

4 November 2013

Access to Justice
Productivity Commission
GPO Box 1428
Canberra City ACT 2601
By email: access.justice@pc.gov.au

Dear Commissioner,

Access to Justice Arrangements - Productivity Commission Issues Paper (Sept. 2013)

Thank you for the opportunity to make a submission into the Productivity Commission's Inquiry into Access to Justice Arrangements.

Our submission is focused on the issues raised in Chapter 12 of the Commission's Issues Paper, *Effective and responsive legal services*. We pay particular regard to the role of law students in the delivery of legal assistance services, which we note is an issue that appears to have been overlooked by the Commission when compiling its Issues Paper. The matters raised in our submission are not intended to de-value calls for increased public funding for the legal assistance sector, which we recognise is an area of acute need.

We recommend that the Productivity Commission:

1. considers the cost and value of embedding clinical teaching within curricula at all Australian law schools;
2. considers a strategy to develop a sustainable funding matrix for clinical legal education to be offered by all Australian law schools;
3. recognises the value of law student involvement in the delivery of pro bono legal services.

UQ Pro Bono Centre

The UQ Pro Bono Centre (**the Centre**) was established in 2009 as a partnership of the TC Beirne School of Law at the University of Queensland. The Centre's primary function is to provide clinical legal education and pro bono learning opportunities for law students. In fulfilling this role the Centre seeks to build a positive culture of, and a commitment to, pro bono legal service both amongst staff and students of the law school.

The Centre is just one example of a growing number of university law school programs throughout Australia that seeks to involve law students in the delivery of actual legal work, be it for academic credit through Clinical Legal Education (**CLE**) law course electives, or in a voluntary or *pro bono* capacity. The UQ Pro Bono Centre provides an umbrella structure which oversees and develops both of these activities for students who study law at UQ.

Clinical Legal Education – What and Why?

Clinical legal education is a method of teaching law students practical legal skills in a social justice setting. CLE is 'experiential' in the sense that students often engage directly with clients to ascertain their legal problem, either face-to-face or over the telephone. Students are also likely to undertake casework activities such as drafting legal letters of advice and researching the law and legislation. In doing so, students work very closely with an experienced legal practitioner, receiving frequent and

constructive feedback about their work. CLE has been described as an example of *service learning* as it integrates meaningful community service with instruction and reflection.¹

In recent years there has been a sharp increase in the number and diversity of clinical legal programs offered by law schools across the country. This is evidenced by the increase in entries for the biannual guide to CLE courses offered by Australian universities published by the Kingsford Legal Centre at the University of New South Wales.² The other major development in recognition of the growth and value of CLE in Australian law schools was the completion in 2013 of a project report into CLE which contained a set of nationally recognised CLE Best Practices. CLE also satisfies the Council of Australian Law Deans *Standards for Australian Law Schools*, which requires schools, “to provide, so far as is practicable, experiential learning opportunities for students including clinical programs, internships, workplace experience and *pro bono* community service.”³

There is a good deal of scholarship detailing the benefits of CLE. For example, CLE can inculcate an understanding of social justice amongst law students, reviving the notion that law be used as a tool for responding to social injustice.⁴ Clinics also assist students to develop empathy and emotional maturity through their interaction with clients, as well as also teaching professional ethics.⁵ Clinics can also play a ‘distinctive bridging role’⁶ in legal education by bringing together law schools, the legal profession and their local communities.⁷ Moreover, clinics also reveal the extent of unmet legal need, and social and legal injustice, which can be both rewarding and confronting for law students.⁸

Since 2005, the UQ Law School has offered CLE opportunities to undergraduate law students in the form of a final or penultimate year law elective known as CLE Program. Our law school’s clinical offerings have steadily grown and we now offer a total of nine clinics per semester in partnership with 6 community legal centres. The clinics are as follows:

¹ Best Practices Australian Clinical Legal Education: Final report of the project *Strengthening Australian legal education by integrating clinical experiences: identifying and supporting best practices* 2013 at 10.

² For example, the 2011 – 2012 guide is available at:

<http://www.klc.unsw.edu.au/sites/klc.unsw.edu.au/files/doc/eBulletins/CLE_GUIDE_2011_12.pdf>

³ *CALD Standards for Australian Law Schools* at 2.2.4, formally adopted at CALD meeting 2009/3, Canberra, 17 November 2009. See also 9.6.2 which details the requirement for law schools to engage with the wider community, including through clinical programs, law reform, public education and other forms of pro bono community service: <<http://www.cald.asn.au/docs/CALD%20-%20standards%20project%20-%20final%20-%20adopted%2017%20November%202009.pdf>> Accessed 2 November 2013.

⁴ Tamara Walsh, ‘Putting Justice Back Into Legal Education’ (2007) 17 *Legal Education Review* 119. See also Adrian Evans and Ross Hyams, ‘Independent evaluations of clinical legal education programs: Appropriate objectives and processes in an Australian setting’ (2008) 17 (1) *Griffith Law Review* 52-86 at 53, where the authors suggest that ‘the best [clinical] programs may be progressively humanising Australian legal education...’

⁵ Donald Nicholson, ‘Education, education, education: legal, moral and clinical’ (2008) *The Law Teacher* 42:2, 145-172 at 165.

⁶ Jeff Giddings and Jennifer Lyman, ‘Bridging Different Interests: The Contributions of Clinics to Legal Education’ in Frank S Bloch, (2010) *The Global Clinical Movement: Educating Lawyers for Social Justice* Oxford Scholarship Online: <<http://global.oup.com/academic/product/the-global-clinicalmovement9780195381146;jsessionid=EF3AF111CABB2397D58D721E78631323?cc=au&lang=en&>> (viewed 12 September 2013).

⁷ For an historical discussion of the connection between university legal clinics and the community legal centres in Australia, see Mary Anne Noone, ‘Australian Community Legal Centres – the University Connection’ in Jeremy Cooper and Louise G Trubek, Chapter 13, *Educating for Justice: Social Values and Legal Education*, 1997, Dartmouth Publishing Company Ltd.

⁸ Nicholson above n 5.

CLINIC NAME	No. students	CLC partner
Public Interest Research Clinic	6	QPILCH
Homeless Persons' Legal Clinic	6	
Mental Health Legal Clinic	6	
Consumer Law Advice Clinic	6	Caxton Legal Centre
Criminal Law Matters Clinic	6	
Refugee and Immigration Law Clinic	6	Refugee and Immigration Legal Service
Environmental Law Clinic	3	Environmental Defenders Office
Prison Law Clinic	3	Prisoners' Legal Service
Disability Law Clinic	3	Queensland Advocacy Inc.
Total no. student places per semester	46	

The UQ Law School has not developed an in-house or on-site clinical program like some other universities. Rather, our clinics are 'grafted' on to existing community legal centres' service delivery and have been done so in fruitful collaboration and partnership with those CLCs.⁹ The anecdotal evidence from our CLC partners is that clinical programs positively impact on their ability to service greater clients in the areas of law in which they specialise. Other positive spin-offs include a workplace energised through student involvement in the clinical experience.¹⁰ Partnering with CLCs to deliver legal services through student clinics is also beneficial because CLCs, having a grassroots and 'frontline' awareness of emerging legal problems, are able to quickly and innovatively respond to areas of emerging legal need. Two examples of legal services in Queensland that were developed through a student clinic model in partnership with UQ are the QPILCH Mental Health Law Clinic and the Consumer Law Advice Clinic at Caxton Legal Centre. Both of these clinics respectively provide legal advice to members of the general public for issues arising from the application of the *Mental Health Act (Qld) 2000*, and a range of consumer credit and debt-related matters.

If it is true that law schools 'have an important role to play in ensuring that graduates are equipped with a broader range of attributes than pure legal knowledge',¹¹ then any design of law school curricula must integrate a skills program that facilitates a critical understanding of the law, job readiness and, in the Centre's view, a commitment to lifelong professional service.

The Centre is strongly of the view that clinical legal education has a role to play in facilitating the delivery of legal services by the legal assistance sector, and therefore improving access to justice.

We consider that this type of transformative legal education should be embedded into law schools' curricula nationally, and that the cost of achieving this should be carefully considered by the Commission in its inquiry.

Recommendation 1: That the Productivity Commission considers the cost and value of embedding clinical teaching within curricula at all Australian law schools.

⁹ Jeff Giddings has repeatedly used this term to describe the university/CLC partnership or 'externship' model. See for example Jeff Giddings, *Promoting justice through clinical legal education* 2013, Justice Press at 10; Jeff Giddings, 'Contemplating the Future of Clinical Legal Education' (2008) 17(1) Griffith Law Review, 1, 3.

¹⁰ For a great description of an early student CLE experience at QPILCH, see: Clark, Formosa, Rogers et al, 'Students as public interest advocates: Novel approaches to traditional paradigms' 2003 *Alternative Law Journal* Vol 28, 1.

¹¹ Margaret Castles and Anne Hewitt, 'Can a law school help develop skilled legal professionals? Situational learning to the rescue' (2011) *Alternative Law Journal* 36:2 at 91.

Costs and funding for CLE

Currently there is no single, standardised funding model for CLE. The 2013 Best Practice Guide for CLE states that, 'University and law school commitment to infrastructure is necessary if CLE programs are to operate in a sustainable and quality manner.'¹² The UQ Law School pays each of its CLC partners an agreed sum of money in recognition of the costs associated with running a legal clinic. These include: legal supervision (wages for a legal practitioner to provide full-day supervision at least one day per week); potential travel costs to outreach legal clinic locations; in-kind costs for rent, utilities, repairs and maintenance of computer and other office equipment; and associated insurance costs. Generally this results in a payment of approximately \$1,000 to \$1,200 per student.

In 1998, the Federal budget included an allocation of \$1.74 million over four years for "developing more and better Clinical Legal Education to maximise service delivery to disadvantaged clients and cooperation with universities."¹³ This federal funding, which commenced in 1999 and which continues today, was exclusively allocated to four universities with established clinical programs: Griffith University, Monash University, Murdoch University and the University of NSW. The funding provides those universities with a reliable stream of income to run CLE. However since that initial funding injection, new clinics and clinical programs at other universities have continued to grow in line with the obvious pedagogical and service delivery benefits of CLE. This has resulted in a cost differential across the board, with some universities having a comparative advantage over others in being able to afford and to sustainably integrate CLE into their curriculum offerings. Universities that do not have the benefit of federal funding – such as UQ – must draw on their limited internal budgets as well as rely on attracting donations from other sources such as Alumni and internal strategic grants from within the university. The UQ Pro Bono Centre has had some success in this regard but it is by no means a long-term sustainable budgetary option. As the 2013 Best Practice Guide for CLE states:

"In a globalising legal education environment where clinical methods are increasingly becoming integral to the high-quality legal education landscape, it is a matter of regret that the funding of Australian legal education does not prioritise clinical approaches within law curricula, let alone seek the integration of clinical methodology into those curricula."¹⁴

In his recent book *Promoting Justice through Clinical Legal Education*, Giddings made a series of recommendations regarding funding to support clinical legal education. These include:

1. That the Federal Attorney-General's Department and the Federal Department of Education, Employment and Workplace Training (DEEWR) extend their funding programs to encourage law schools to embrace clinical-based teaching;
2. That DEEWR also supports clinical methodologies in law by including a clinical loading in the government funding provided to law schools. Rather than basing law student funding on lecture formats, the regulators should recognise clinical experiences as integral to a comprehensive legal education. This should be recognised and funded by government as part of the education of lawyers in a similar way to the arrangements for health professionals and teachers.¹⁵

¹² Above n 1 at 65.

¹³ Jeff Giddings 'A Circle Game: Issues in Australian Clinical Legal Education' (1999) 10 (1) *Legal Education Review* 33.

¹⁴ Above n 1 at 6.

¹⁵ Above n 9 at 360.

The UQ Pro Bono Centre readily endorses these recommendations. We note that government funding for CLE also has strong international precedent: from 1978 to 1997 the United States Department of Education provided funding of over \$87 million to law schools for in-house clinical legal education. By the end of this funding injection at least 147 law schools across the USA offered in-house clinical programs.¹⁶

The UQ Pro Bono Centre therefore calls on the Productivity Commission, as part of its inquiry, to consider a strategy to develop a sustainable funding matrix for CLE to be offered by all Australian law schools. Secure funding for CLE would yield enormous benefits for law schools, CLCs and other agencies in the legal assistance sector to work in partnership to design and implement legal services with the involvement of law students in areas of specific legal need.

Recommendation 2: That the Productivity Commission considers a strategy to develop a sustainable funding matrix for CLE to be offered by all Australian law schools.

Student involvement in *pro bono* legal services

Law students at UQ (and at many other universities) are also actively involved in the delivery of *pro bono* legal services outside the parameters of CLE. *Pro bono* activities facilitated by the Centre range from a few weeks to a full year of voluntary commitment. Activities may be flexible and research-based, or they may involve placements at CLCs or other agencies to assist with administrative tasks and associated legal work. Increasingly, private law firms with established *pro bono* practices and barristers undertaking *pro bono* work are seeking law student assistance through the Centre.

The benefits to the legal assistance sector in having students assist with their *pro bono* work include:

- Greater time for lawyers to focus on core casework as they are able to utilise law students to undertake preparatory work such as case law research, literature reviews, comparative jurisdictional analysis etc.
- CLCs and other organisations can attend to a greater amount of policy and law reform by utilising student volunteers to assist with background research and initial drafts.

All of this generates cost savings in the system as paid workers are able to perform their roles with greater focus due to the involvement of law students.

There are additional longer-term benefits to involving law students in *pro bono* activities whilst at law school. Law graduates who are actively involved in *pro bono* work at university are more likely to enter legal practice with a personal commitment to undertake *pro bono* work as part of their professional obligations as a solicitor or barrister. Although these cultural practices are difficult to quantify in economic terms, it is clearly a phenomenon which, in the Centre's view, is likely to generate costs savings across the board as it leads to greater numbers of legal professionals actively engaged in *pro bono* work.

In a six month time period the Centre averages approximately 60 – 80 *pro bono* placements for law students. The Centre doesn't collect statistics about the number of hours students have spent on individual *pro bono* placements; however the majority of placements would be the equivalent of between 1 week to 3 months work (FTE). Some examples of recent *pro bono* placements include:

¹⁶ Peter Joy 'The cost of clinical legal education' (2012) *Boston College Journal of Law and Social Justice* Vol 32: 309 at 324.

- Four students undertook legal research to produce an Issues Paper critically examining coronial laws and practices in Queensland (in relation to deaths in custody) since the enactment of the *Coroners Act 2003*;
- Three law students were placed with a CLC to assist with mental health law casework and one student was placed with same CLC to work with its systems advocacy unit on a report entitled, *Disabled Justice*;
- Two law students are undertaking legal research on behalf of a CLC for a UN Human Rights Committee complaint relating to Australia's offshore processing policy for asylum seekers.

In the spirit of *pro bono* work, much of the work undertaken by law students is hidden and unseen; however there have been instances where the work has generated significant reform and/or where it has greatly enabled CLCs to better advocate on issues that affect their communities. The Centre is strongly of the view that any consideration of *pro bono* work through the inquiry must necessarily have regard to the *pro bono* contributions made by law students.

Recommendation 3: That the Productivity Commission recognises the value of law student involvement in the delivery of *pro bono* legal services.

Thank you for the opportunity to make this submission.

Yours faithfully

Monica Taylor
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