

Productivity Commission Inquiry into Access to Justice

Submission on Draft Recommendation 7.1 – proposing consideration of ‘the relative merits of increased clinical legal education [CLE] at the university or practical training stages of education’.

The Draft report recommends further investigation of the relative merits of CLE as a part of the overall strategy of increasing what I take to be, cost-effective access to justice in Australia.

I support this proposal for a number of reasons:

- Access to justice is as much a matter of a lawyers’ attitudes and values as it is an issue of economic affordability, but if lawyer attitudes to access to justice are improved, the effective cost of such access is reduced (or made more efficient)
- I assert that mere financial incentives to improve access to justice can never be maximised unless – bluntly put – the hearts of the lawyers involved are ‘in it’. CLE motivates the heart
- CLE can cover many experiential approaches to learning, but in this submission I confine myself to the importance of so-called ‘live-client’ CLE
- When such CLE is taught according to best practice,¹ it addresses law students’ *character formation* – developing their attitudes and values in a socially desirable manner – far more effectively than the rest of legal education, which is still over-focussed on doctrinal instruction in a perceived value-free manner, rather than cognisant of the importance of work-integrated learning and critical analyses of all law
- CLE utilises multi-disciplinary insights of learning-by-doing, psychology, skills acquisition, formative assessment, policy analysis, mentoring and especially, both responsibility and accountability
- CLE embeds law students in their clients’ dilemmas, frailties, aspirations and objectives at a personal level, while providing the self-reflective tools to analyse what is happening to both their clients and themselves
- As a consequence of exposure to best practice CLE, the capacity to reflect and empathise with clients who have little access to justice, develops in many of these students a sense of some regret and a desire to see justice done
- In this process of reflection, law students become acutely aware of the need to ask: ‘whose purposes are served by this law (or this reality)?’ That critical [sic] question is asked in other law courses and subjects, but rarely with the potential to change student attitudes to the extent provided by identification with clients as people ‘just like them’
- The impact of clinical methods on students is greater if they are introduced early enough in their (student) lives to counter the above-mentioned bias of most existing law courses
- The cumulative result is that many students so exposed, see it as important as they enter practice to look for opportunities to make their own impact on access to justice
- CLE methods can work in a PLT environment, but these are time-pressured and increasingly online environments where the ability to interact face-to-face with a number of (real) clients over many weeks, is considered to be impractical and/or uneconomic.

¹ See Adrian Evans, ‘Best Practices: Australian Clinical Legal Education’ (2013) 47(3) *The Law Teacher* 421-423.

Legal clinicians know these assertions to be generally accurate, but there is no local and current² medium or long term longitudinal quantitative study which establishes these connections in a manner that would sufficiently convince a current Attorney General or Treasurer to invest in CLE to the extent that it becomes *de rigueur* for all law courses. I do not think it is too strong a statement to suggest that the facilitation of such research therefore remains indirectly important for the reputation of the justice system.

We do not need more lawyers in Australia, but we do need better lawyers whose priorities are attuned to the fundamental fact that the Rule of Law (upon which stable economies and future generations' jobs intimately depend) will erode and disappear if the community's sense of real access to justice is not strengthened. CLE offers this prospect, by strengthening justice practitioners like nothing else.

There are few votes in access to justice and in a perceived deficit reduction era, I see little opportunity to effectively argue for additional investment in legal education. However, there is capacity for the methods of current legal education to change, such that, in the interests of access to justice, law schools be asked to shift their priorities from numbers to quality.

Quality is a close synonym for efficiency, if efficiency is understood in social as well as economic terms as the ability of the system to deliver justice to the vast majority who cannot currently access it.

I define efficiency for present purposes as the integration of simulated 'real' cases into the legal education of all law students³ and the *availability* of CLE to all law students who express a wish to undertake such a course. The latter component will require some shifts in internal investment by some law schools. I would welcome the chance to address some of the implications at a public hearing.

Thank you for the opportunity to make this submission.

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² Early 2000-02 studies to this effect are now dated. See for example, Adrian Evans and Josephine Palermo, 'Almost There: Empirical Insights into Clinical Method and Ethics Courses in Climbing the Hill towards Lawyers' Professionalism' (2008) 17 *Griffith LR* 252, which reported on surveys conducted over the earlier period.

³ As for example, in the online scenarios licensed by the ANU Legal Workshop from Paul Maharg, of Strathclyde University in Scotland.