence in their own abilities, a sense of achievement for having tackled a process ordinarily conducted only by solicitors, study participants viewed this as entirely incidental to or even irrelevant to their purpose in undertaking self-help. Interestingly however, none (including the sole participant who indicated that empowerment was an important factor in the decision to undertake legal self-help) were able to clearly articulate the specific or even basic steps that they undertook to obtain probate, all said they would need to use the Probate Kit again if called upon to make a further application for probate.

This observation from our research to date, that users of at least certain types of particular self-help legal services may be largely disinterested in being empowered but rather seek simple, clear solutions to a legal problem or matter suggests the importance of considering the potential impact of a service provider’s motivation on the legal self-helper’s motivations and end goals in undertaking their own legal work. In effect, is it possible that a self-helper’s assessment of a service’s utility may be effected by the primary motivations of the provider in delivering that service?

Differing motivations – empowering the citizen or making profit from the consumer

In this part we aim to explore the two dominant motivations or ideologies advanced by many providers of legal self-help services as underpinning their delivery of those services – the ideology of empowerment which traditionally at least has been advanced by community legal centres and legal aid commissions as a primary reason for developing legal self-help materials and the more recent emergence of the

profit motivation which is almost exclusively the reason advanced by private providers in developing legal self-help services. We do so because if as our research suggests, in some instances users of self-help services are not seeking to be empowered, there may be implications for the utility of self-help materials which are motivated by the providers desire to empower.

In considering the two different dominant motivations for the development of legal self-help services in Australia, we make no judgment that one motivation is to be preferred over another. Rather we seek to explore the ways in which those differing motivations, which might be categorised as the notion of citizenship versus the notion of consumerism, may potentially impact upon the development of legal self-help services and their ultimate reception by the legal self-helper. We will suggest that differing motivations may affect the development and content of services. On the one hand those services which pursue the laudable aim of empowering the legal self-helper to be a productive and engaged citizen in the resolution of their own legal problems may fall short of meeting that self-helper's actual needs in the particular circumstances. Alternatively the development of materials giving legal consumers exactly what they think they need in a particular circumstance may miss the opportunity to develop the consumer's potential to participate more fully in the resolution of future legal issues. This involves a degree of theorising about the potential interplay between service provider motivations and the self-helpers assessment as to the utility of services provider which we consider necessary in the absence of any significant research which examines the issue. As our own research progresses and other case studies illuminate the issue, our own theorising may change significantly.

The Ideology of Empowerment

In Australia, the development and dissemination of legal self-help services and products was pioneered by community agencies, notably community legal centres. In addition to the provision of specific individualised legal services, community legal centres have attempted to also work "beyond the individual"¹⁸ by reference to a suite of tools including community legal education, community development activities, systemic advocacy and law reform initiatives. The provision of legal self-help services, whether by way of production of a written self-help kit or guide, a video or the conduct of a class is viewed by community legal centres and their funding bodies as a form of community legal education.

While the concept of empowerment informs all of the work undertaken by community legal centres, it is particularly relevant in the context of community legal education. Goldie, in designing a handbook to guide community legal centre workers in the development and delivery of community legal education notes that "community legal education should be an empowerment tool for disadvantaged people".¹⁹ Goldie grounds the notion of empowerment in the theoretical and practical work of Paulo Freire.²⁰ An educational theorist whose seminal work *Pedagogy of the Oppressed*²¹ sought to articulate the ideal of co-intentional education, Freire was most concerned with liberation from oppression through transformative education which was not simply owned by the educator but jointly owned with those who were to be educated. His work formed a strong foundation for what today might be considered to be a "community development" approach to consciousness raising and his approach to

¹⁸ National Association of Community Legal Centre website <http://www.naclc.org.au> accessed on 30 April 2008

¹⁹ Goldie C., (1997) *The Community Legal Education Handbook*, Redfern Legal Centre Publishing 11

²⁰ Goldie C., 11

²¹ Freire P., (1970) *Pedagogy of the Oppressed*, The Continuum International Publishing Group, NY

“community development” is strongly reflected in the processes articulated by Goldie as being best practice for the development of community legal education.

In 1995, the Australian National Community Legal Education Group adopted guidelines for the conduct of community legal education which confirmed “empowerment as a central principle around which community legal education should be developed”.²²

Neither Goldie’s handbook nor the nationally mandated guidelines seek to provide a substantive definition of “empowerment” although certainly the text of them suggests that the notion of empowerment as it relates to the development of community legal education materials (including legal self-help services) is imbued with concepts of “working with the community”, “encouraging active participation in the learning process”, “providing education of the people by the people” and the processes of imparting legal knowledge which assist people to more actively participate in the legal system as citizens rather than as mere consumers. Empowerment seeks to position individuals as citizens within the legal system rather than as mere consumers of it.²³

In this regard, the ideology of empowerment appears focused upon the processes by which the provider seeks to engage with the community rather than the outcomes of those processes. Empowerment is seen as a modality, a way of working rather than as an outcome of that way of working. It informs the service provider’s approach to the development of community legal education materials, including the development of legal self-help services and products. At a practical level it informs the content of the services and products developed.

This final point is key. By adopting an empowerment framework in developing community legal education materials, service providers embrace the importance of providing legal information which assists a legal consumer to contextualise their position within the legal system. It aims to provide sufficient historical, political, social as well as legal information to allow the legal consumer to navigate the system as an informed citizen. The focus then is very much on the service provider imparting high levels of propositional or descriptive knowledge which might be defined as information which seeks to describe “what is” and “why it is so” in terms of those matters which the service provider believes the “informed legal citizen” should know in order that they may advocate for themselves. A fact sheet on probate for example would seek to impart information about what is probate, in what circumstances is it required, why it is required, who may apply for probate, how it is obtained, what role the court plays in the probate application process, what limits exist on it being granted and what may be the implications if there is a dispute about who should be granted probate. The focus is on ensuring that the informed legal citizen is able to engage with the probate system with sufficient background knowledge about its operation (what is probate, why is it required, what limitations exist), sufficient information to allow the legal citizen to identify for themselves where they fit within the system (when it is required, who may apply for it, who may grant it) and sufficient knowledge about the problems which might arise (what might happen if there is a dispute).

²² National CLE Advisory Group (1995) Guidelines for the Management of Community Legal Education Practice, National Association of Community Legal Centres, August 1995.

²³ Glanville, L (1999) Community Legal Centres: Can CLCs advocate for themselves? [1999] AltAJ 27 at 29

While a legal self-help resource such as a kit or guide may provide procedural information about how to apply for probate, its genesis as a vehicle of empowerment necessarily requires that it provides propositional knowledge sufficient to allow the self-helper to move through the system as an informed legal citizen. Moreover, the content of the resource is informed from the perspective of the service provider, often a legally trained person or group based upon what that person or group believes is important in order to navigate the system, a perspective which is potentially influenced by what the legal trained person feels they need to know in navigating that terrain.

Our preliminary research findings indicate that in some instances legal self-helpers are largely or entirely disinterested in “being empowered”. This may suggest the need for community legal centres to re-examine the empowerment ideology and praxis as it relates to the development of legal self-help services. Because both ideology and praxis focus on the processes of the provider rather than the outcomes desired by the legal self-helper, some current and future legal self-help services developed within that framework may fall short of meeting the users’ measures of utility or fail to fit with the users’ framework. Arguably, in circumstances where self-helpers are not interested in being empowered, their focus is entirely upon procedural knowledge, the necessary “know how” which clearly and directly assists them to navigate unfamiliar legal terrain by the shortest possible route in order to reach their desired destination (most often an exit from the legal system). Propositional knowledge which is designed to “empower” the legal citizen to operate within the legal system on an ongoing basis may potentially confuse, irritate or impede the reluctant legal tourist’s intended journey by the shortest route possible. It may be equivalent to Macon’s reluctant business traveller wading through the Lonely Planet travel guide with its pages of historical and cultural musings about San Francisco in order to identify the location of the nearest taxi cab rank.

Moreover, there is potential that the empowerment praxis and ideology as it relates to the development of legal self-help materials focuses upon those aspects of the legal system or process which are important from the perspective of the legally trained provider but of little interest or relevance to the legal self-helper. The power of the Supreme Court to deal with matters other than probate and the sources of those powers may be of intense interest to the lawyer or to those interested in how the Supreme Court operates or to the eager and informed legal citizen but may be of little relevance to the legal self-helper seeking only to obtain a grant of probate.

We do not intend to suggest that empowerment is not an important and laudable motivation and goal in the development of community legal education materials generally. Rather we seek to highlight that the current ideology and praxis of empowerment adopted by community legal centres in developing all forms of community legal education may be less appropriate in instances of developing legal self-help services where the outcome of empowerment is not a primary or even ancillary motivation of the self-helper.

The Profit Motivation

The private for-profit provider of legal self-help services is not an entirely new phenomenon in Australia. Indeed, Legal Kits of Victoria have been publishing self-help kits and guides on a commercial basis since the mid 1970’s. What is clear however is the growth in the number of private providers which have, in recent years sought to develop business interests around the provision of legal self-help. Whether in the form of businesses like Legal Kits of Victoria and AussieLegal Pty Ltd which are involved in significant activities associated with the sale of a range of legal self-

help resources or in the form of private legal practices which may provide access to some level of limited but free legal self-help as a tool for marketing their wider services, the private for-profit provider is making increasing inroads into the provision of legal self-help services in Australia. This is not to suggest that those service providers which have traditionally delivered legal self-help services are under direct threat. One of the key distinctions between the private and non-private sector lies in the focus of one on identifying niche markets in which a profit can be turned while for the other, the development of legal self-help is a response to an unmet legal need in circumstances where the person with that legal need most often has limited economic resources.

On the other hand however there is the potential that the private for-profit sector has an increased capacity to deliver legal self-help services which may ultimately meet the express needs of the legal self-helper. For the primary for-profit provider the provision of legal self-help services is its core business whereas other providers, notably community legal centres and legal aid bodies use it as one method of achieving broader aims. The private provider has the opportunity to be solely focused on its business enterprise (and the success of that enterprise) whereas the traditional provider is required to focus on a range of services and activities from individualised legal advice to law reform activities. The private for-profit provider is driven by a simple motivation to develop services which will be commercially successful. The entire success of the enterprise depends upon its' ability to identify a niche market, develop a product which meets the needs of that market and promote the product in a way which targets specifically the potential market. Success is therefore driven almost entirely by the market of legal self-helpers. The best interests of the provider are potentially served by being able to meet the market's specific needs.

The profit motive positions the individual as a consumer within the legal system. While arguably, the operation of market forces gives the consumer some degree of power in terms of directing the content of the self-help service, there are limitations to that position. In the first instance consumers may have a sense of what they think they need to know in order to navigate through a legal transaction relying upon self-help but it is a sense developed from outside the legal system itself. It is developed without an existing knowledge of that system which may be required in order to assess what further is required. Moreover, by developing materials and self-help services which simply direct the legal consumer through the appropriate steps of a legal transaction without requiring the consumer to actively engage in an understanding the legal system or the legal transaction potentially misses the opportunity to increase the consumer's capacity to work with greater autonomy through that system or transaction in the future. In effect, the approach of giving the consumer exactly what the consumer thinks he or she wants may have the consequence of compelling the consumer to rely upon a market of self-help legal services in the future because the opportunity to increase legal knowledge and skills is missed.

We propose in the next section to briefly outline five ways in which the private for-profit provider in the case study has sought to tailor its service to meet perceived consumer need. We do so because there may be potential (notwithstanding differing motivations and ideologies) for non-profit providers to consider and incorporate some or all of those tailoring processes into the development of future self-help legal services. We add however a cautionary note that some or all of those tailoring processes are drawn from a single case study in a low risk legal environment with a high degree of homogeneity between the self-helpers who used the legal self-help service. It may well be that such tailoring may be relevant only to the development of

legal self-help services involving legal matters of a similar nature to those in our case study.

A private for-profit provider's approach to meeting consumer needs

Our case study indicated that from the perspective of legal self-helpers there were extremely high levels of satisfaction with the Probate Kit developed by Legal Kits of Victoria. In the course of interviews with study participants five recurring themes emerged which tended to explain the legal self-helpers assessment as to the utility of the service.

A framework which assumes that the self-helper has sufficient information to decide to undertake legal self-help

The Probate Guide assumes that the self-helper has, prior to embarking on a process of applying for probate, obtained sufficient guidance from appropriate sources about the need to make such an application... More than half of the participants in our study indicated that they knew they had to apply for probate in their specific circumstances because they had been advised by a financial institution or the Land Titles Office that probate was required in order to transfer or otherwise deal with the assets of the estate. With one exception, the remaining participants indicated that they knew broadly that probate might be a requirement and they then accessed either the internet or the telephone directory for further information which resulted in each of them making contact with the Probate Office of the Supreme Court of Victoria and receiving guidance from that body.

The directors of LKV indicate that the starting point for the Probate Kit is a deliberate assumption that people have obtained guidance elsewhere about the need to make an application for probate. It appears a reasonable assumption to make given the availability of sources of information which provide such detail (from financial institutions, accountants, the Probate Office, pamphlets produced by law firms and other legal service providers and internet materials). This means that LKV is able to focus on people having a basic level of knowledge about what probate is and when it is required rather than having to provide detailed explanations. Instead it is able to focus solely on providing procedural information related to the specific task at hand. This is favourably reflected in the comments of respondents to the study who indicated that the Probate Kit was "pitched at the right level and didn't tell me things I already knew or should have known."²⁴ As the LKV Director indicated "If people have purchased the kit, it's because they've already decided to do it themselves and have already ascertained that probate is necessary. It's only reasonable to assume they have some basic understanding of what probate is and when it is required without the kit needing to go into all that detail about "if this, then that"²⁵.

Like Macon Leary who assumes that his business travellers know why they are heading off on business and have at least a basic understanding of where they are headed, LKV assumes that those who purchase the Probate Kit know why they need to apply for probate and have a basic understanding that it is a legal process.

This approach differs from that adopted in the development of many other legal self-help services produced by non-profit providers. Because those providers seek to use self-help services and resources as a mechanism for managing demand on other services (such as individual legal advice), there is a tendency for the kits to reflect the (well-founded) belief that the end-user has not yet obtained the preliminary advice or guidance. As a result those self-help resources tend to provide a wealth of

²⁴ Probate Guide Case Study Interview #18

²⁵ Probate Guide Case Study Interview - Interview with Dale Sedgman

descriptive and contextual information within the framework of a service designed to provide practical procedural assistance. Self-helpers who already have sufficient contextual information, of necessity must work through the resource in order to identify and implement the processes relevant to the particular legal matter. Self-helpers who do not have that contextual information prior to accessing the resource must, before working through the processes, attempt to identify whether their particular circumstances fit within those covered by the self-help service.

Our research to date indicates that legal self-helpers find it both time consuming and confusing to digest and assimilate a wealth of propositional information at the same as procedural information, particularly where the materials are assembled in a way which requires them to jump backwards and forwards from the propositional to the procedural. It is a problem that the Supreme Court of Queensland has recently recognised in the materials it provides on its website to intending self-representing parties in criminal appeals. The Court is now working towards separating out propositional from procedural information by way of separate facts sheets and self-help guides.

A framework that promotes self-reliance

At no stage in the Probate Kit is reference made to the desirability or preferability of obtaining legal advice nor is there any suggestion in the text of the Kit that people undertaking their own legal self-help are receiving less than optimal access to the legal system. While the Probate Kit makes only a couple of references to the legal profession, it does so in a way which reinforces the autonomy of the self-helper as capable of managing their own legal process.

“When approaching solicitors in search of a Will: Don’t try to pick their brains – you are not their client so they have no reason to spend time discussing what you are doing. Confine your questions to: whether or not they have the Will, whether it names you as executor when and how they will hand it over to you; and the full name and (preferably) residential address of any staff member who witnesses it.”²⁶

and

“When drafting Wills some solicitors include a clause that their law firm handle the estate, which is not what DIY executors want. Some executors ask, “Do we have to” The answer is no – you do not have to observe such “directions”.”²⁷

The Probate Kit adopts a framework that the self-helper can undertake their own legal steps in applying for probate rather than implying that self-help is a poor second choice. While never overtly intended by LKV, the effect is one of giving the self-helper a sense of being firmly in charge of their destiny. That clear message was reflected in our research in the significant numbers of self-helpers who acknowledged the autonomy they felt in making application for probate.

“It never occurred to me that I would need a solicitor. It just never crossed my mind”²⁸

and

²⁶ Legal Kits of Victoria (2006) How to Apply for Probate in Victoria (Probate Guide), 38th edition LKV Publishing p10

²⁷ Probate Guide p10

²⁸ Probate Guide Case Study Interview #3

*“Even when things got difficult, even when the Probate Office said there was a problem with the signatures on the Will I didn’t feel that I needed to race off and get legal advice. The kit made it clear there might be problems and also explained how to fix them”.*²⁹

As the LKV Director described it, the message is simply one of “can-do”. Even when something goes awry in the process, the Probate Kit encourages the self-helper to see it as simply a small hiccup rather than an insurmountable hurdle. That “can-do” attitude is reflected in the final section relating to the granting of probate.

*“One day your Probate will simply be there – sitting in your mailbox. It’s going to seem like an anti-climax because there will be no heavenly music or congratulatory voices from the clouds – it is simply just there”.*³⁰

This approach which promotes the autonomy of the self-helper and does not question the decision to undertake legal self-help is, in many respects akin to Macon Leary’s approach to his guides for his business travellers. Rather than making regular reference to the desirability or need to consult a travel agent, Macon accepts the decision of the traveller to “go it alone” and seeks to provide guidance which affirms the traveller’s decision and autonomy.

The adoption of a tone and language which is familiar to the legal self-helper

It is not simply that LKV in developing the Probate Kit has eschewed the use of technical legal language but that it has adopted a style of language (and indeed content) which might be considered almost “conversational”. With one exception, all participants in our case study felt that the tone adopted was “friendly”, “like sitting around drinking coffee with a friend who had been through the same thing” and “helpful without being self-important”. Respondents felt at ease with the level of language used as well as the “tit-bits of information” scattered throughout. Whereas more orthodox self-help services may tend to confine their materials to the strict legal processes associated with a particular transaction, the Probate Kit reflects the sorts of practical matters that are of concern to the legal self-helper – advice on how to deal with “stropmy relatives”³¹, dealing with banks that might seek to impose additional fees on an estate simply because it is an estate³² and how to talk to staff of the Probate Office in circumstances where the self-helper is feeling frustrated.

LKV views the success of the Probate Kit as being largely about its connection with the user through its language and content. Its’ Director points out that other self-help kits, produced by non-profit providers tend to be developed with either complete or high levels of control and involvement by lawyers who have a reverence for the legal system which is sometimes overpowering for the lay consumer and notes that “Lawyers have a tendency to panic when something goes wrong. Everything’s a drama and only they can sort it out. If Probate is refused in the first instance the lawyer goes into a mad state of panic because their own legal system hasn’t worked the way it was supposed to. As non-lawyers we already know the legal system is not perfect so there’s no point panicking about it. We just make certain the consumer knows that things can go wrong, if they do the sun isn’t going to fall out of the sky and generally those things can be easily fixed”.³³

²⁹ Probate Guide Case Study Interview #15

³⁰ Probate Guide p56

³¹ Probate Guide p18

³² Probate Guide p29

³³ Probate Guide Case Study Interview - Interview with Dale Sedgman

Like Macon Leary, LKV seeks to ensure that the reader is given practical information which might otherwise be considered irrelevant or of little consequence to the professional, whether it be a cautionary note to the business traveller who is afraid of heights to avoid certain subway stations in New York or location of the closest parking facilities to the Probate Office. Both are focused on ensuring that the traveller has the most comfortable, convenient and expeditious journey through unfamiliar terrains.

A limiting of choices or decisions which the self-helper needs to make or take responsibility for

Instrumental to the accessibility and utility of the Probate Kit as measured from the perspective of the self-helper is the way in which it seeks to reduce the need for the user to make decisions. The starting point for the Kit is that the self-helper knows that he or she is required to apply for probate. LKV then supplements this with a process it calls “sampling” which allows the consumer (or LKV staff member) to complete a simple checklist. That checklist is then used by LKV to determine exactly what forms are required by the self-helper in the individual circumstances. For example, rather than requiring the self-helper to sift through the hundreds of different wordings required in order to publicly advertise an intention to apply for probate, LKV staff determine which wording is appropriate in the circumstances and provide only that sample to the self-helper. The self-helper is relieved of the responsibility to attain and then apply limited legal knowledge of complex advertising requirements and can be confident that the correct sample has been provided based upon the information supplied to LKV.

While the Probate Kit anticipates the variables which might apply in relation to making an application for probate, it also provides clear guidance about what decision needs to be made by whom. For example, in relation to whether an affidavit of testamentary capacity is required the Probate Kit makes it clear that where there is no question that the testator was of sound mind at the time of making the will, the self-helper should skip over the section relating to such affidavits.

LKV does not recoil from providing the sort of guidance that many solicitors would be loathe to give clients for fear that it would influence their clients choices or decisions. For example, in discussing an instance where the debts of an estate are greater than the assets, the Probate Kit urges the self-helper not to make an application for probate because “it makes you responsible for sorting out a lot of financial problems that you can do without. You would almost need to be a masochist to apply for probate in such situations”.³⁴ It is the sort of advice that a lawyer would tend to avoid or alternatively would couch in so much “if this then that” type of language that the client is left to determine the decision without any practical guidance.

This limiting of choice resonates with the “Accidental Tourist” guides. In the same way that LKV anticipates the variables needs of legal self-helpers and adopts a sampling process to limit their need to make choices, Macon also anticipates the variable needs of his readers – some business travellers may need to entertain, others will dine alone. Restaurants and eateries are categorised not simply by the type of cuisine available but also by reference to their willingness to comfortably accommodate the lone diner. Hotels are recommended based upon the distance the traveller will need to cover to reach business meetings. All are based on Macon’s own sampling – through regular visits in which he tries out the restaurants for himself, tests the beds in multiple hotel rooms and notes the number of waste paper baskets in each room in order to accommodate the traveller who is interested in such things.

³⁴ Probate Guide p7

The need for the traveller to make any meaningful decision is controlled for Macon never lists more than a handful of hotels and a handful of accessible restaurants – “his guidebooks were anything but all-inclusive”. By avoiding the provision of every possible form that may be required in a probate application through a process of sampling, LKV controls the legal self-helpers need to make meaningful decisions about the process – the Probate Kit may equally be described as “anything but all-inclusive”.

A constant process of review and revision

LKV has been producing the Probate Kit since 1982 and it is currently in its 38th edition. The provider indicates that the service is in a constant state of review and revision despite the fact that probate law and practice itself has remained relatively unchanged during the lifetime of the Probate Kit. LKV actively encourages consumer feedback in relation to the resource and supplements that feedback with observations gleaned from the ancillary services it provides to support self-helpers. For example, the telephone support service is able to record details about the types of queries self-helpers raise after reading the Probate Kit and that information is then considered in the context of revision to ensure that wherever possible queries are addressed in the written materials. Moreover, LKV staff are actively involved in investigating instances where a self-helper may have experienced issues in completing the process of making application for probate. Where for example, an application has been rejected by the Probate Office, LKV staff will explore with the Probate Office the reasons for that rejection in order to determine whether it reflects a changing attitude within the registry about what is acceptable and will note any changes in attitude for inclusion in the next edition of the Probate Kit. The LKV Director is a member of the “Probate Office Users Group”, a formal body established by the Probate Office and through that forum LKV is constantly alerted to changes in practice and procedure as well as being alerted to issues affecting users generally.

Participants in our case study spoke favourably about the currency of information in the Probate Kit with most indicating that the processes they worked through were exactly as the Probate Kit had suggested they would be. Many expressed appreciation of the extent to which LKV staff appeared interested in their legal journey, making friendly inquiries of the legal self-helper as to progress of an application and encouraging the user to provide frank assessment of the services provided. Every participant indicated that they would recommend the Probate Kit to friends and family members and many offered to write testimonials for LKV to use in its marketing of the service. It was through the provider’s encouragement of feedback and its’ willingness to provide the most up to date information available about the legal process that the study participants felt that LKV displayed a sense of real connection with the self-helper, an intimate understanding of their needs.

Macon Leary similarly seeks to incorporate his reader’s requirements into future editions of his traveller’s guides. He painstakingly researches hotels and restaurants recommended by his readers and while he loathes travel, he engages on annual trips to each of the destinations in order to ensure that the information in each guide book remains current. In the same way that LKV is warmly regarded by participants in our study, Macon Leary is warmly regarded by the business traveller who relies upon his guidebooks.

“You’re my hero...You’ve improved my trips a hundred percent. You’re the one who told me about those springy items that turn into clotheslines...I’ve stopped relying on hotel laundries. I hardly need to venture into the streets anymore. I tell my wife...

'Going with the Accidental Tourist is like going in a capsule, a cocoon. Don't forget to pack my Accidental Tourist' I tell her".³⁵

Conclusion

Like Macon's business travellers, some self-helpers in the legal system arguably wish to be transported through the legal terrain in a capsule or cocoon. We have suggested that the approach adopted by Legal Kits of Victoria in developing its probate service potentially provides self-helpers with the opportunity to navigate through a particular legal process in relative safety – immune from the need to know more than how to take each step in the journey forward and protected from the need to make any meaningful decisions about how to proceed via the technique of sampling. The expectation that the legal traveller knows basically the purpose of the journey, combined with an overriding message that the legal traveller is perfectly capable of completing the journey without external assistance conveyed and supported by current and accessible information about those things the traveller wants to know in order to complete their business, the Probate Kit is very much a safe vehicle or cocoon for the self-helping probate applicant.

We have reported that the approach adopted by LKV in developing the Probate Kit is considered by self-helpers to be highly useful and have suggested that there may be potential lessons which other providers can derive from an examination of that approach. The LKV approach may suggest the need to reconsider the traditional motivation of "empowerment" as a central feature in the development of self-help materials. We have also indicated that while the private for-profit provider's overall approach may be considered by self-helpers to meet their needs that approach may have limited application given the nature of the particular low-risk legal transaction involved and the ability to significantly limit the need of the self-helper to engage in significant decision-making. It is certainly not clear from a single case study whether the approach can have wide ranging application across a range of legal transactions and events, including high risk transactions where a wrong step in the journey can be fatal to the outcome or where the traveller is required to make not only significant but informed decisions about each step to be taken. We anticipate that our ongoing research will expand on this further.

LKV has recognised what legal services consumers really want in the case of probate. It is the ability to get the grant of probate with a minimum of difficulty. It is ironic that a non-lawyer has developed ways to provide legal consumers with a reliable and effective way to achieve a legal outcome without lawyers *and* at a fraction of the lawyers' cost. Yet the ultimate motivation for the LKV kit is *profit* for the provider of the kit, not empowerment for the user.

It could be asked whether users of the Probate Kit nevertheless are 'empowered' by being able to succeed in getting what they want, without having to instruct lawyers. In the community legal centre sense, legal empowerment seems to involve far more than this reductionist, formulaic approach to essential legal tasks, in which legal engagement could amount to a series of risk-free consumer events. This seems to be a far cry from the notion of the critically engaged citizen who gets to understand more about the possibilities and limitations of law and its processes in a lively democracy.

But while empowerment in the fuller sense still has a place in the services provided by community legal centres and legal aid commissions, probate is probably not the place for this. It is also worth emphasising that many legal processes simply do not

³⁵ Tyler, A p251

lend themselves to the kind of 'commodification' of process that LKV has achieved with its probate application.

This case study demonstrates that there is a market need (and opportunity) to respond to what legal consumers want, rather than to what some lawyers think they need to become better citizens. It demonstrates that there is a case for considering whether to put aside lofty aspirations of citizen empowerment through legal learning in the interests of giving legal consumers what they must have to get through some of life's little chapters.

This still leaves the possibility that all sorts of 'empowering' guides and texts, may have limited appeal because they don't actually help legal users *to get what legal users think that they need*. Other case studies in our research will explore this aspect further.