

Best practices

Australian clinical legal education

The final report of the project *Strengthening Australian legal education by integrating clinical experiences: identifying and supporting effective practices*

2013

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Preface

Strengthening legal education is at the heart of the mission statement of all Australian law deans. There are many dimensions to this task, but perhaps few with the potential of clinical methodology to inspire students and teachers alike. Australian 'clinics' and clinical experiments are now numerous and diverse in our law schools, as many legal educators seek to gather in some of the spirit and energy of this most satisfying approach to improving legal education. However, it is striking how, in their diversity, some clinics are accepting some of the responsibilities of credible educational pedagogy but not others. Nevertheless, we think all are working from a position of good will and a genuine desire to expand deep learning in their students.

To date, there has been no national attempt either to document this rich diversity or to set out what can be done to achieve overall higher standards of clinical operation, whether inside our law schools or under their control. This project has provided the opportunity to achieve both of these objectives. We acknowledge with thanks the funding provided by the former Australian Learning and Teaching Council, which made this project possible. The many interviewees whose names appear in the appendices are also owed a great debt, for without them we could not have come to grips with the breadth of approach and experimentation, let alone form our views of what is best practice. We also wish to specifically thank the deans of our law schools for supporting this project, Siobhan Lenihan and Suzi Hewlett of the Office for Learning and Teaching for their ongoing support, our reference groups for their informed and valuable comments at various stages and, most importantly, our Project Manager Ebony Booth, whose enthusiasm and background as a clinical graduate has made her a dedicated and quietly persistent manager of all of us.

We hope these detailed recommendations for best practices in Australian clinical legal education will play a role in the wider task of encouraging law schools to keep a focus on the access to justice environment. Such a focus is important not just to improve students' technical skills, but also to underpin the imperative in all good legal education: to graduate lawyers with an understanding of injustice and the willingness to do something about it.

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List of acronyms used

AALS	Association of American Law Schools
ABA	American Bar Association
ALOS	Adelaide Legal Outreach Service
ALTA	Australasian Law Teachers Association
ALTC	Australian Learning and Teaching Council Ltd
ANU	Australian National University
AQF	Australian Qualification Framework
AUQA	Australian Universities Quality Agency
CALD	Council of Australian Law Deans
CDU	Charles Darwin University
CLC	Community legal centre
CLE	Clinical legal education
CLEO	Clinical Legal Education Organisation (UK)
ECU	Edith Cowan University
EPP	External Placement Program (USyd)
FRC	Family Relationship Centre
GAJE	Global Alliance for Justice Education
HRC	Human Rights Clinic
JCU	James Cook University
JD	Juris doctor
KLC	Kingsford Legal Centre
LIP	Legal Internship Program (UoW)
LLB	Undergraduate law degree
LLM	Masters of Laws
MACQ	Macquarie University
MLC	Macquarie Legal Centre
MOLS	Monash Oakleigh Legal Service
MOU	Memorandum of Understanding
MUHREC	Monash University Human Research Ethics Committee
NGO	Non-government organisation
PIAC	Public Interest Advocacy Centre
PLT	Practical legal training
QUT	Queensland University of Technology
SCU	Southern Cross University
SJC	Social Justice Clinic (USyd)
SMLS	Springvale Monash Legal Service
TEQSA	Tertiary Education Quality Standards
TLO	Threshold Learning Outcome
UNE	University of New England
UniSA	University of South Australia
UNSW	The University of New South Wales
UoW	University of Wollongong
UQ	The University of Queensland

USQ	University of Southern Queensland
USyd	The University of Sydney
UTas	University of Tasmania
UWS	University of Western Sydney
VLA	Victoria Legal Aid
VU	Victoria University
WHCLS	West Heidelberg Community Legal Service
WIL	Work-integrated learning
WSLC	Western Suburbs Legal Centre

Executive summary

Clinical legal education (CLE) is a significant method of learning and teaching in law. It is intensive, often one-on-one in nature and exhibits a justified expectation that students, who are commonly self-selecting, will 'do well' as they apply legal theory and develop lawyering skills to solve simulated and real-client legal problems. Clinical pedagogy involves a system of self-critique and supervisory feedback so that law students learn how to learn from their experience. The high staff-student ratio and collaborative learning environments support a climate in which each student is motivated to improve and perform at their best. In its common focus on real clients, students are motivated by the inescapable personal responsibility of working with and being accountable to those clients, to perform to the best of their ability. The result for participating students is a profound consolidation of substantive legal knowledge with the practicalities, compromises and successes of contemporary legal practice.

This project has involved an in-depth 27-month investigation of all identifiable Australian CLE programs. The project has confirmed to team members that, while there is a growing consciousness of the advantages of CLE to law schools and law students, there is still only a very limited awareness in conventional academia of the transforming potential of CLE – a long-term strategy to lift the reputation and hence the international ranking of many law schools. 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.

In the expectation that this state of affairs must change (and in order to provoke that change), this project has galvanised clinical supervisors' opinions around Australia and identified an extensive number of *best practices* for Australian CLE – see page 48 of this report. These best practices constitute the recommendations arising from the project, and are organised under seven themes comprising *Course Design, Law in Context in a Clinical Setting, Reflective Student Learning, Assessment, Supervision, Staff* and *Infrastructure*.

The project team has also commenced a process of advocating for the adoption of these practices within the Council of Australian Law Deans (CALD) and that process will continue after the cessation of project funding. It is hoped that this advocacy will have a pervasive effect on the attitudes of legal academia to CLE over the long term, particularly in the context of CALD's progressive development of Standards for Australian law schools.

The project team has also begun the process of writing and publishing a collectively authored book. This book will distil shared insights arising from the project by examining the premises and justifications for many clinical practices, according to the above themes, and offer a scholarly underpinning to the best practices proposed by the project.

The key outcomes of the project are therefore as follows:

No.	Outcomes achieved	Where this outcome can be found
1	The galvanising of Australian clinical supervisors and relevant stakeholders as to the importance and potential of CLE in transforming Australian legal education.	The nature of responses of interviewees to survey questions concerning current clinical practices, as recorded in the Regional Reports – see http://www.law.monash.edu.au/about-us/legal/altc-project/
2	The creation of an extensive database of all current (2010-2012) practices in Australian CLE, collated, analysed and published as <i>Regional Reports</i> , covering all 24 identifiable Australian CLE programs.	http://www.law.monash.edu.au/about-us/legal/altc-project/
3	The development and refinement of a comprehensive set of <i>Best Practices – Australian Clinical Legal Education</i> .	Page 48 of this Report
4	The presentation of the aims, processes and preliminary findings of the project to key gatherings of clinical supervisors, stakeholders and legal academics at the Global Alliance for Justice Education Conference ('GAJE'), July 2011, Valencia, Spain; the National Clinical Conference, September 2011, Sydney; a Stakeholder Project Workshop, December 2011, Melbourne; and to the Australasian Law Teachers Association (ALTA) Conference, July 2012, Sydney, NSW.	See http://www.gaje.org/wp-content/uploads/2012/08/2011-Conference-Report.pdf http://sydney.edu.au/law/alta/documents/SessionAbstracts_Wed.pdf
5	The presentation of the aims, processes and likely final version of <i>Best Practices</i> to the Australian Collaborative Education Network (ACEN) Conference, 1 November 2012, Geelong, Victoria.	See http://acen.edu.au/2012conference/conference-program-2/
6	The acceptance of draft <i>Best Practices</i> at an in-principle level by the Council of Australian Law Deans at its June 2012 meeting and an agreement by the CALD for its Standing Committee on Education to consider the final version of same at its following meeting. Acceptance and unanimous endorsement of the amended <i>Best Practices</i> by the CALD at its meeting in Melbourne in November 2012.	Minutes of the CALD meeting, Sydney, 30 June 2012. See http://www.cald.asn.au/ Minutes of the CALD meeting, Melbourne, 16 November 2012. See http://www.cald.asn.au/
Outcomes in Progress		
1	The preparation, writing and publication of a paperback or e-book of <i>Best Practices</i> , by the project team. This book will explore in a scholarly manner the bases and justifications for Australian best clinical practices, according to the above themes, and is expected to take another 12-18 months to produce.	

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Introduction

Clinical legal education (CLE) is a significant method of learning and teaching law. It is intensive, one-on-one or small-group in nature and allows students to apply legal theory and develop lawyering skills to solve client legal problems. Clinical pedagogy involves a system of self-critique and supervisory feedback enabling law students to learn how to learn from their experiences. Favourable staff-student ratios and collaborative learning environments support a climate in which each student is motivated to improve and perform at their best. The personal responsibility of working with and being accountable to clients motivates students to perform to the best of their ability.

There are many different types of experiential education available today at law schools in Australia. Law school experiential learning courses that place students in the role of lawyers representing clients with legal questions or problems are known as clinical legal education programs or courses. In simulation courses, or courses with simulation components, students assume lawyer roles, usually involving the representation of hypothetical clients. In externship courses (as defined at p 20 below), law students are placed in professional legal settings outside the law school where they work on real legal matters and are primarily supervised by lawyers who are not law school staff. Agency and in-house clinical courses involve law students working closely under the supervision of law school staff to provide legal assistance to clients or perform other legal tasks such as drafting law reform submissions, legislation, mediating disputes, community legal education or other work done by lawyers.

In all forms of clinical legal education law students work under supervision to take on the professional responsibilities of a lawyer. This may include analysing client problems and giving legal advice; meeting with clients and witnesses to gather information; reviewing and preparing legal documents, such as contracts, wills, or legal briefs; negotiating with opposing parties or their lawyers; and representing clients in administrative hearings, in court or before other tribunals in which the students have been granted a case-specific right of audience or the right to appear on behalf of a client; fact investigation; legal research for policy or law reform; and developing materials for community legal education.

CLE is already making important community engagement contributions in some law schools. CLE can bring together law schools with the practising profession, the judiciary and local communities. CLE can also link law schools with their alumni. This capacity to promote links among the various groups interested in the outcomes of legal education suggests clinics should be viewed by law schools as a bridge for community and professional engagement.

CLE is similar to practical legal training (PLT) courses, work-integrated learning (WIL) and service learning in several respects. All of these approaches expose students to practical aspects of legal workplaces. Each approach also reinforces for students that a knowledge of legal theory is insufficient for legal practice and that their 'law school' impressions of what it is like to actually practise law are often inadequate.

Service learning is a teaching and learning strategy that integrates meaningful community service with instruction and reflection to enrich learning experiences, teach civic responsibility and strengthen communities. CLE shares these objectives and might be considered a specific example of service learning.

However, there are some subtle differences between CLE and PLT or WIL. CLE is an approach to integrating and strengthening the academic phase of legal education in the interests of students and clients. Its emphasis on meeting the diverse and complex needs (legal, emotional, systemic and therapeutic) of real clients, either individuals or organisations, places it well beyond the vocational focus of PLT and WIL, which can limit themselves to a 'how to' approach to practising law. CLE goes beyond apparently value-

neutral practical skills and is intended to develop a critical and analytical consciousness of law.

Similarly, CLE is distinct from *pro bono publico* and student-run volunteer programs. Such placements have limited educational objectives compared to CLE, do not generally seek to develop students' normative awareness and do not set out to strengthen wider legal education and law reform curricula. However, both can awaken and sustain graduates' civic consciousness once they are in practice.

CLE programs in Australia are often sited within community legal centres (CLCs) and other law-related agencies. These centres and agencies are often funded by government legal aid authorities and their 'missions' are typically replicated to varying degrees by their hosted clinical courses. In this context, it is now very common in Australia for all clinical courses to seek to achieve social justice objectives and to promote/develop *pro bono* awareness in clinical graduates.

The theoretical framework of CLE and its implications for wider legal education

It is important to state the rationale for clinical methodology. These are the reasons why it is worth undertaking the effort necessary to establish clinical courses in the first place. CLE has the potential to:

- help students reflect on and analyse their experiences;
- develop student awareness of law in the context of society;
- engage students in deep and active learning, with timely, rich feedback;
- develop student emotional skills, values, responsibility, resilience, confidence, self-esteem, self-awareness and humility;
- move a student towards responsible professional identity;
- sensitise students to the importance of all relationships – including with clients, students, professionals;
- benefit from student-centred learning, which comes out of flexible and adaptable approaches; and
- educate students to become effective, ethical practitioners.

While CLE is different from other approaches to legal education, it is also diverse around Australia and reflects a number of pedagogical approaches to curriculum. Consistent with Dewey curriculum theory¹ and the power of experiential learning, clinical experience aims to produce graduates who can deal effectively with the modern world. At the same time it focuses on lawyers' roles in achieving social justice, and aims to develop future lawyers' emotional awareness and sense of ethical behaviour.² CLE is vocational because of its context, but will be truly effective only if its academic dimensions are in constant connection with the substantial or 'black-letter law' curriculum. CLE is collaborative between supervisors, other staff and students and among students themselves. CLE breaks down existing knowledge boundaries, strengthening cooperation and challenging traditional and limited understandings of teacher and student relations.

CLE has a fundamental role in integrating students' core academic learning areas prescribed by the Priestly 11³ and fully supports the objectives of the national *Threshold Learning Outcomes* (TLOs).⁴ The *Best Practices* proposed in this report strengthen CLE and legal education more generally, a quality recognised by the *Council of Australian Law Deans* (CALD) in its standards for law schools.⁵ The CALD has supported this project from its

¹ Experiential learning has attracted the attention of academics in several professional fields, for example, teaching, engineering and pharmacy. Numerous studies have investigated the purpose and value of this learning model, its structure, and its relationship to units or courses as a whole. It is now widely accepted that students need exposure to professional practice to develop critical decision-making skills and to place classroom learning in an authentic context. See, for example, K Taylor and I Bates, 'Pharmacy Student Numbers are Bound to Affect Educational Standards' (2003) *The Pharmaceutical Journal* 271, 546.

² H Kliebard, *The Struggle for the American Curriculum 1893-1958*, Routledge-Falmer, New York (2004); M Schiro, *Curriculum Theory: Conflicting Visions and Enduring Concerns*, Sage Publications, Thousand Oaks, CA (2007).

³ The Priestly 11 are the 11 prescribed academic areas of law required for admission to the legal profession. See, for example, http://www.lawadmissions.vic.gov.au/admission_requirements/.

⁴ See Office of Learning and Teaching, at <http://www.olt.gov.au/resources/930,4060,1710?solrsort=score%20desc>.

⁵ See Council of Australian Law Deans, *Standards for Australian Law Schools*, 17 November 2009, Standard

beginning through its representation on the project reference group and, in so doing, seeks to provide to all Australian legal education regulators a pro-active illustration of the CALD's efforts to demonstrate rigour in the advancement of Australian legal education.

CLE is an evolving and exciting field where new initiatives are proliferating. The embedding of clinical methods into new and existing substantive law courses often goes without mention and there is capacity to 'scale up' CLE through many conventional substantive subjects in this manner. 'Virtual' clinics that involve online law student-client contact, often in rural and remote environments, have commenced since our research phase ended. Multi-disciplinary clinics – which place the students of law, social work and other professions in teams to learn and deliver services to clients with multi-faceted problems – have also begun since our data gathering was completed. A new law dean who seeks to transform their law school will find they can address the whole of the law curriculum through a clinical lens. As a capstone experience, there may be nothing as enriching for teachers and students, as developing of analytical skills and as formative of true professionalism, as a properly resourced real-client clinic. Deans who adopt these *Best Practices* will be secure in the knowledge that the pedagogical bases of learning identified above are well represented.

Apart from Johnstone and Vignaendra's 2003 *Learning Outcomes and Curriculum Development in Law*⁶ stocktake there has been no thorough inquiry into legal education in Australia since the *Pearce Report* in 1987⁷ and its 1994 postscript⁸ and no Australian book on clinical legal pedagogy since 1996.⁹ There is a biennial list of 20 asserted clinical courses put out by the University of New South Wales. While there is no agreed method of determining which of these courses is properly described as clinical, that publication was used as the starting point for the selection of programs for study in this project. At no stage has clinical legal education *per se* been examined by an academic consortium from Australian law schools.

Typically in CLE (though not always) later-year law students participate in classroom exercises before being placed in real or live-client environments in CLCs – analogous to education students doing rounds at schools or social workers and nurses on placements – and learn how to be lawyers as a result of actually representing clients with real problems. This is real-life legal practice. Clients come from culturally diverse backgrounds and may be Indigenous, poor or living with mental illness or other disabilities that can be challenging for student interviewers and their clinical supervisors. A number of clients with a wide range of intersecting criminal, civil and family law problems are allocated to each law student for 'clinical periods' of varying length. Students' learning outcomes can include the development of effective and sensitive interviewing skills; analysis of the social and legal forces at work; an understanding and experience of team work; the ability to negotiate and reflect on their own learning; as well as the capacity to carry out more conventional legal tasks such as drafting documents and, in some courses, the confidence to appear in court on behalf of their clients. As well, or separately, students may also be involved in analytical projects that build on their casework experiences. Such projects both broaden their understanding of the operation of law to wider questions of politics, community and social

9.6.2; at <http://www.cald.asn.au/education>.

⁶ Johnstone & Vignaendra, *Learning Outcomes and Curriculum Development in Law*, Council of Australian Law Deans (2003), available at http://www.cald.asn.au/docs/AUTC_2003_Johnstone-Vignaendra.pdf. This report made the point that clinical programs would not be entrenched within Australian legal education until they were 'rigorously evaluated', 135.

⁷ D Pearce, E Campbell & D Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (1987) (the 'Pearce Report').

⁸ Craig McInnis & Simon Marginson, assisted by Alison Morris, *Australian Law Schools After the 1987 Pearce Report*, Australian Government Publishing Service, Canberra (1994).

⁹ Simon Rice & Graeme Coss, *A Guide to Implementing Clinical Teaching Method in the Law School Curriculum*, Centre for Legal Education, Sydney (1996).

justice and develop skills in areas such as research methods, complex drafting, interdisciplinary collaboration, law reform processes and systemic advocacy.

We assert that clinical ‘graduates’ are among the more ethically responsible lawyers in the community. We further assert that they confirm the capacity of the legal education system as a whole to produce socially aware and responsible professionals who can contribute constructively to just and equitable communities. It is also plausible to suggest that students’ (clinical) education, when conducted in accord with the *Best Practices* proposed by this report, represents a cost-effective strategy over time for the community and profession because their skills and ethical understanding are far more likely to be retained within legal practice than those without such law school experience. Best practice in clinical experience is a high-quality approach to legal education that needs to be shared nationally and not just championed in a relatively few law schools.

Literature Review

The key CLE literature used in the development of these project outcomes were Roy Stuckey and Ors, *Best Practices for Legal Education* (2007)¹⁰ and Jeffrey Giddings, *Influential Factors in the Sustainability of Clinical Legal Education Programs* (2011).¹¹ In *Best Practices for Legal Education*, Stuckey and Ors provide a framework for legal education in the United States. The book is premised on the need to change legal education in the United States because of the fact that many law school graduates complete their law school education lacking the basic abilities required to practice law. In Chapter 5, Stuckey provides best practices and principles that can be used as a guide to develop experiential learning opportunities. The author provides a roadmap for experiential courses generally, simulation-based courses and in-house clinical courses. The author stresses the importance of course design, in particular, the articulation of clear objectives and assessment criteria, along with the effective provision of feedback. In his PhD thesis, *Influential Factors in the Sustainability of Clinical Legal Education Programs*, Giddings presents a comprehensive overview of CLE literature in Australia and internationally. The thesis canvasses how to maximise the benefits of CLE methodologies to improve legal education generally. The author provides extensive case studies of Australian clinical programs and analyses the pedagogical sustainability of clinical programs in Australia.

Other professional education literature was also researched to consider what linkages can be made from the methods used in medical clinical training. Various reports were considered including: *Report to the Medical Training Review Panel Clinical Training Sub-Committee* (2008); *Australian Medical Association Position Statement*; ¹² and the *CanMEDS physician competency framework* (2005).¹³

Five main areas of academic and professional literature are relevant to CLE:

- Context-based literature (covering topics such as disadvantaged communities, access to justice, poverty).
- Reflective practice literature.
- Skills-based literature (including interviewing and negotiation, file management, legal writing, research, and cultural competency).
- CLE literature (to understand the pedagogy and methodology).
- Topic-specific literature for areas of law relevant to the particular clinic.

A significant amount of this diverse literature bears on the general issue of clinical standards or best practices, particularly in the following areas of debate:

- **What constitutes an effective clinical program within legal education?**
 - Is the term 'effective' always relative or are there irreducible minimum standards?

¹⁰ Roy Stuckey & Ors, *Best Practices for Legal Education: A Vision and A Road Map* (2007) Clinical Legal Education Association <http://www.law.sc.edu/faculty/stuckey/best_practices/> available as a PDF at <http://cleaweb.org>.

¹¹ Jeffrey Giddings, *Influential Factors in the Sustainability of Clinical Legal Education Programs* (unpublished PhD Thesis, Griffith University 2010).

¹² A Carmichael and M McCall, *Report to the Medical Training Review Panel Clinical Training Sub-Committee* (2008) < <http://www.medicaldeans.org.au/wp-content/uploads/National-Clinical-Training-Review.pdf>>.

¹³ JR Frank, (ed), *The CanMEDS 2005 physician competency framework. Better standards, Better physicians. Better care* (2005) Ottawa: The Royal College of Physicians and Surgeons of Canada.

- Is effective experience best achieved in a live-client clinic, or can the concept be as effective with simulated experiences using role plays, and with externships and virtual (online) clinics?
- In a live-client clinic, what is the proper balance between client service and students' education?
- Should initial advice be given to clients only in the presence of a supervisor, or will insistence on this client protection stifle students' development of confidence and a sense of responsibility?
- If the latter, what precautions should govern students' 'first contact' autonomy?
- Are ongoing law reform and community development techniques legitimate clinical program objectives, as a part of legal professionalism?
- If they are legitimate objectives, are they also necessary objectives?
- **What clinical supervision standards or practices are necessary in an Australian law school setting?**
 - Are there minimum time periods for effective clinical experience?
 - In relation to live-client clinics, are there more or less appropriate practice environments in which clinical experience should take place?
 - Are there minimum levels and preferred types of student-accessible documentation in relation to learning objectives, formative feedback/assessment, summative feedback/assessment, types and intervals of clinical feedback and assessment criteria at each of these stages?
 - What are effective standards for these criteria, particularly in relation to students' levels of client sensitivity and communication, ethical awareness, intellectual grasp of substantive law and its practical implementation, drafting, negotiation and advocacy skills, self-organisational ability, socio-legal awareness and comprehension of law reform processes?
 - Which of these standards apply and in what way to other types of clinics, such as externships or virtual clinics?
- **How effectively are clinical programs integrated within law curricula and law schools?**
 - Should a student's clinical experience be integrated with other courses or stand alone within an undergraduate law degree?
 - Should clinical components be incorporated into doctrinal law courses?
 - Do the existing examples of clinical impact on doctrinal curriculum provide compelling evidence of the benefits of integration?
 - What expectations should there be of, and what support should there be for, clinical teachers' research output, and their administrative and 'conventional' teaching workload?
 - What access should clinical teachers have to 'conventional' law teachers' terms and conditions of employment?
- **What is the proper relationship between clinics, externships and a myriad of related pro bono placement initiatives?**
 - Is there any need for a definition of clinical method that excludes externships?
 - If not, is there any progressive, sequential relationship between live-client and externship experiences or can they operate parallel to one another without limiting student learning?
 - Do the same considerations apply to live-client clinic and *pro bono* experiences?
 - What is truly distinctive about a live-client clinic compared to a *pro bono* or

externship experience?

- Or is the real educational question as to what are the essential qualities of in-depth student learning?
- Are the most effective legal education outcomes obtainable from full integration of simulation, live-client clinical and doctrinal teaching throughout the academic phase, in the manner of The University of Newcastle law school?
- **How are clinical programs to be adequately staffed?**
 - What mix of educational insight and legal practice know-how is needed for clinical supervision in law?
 - Should clinical supervisors be required to have certain formal qualifications and experience and, if so, then what are they and what are the acceptable minimum standards?
 - If clinical supervisors require certain standards and cannot always be recruited with highly developed standards, then what are the most effective ways to train them to acceptable minimums?
 - What insights from clinical supervision in the health sciences are likely to be relevant to the training of clinical legal supervisors?
- **How are students' performances to be assessed?**
 - Should students be assessed at 'satisfactory' levels of performance according to stated criteria (that is, a pass/fail approach) or should they be eligible to record higher levels of achievement, similar to other law subjects?¹⁴

¹⁴ Simon Rice, 'Assessing – But Not Grading' (2007) *Macquarie Law Working Paper No. 2007-16* Available at SSRN: <http://ssrn.com/abstract=1061622> or <http://dx.doi.org/10.2139/ssrn.1061622> ; Ross Hyams, 'Student Assessment in the Clinical Environment – what can we learn from the U.S. experience?' (2006) 10 *International Journal of Clinical Legal Education* 77-96.

Maintaining Quality through Relevant Educational Standards

There are two contemporary ‘standards’ that inform the way in which the *Best Practices* this report recommends will have to operate. Certain sections of the law school Standards promulgated by the Council of Australian Law Deans in 2009 (see Appendix D) encourage clinical experimentation and expansion in Australian law schools. Secondly, the Threshold Learning Outcomes relevant to clinics developed by the former ALTC in 2010 (see Appendix C) fundamentally underpin the purposes of this project. The majority of these Outcomes, if not all, are, and we believe will be, achieved by clinics that operate according to the *Best Practices* recommended here.

The development of these Australian *Best Practices* has been influenced by the approach taken by Stuckey and Ors, in *Best Practices for Legal Education*,¹⁵ published in 2007. This North American exposition of best practices covers wider territory than clinical methods but grounds its analysis in learning outcomes. In contrast, the United Kingdom’s Clinical Legal Education Organisation (CLEO) produced a set of *Model Standards for Live-Client Clinics*¹⁶ in the same year. These were rather more functional in nature, focusing on ‘good’ rather than ‘best’ practice and using the terminology of standards rather than practices. Learning outcomes are mentioned, but they appear at number 10 in a list of 24 items that are not thematically organised.¹⁷

In Australia there is increasing concern to improve the quality of all legal education. This objective is fully supported by the proposed *Best Practices*. Quality control in clinical teaching is an underlying reality in all clinics, but it is one that has yet to significantly impact on any of them.¹⁸ In addition, all live-client clinics and practice-based placements are subject to overarching (and potentially national) professional conduct rules and have confidential client complaint-recording processes as a part of the discharge of their professional responsibilities, as legal practices. But these controls, welcome as they are, are consequences of those practice responsibilities rather than measures designed to bolster educational outcomes. The recommendations of this report address this second environment, having regard to clinical pedagogy and an overall imperative of quality delivery.

It is plausible to suggest that a ‘quality’ clinical program is less susceptible to internal faculty and external political and regulatory criticism. The Tertiary Education Quality Standards Agency (TEQSA) will sequentially assess the quality of all universities over time, with significant financial penalties for those who are found not to have acceptable protocols in place to manage the issue. In time TEQSA may also encourage the development of course-specific best practices. Further, the Australian Qualification Framework (AQF) is to commence in 2015 and will require all courses (including those of law schools and their

¹⁵ Stuckey, above n 10.

¹⁶ CLEO, *Model Standards for Live-Client Clinics* – updated 25 June 2007. See <www.ukcle.ac.uk/files/downloads/38/713.83471086.standards.rtf>

¹⁷ *Ibid.* The nominated UK standards were as follows: Educational objectives, Supervision, Stationery and publicity, Basic client care, Insurance, Confidentiality, Ethics, A professional standard of service, Conflict of interest, Learning outcomes, Assessment, Integration, General representation, Operational practice, Supervision and staffing, Maintenance of files and records, Premises, Equipment, Funding, Student activity, Training, Referrals to other agencies, Management and Review of clinical procedures.

¹⁸ Except to the extent that those clinics that operate inside CLCs are subject to annual peer-administered audits for professional indemnity insurance purposes. However, the quality of these peer reviews is not audited.

clinics) to meet minimum standards of teaching and assessment, depending on the level of the qualification from 1–10. An LLB will rank as Level 7, an LLB Honours will be Level 8 and an LLM (which includes all JD law degrees) will be Level 9. A clinical course offered inside an LLM (or JD) will therefore have to be taught and assessed at a level significantly higher (that is, more difficult) than that required in an LLB. No Australian clinical program has begun to deal with these shortly-to-be-imposed realities in relation to teaching and assessment, and therefore also in relation to quality.

Quality control at most Australian universities is managed by a variety of direct and indirect means. The direct measure is often an online student questionnaire, which purports to assess whether the unit as a whole is delivered satisfactorily and whether the teachers' role in that delivery was also satisfactory. This tool can be used in clinical subjects or placements but is not well suited to small enrolment or specialised clinics because the accompanying statistical analyses, designed, for example, to show mean student satisfaction levels, etc, are unreliable with very small sample sizes. In these subjects therefore there is no direct and effective measurement of quality. As with all questionnaires, there is also a degree of inherent inaccuracy due to student fatigue, apathy and distraction. However on the whole, this assessment method is seen as cost effective and is most often utilised by students to give useful feedback. Only a very small proportion of responses tends to be offensive or gratuitous.

Indirect measures of quality affecting all subjects (including clinical subjects) can also arise through university and law school insistence on all new permanent academic staff holding a graduate certificate or similar qualification in higher education; regular course reviews; detailed student-accessible documentation about deliverable content, assessment, student appeal mechanisms and available research resources.

A significant area where most law schools underperform is in the training of clinical supervisors, in either live-client or externship/placement contexts. As far as we can tell, there is currently no requirement for such supervisors to hold a higher education certificate or equivalent.

Definitions

What is ‘Clinic’?

‘Clinic’ or clinical legal education (CLE) is a significant experiential method of learning and teaching. CLE places law students in close contact with the realities, demands and compromises of legal practice. In so doing, CLE provides students with real-life reference points for learning the law. CLE also invites students to see the wider context and everyday realities of accessing an imperfect legal system. Clinical pedagogy involves a system of self-critique and supervisory feedback so that law students may learn how to learn from their experiences of simulated environments, observation and, at its most effective level, personal responsibility for real clients and their legal problems. CLE is, in summary, a learning methodology for law students that compels them, through a constant reality check, to integrate their learning of substantive law with the justice or otherwise of its practical operation.

What is ‘live client’?

Live-client CLE is intensive, essentially one-on-one in nature, with an implicit expectation that (mostly) self-selecting students will do well as they apply legal theory, develop lawyering skills and build their confidence in solving the legal problems of real clients for whom they are responsible, under supervision. Live-client CLE entails a high staff-student ratio and collaborative learning environments so each student is motivated to improve and perform at their best. Students are so motivated because of the personal responsibility of working with and being accountable to clients, as opposed to software or other simulated accountability structures.

Clinic types, definitions and examples

Clinic Type	Definition	Example
Wholly law school funded in-house live-client clinic	On campus, wholly funded and controlled by law school for student education	University of South Australia Legal Advice Clinic
In-house live-client clinic (some external funding)	Substantially funded, substantially controlled by university, for student learning and client service	Kingsford Legal Centre, UNSW
External live-client clinic (‘agency clinic’)	University students placed in an agency, under supervision of agency, assessed by university, with input from placement	Springvale Monash Legal Service, Monash University
Externships (includes internships and placements)	University students placed in an agency, under supervision of agency, assessed by university, with input from placement	Griffith University Semester in Practice Program
Clinical components in other courses (includes simulations of legal practice activities and encounters)	Element of another substantive law unit	Charles Darwin University

Client

References to 'client' or 'legal work for the client' in this document are intended to cover considerably more than legal work for individuals. These terms generally refer to one or more of the following:

- An individual (as a client of a live-client clinic).
- Groups of individuals with common interests or concerns and /or an organisation or group of organisations.
- The community (the client of a law reform or community development clinic or component within a clinical course).
- The general beneficiaries of law reform or impact litigation.

Semester

Australian university semesters are typically of 12–13 weeks duration. Most clinical courses conform to this length for ease of administration, student expectations of time commitment and central university assessment regimes. In some cases, clinical teaching periods of longer or shorter length have been substituted for semesters for local reasons.

Investigation Methodology

Methodology overview

Our approach to the challenge of describing best practices for Australian CLE began with ‘what is’. Then, on the basis of the data gathered and our discussions with interviewees, we assessed ‘what should be’ best practices. We are aware that the resulting *Best Practices* reflect our considered views on the very issue of ‘best’ and that there will always be debate about what is ‘best’. Our position is supported by extensive sound research. We have interviewed law school teachers, administrators, other legal education providers and regulators (including the funders of this project) regionally and nationally, consulted and re-consulted with stakeholders and we have produced successive drafts in conjunction with members of our national and international reference groups. We have also had the benefit of an experienced international evaluator and have at several stages adapted our approach on the basis of his counsel and that of reference group members.

Beginning with the list of CLE programs reported annually by Kingsford Legal Centre,¹⁹ we developed a questionnaire and interviewed representatives of 26 law schools over 2010 and 2011, accumulating their responses and views as to what exists and what ‘should be’ in relation to Australian CLE. Some law schools did not participate, but that was their decision and was not a consequence of any lack of opportunity. Different team members took responsibility for collating responses in each State and Territory and produced individual *Regional Reports* that were introduced to, explained and workshopped in regional colloquia of participant law schools and stakeholders around the country. Frequent team meetings and teleconferences intersected these discussions, culminating with a number of key meetings where we transformed the insights of the *Regional Reports*²⁰ into a number of appropriate discrete themes. We presented our findings and sought input into our draft *Best Practices* at the Global Alliance for Justice Education and International Journal of Clinical Legal Education Joint Conference in July 2011 (Valencia, Spain) and the Australian Clinical and Experiential Conference in September 2011 (Sydney). Eventually, the thematic approach allowed us to refine a set of draft best practices for each theme. Finally, these proposals were, in turn, workshopped with key stakeholders and further critiqued by members of our national and international reference groups.

Throughout the project we grappled with the important implications of different terms that could describe what we have been working towards. In the event, we have a document that allows law schools the latitude to determine if they will comply with what we think is best practice or to do things differently, without potential for regulatory recrimination.

Project Team

The project team consists of:

- Professor Adrian Evans, Associate Dean (Staff), Monash University –Project Leader;
- Associate Professor Anna Cody, Director of Kingsford Legal Centre, University of New South Wales;
- Anna Copeland, Director of Clinical Legal Education Programs, Murdoch University;

¹⁹ Kingsford Legal Centre, *Clinical Legal Education Guide 2011-12*, University of New South Wales (2007) at http://www.klc.unsw.edu.au/sites/klc.unsw.../CLE_GUIDE_2011_12.pdf.

²⁰ Each *Regional Report* appears on the project website <http://www.law.monash.edu.au/about-us/legal/altc-project/regional-reports/index.html>.

- Professor Jeff Giddings, Director of Professionalism, Griffith University;
- Associate Professor Mary Anne Noone, Coordinator, Clinical Legal Education and Public Interest Law Postgraduate Program, La Trobe University;
- Professor Simon Rice, Director, Law Reform & Social Justice, The Australian National University; and
- Ms Ebony Booth, Monash University, Project Manager.

Survey Questions

The project team developed the survey instrument (see Appendix A) in September 2010. Research ethics approval was initially sought and received from Monash University Human Research Ethics Committee (MUHREC) in November 2010 (CF10/2794 – 2010001578). Initial interviews were conducted with interviewees in 2010 and 2012. All interviewees were approached by a project team member who explained the purpose of the research. The interview was arranged between the interviewee and the project team member who then conducted the interview following a set of questions outlined in the survey instrument. The topics covered in the survey instrument included:

- descriptions of existing clinical programs;
- debates as to good clinical programs;
- necessary clinical supervision standards in an Australian law school setting;
- the extent to which clinical programs are integrated within the larger law curriculum and the law school itself;
- the desirable relationship between clinics, externships and a myriad of related *pro bono* placement initiatives;
- adequate staffing of clinical programs; and
- assessment of students' performances.

After research, analysis and regional colloquia, the project team created a supplementary research survey to ask additional questions that were not canvassed in the initial interview (see Appendix B). Research ethics approval was sought and received from MUHREC for this supplementary survey (Project Number: CF11/2276 – 2011001312). The additional questions covered the following topics:

- selection of students for clinical programs;
- clinical scholarship/research;
- clinical classroom components;
- costs of clinical programs;
- insurance; and
- clinical case selection.

Research Interviews (November 2010 – March 2011)

Interviews were conducted in each State and Territory at various times from November 2010 until March 2011, segmented by law school into the regions below. Each region was the focus of a later *Regional Report* (see below page 28). Interviews ranged from one to three hours in length and were conducted face-to-face. All participants were (at the date of publication) clinical supervisors/academics involved with clinical programs in the following law schools:

<p>New South Wales and Australian Capital Territory</p> <ul style="list-style-type: none"> • The Australian National University (ANU); • Macquarie University (MACQ); • The University of NSW (UNSW); • The University of Newcastle; • The University of Sydney (USyd); • University of Western Sydney (UWS); and • University of Wollongong (UoW). <p>South Australia</p> <ul style="list-style-type: none"> • The University of Adelaide; • University of South Australia; and • Flinders University <p>Western Australia and Northern Territory</p> <ul style="list-style-type: none"> • Murdoch University; • Charles Darwin University; and • Edith Cowan University. 	<p>Queensland and Northern New South Wales</p> <ul style="list-style-type: none"> • Bond University; • Griffith University; • James Cook University; • Queensland University of Technology; • Southern Cross University; • University of New England; • The University of Queensland; and • University of Southern Queensland. <p>Victoria and Tasmania</p> <ul style="list-style-type: none"> • Monash University; • Latrobe University; • Victoria University; • Deakin University; and • University of Tasmania.
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Regional Colloquia (April – June 2011)

Regional colloquia were conducted in Melbourne, Sydney, Perth and Brisbane to disseminate and discuss the initial findings of the study, segmented according to the above regions. All interviewees and other clinical supervisors who were not part of the initial interview process were invited to attend the colloquium in their region. Attendance at each colloquium ranged from seven to 25 participants. Project team members covered the more controversial topics that were elucidated from the interview process. These topics included:

- assessment practices for clinical subjects and whether students should be assessed on a pass/fail basis or according to standard law school practices (Fail, Pass, Credit, Distinction, High Distinction);
- student to supervisor ratios;
- reconciling the two purposes of most clinics: students education and service to clients;
- integration with the law school;
- clinical teachers' employment conditions; and
- appropriate qualifications for clinical teachers/supervisors.

Participants contributed widely to the various themes discussed at the colloquia. Project team members made notes based on the feedback and contribution made at the colloquia and reported the comments back to the project team to incorporate the feedback in the development of the research.

Regional Reports

The *Regional Reports* reported, digested and analysed the research gathered from interviews and colloquia. Each report reflects the findings in a particular region, which with two exceptions corresponded to the States and Territories. These reports are written and formatted in slightly different ways, reflecting the differing contexts, priorities and responses of the interviewees and the sense of responsible team members for what was and is most important in their regions. To this extent, some variations in phrasing, emphasis and delineation of programs inside each region have been retained. Our aim is to ensure that peculiarly local concerns are not subsumed or lost in the homogenous language that would tend to emerge with a single national report of all clinical programs. In this way, individual readers of this report in each region will we think identify more closely with the local analyses of each team member and in turn, the consequent *Best Practices*.

The regions were southern and central New South Wales and the Australian Capital Territory; Queensland and northern New South Wales; South Australia; Victoria and Tasmania; and finally Western Australia and the Northern Territory.

Each *Regional Report* is divided into three key areas:

1. Comparative Descriptions of Clinical Programs
2. Reporting and Preliminary Analysis
3. Analysis.

The first part of each *Regional Report*, 'Comparative Descriptions of Clinical Programs', consists of a table displaying an overview of each clinical program in the region and its key characteristics.

The second part, 'Reporting and Preliminary Analysis', reflects the responses of clinical supervisors to questions aimed at drawing out what would be best practice in CLE. However, it is important to note that this project was funded to develop specific guidelines around clinical practice; it was not intended that it would explore or justify every aspect of CLE. While the questions are aimed at best practice, often the responses tended to focus on existing patterns of provision. It should be kept in mind that each *Regional Report* provided a starting point for discussion and by nature reflected strongly where CLE was perceived to be at the time of survey, while pointing the way towards respondents' views as to what CLE ought to become.

The third part, 'Analysis', contains the responsible team member's analysis of the information gathered in their region through the interviewing process with a particular focus on four key themes: sustainability; integration; pedagogy and quality.

Reference Groups

The national reference group was consulted for expert advice in all phases of the project. The members' advice has profoundly assisted with the refinement of survey questions, reports and activities and the interim and final project reports. Members of the national reference group are:

- Professor Stephen Billet, Griffith University;
- Judith Dickson, Director, Practical Training, Leo Cussen Centre for Law;
- Professor David Dixon, Dean of Law, University of New South Wales; and
- Professor Sally Kift, DVC, James Cook University.

The international reference group members are leading clinical educators in their respective jurisdictions. They have provided invaluable commentary on the course of comparable debates in their own countries, the methodology of this project and the drafting of its major output, *Best Practices for Australian Clinical Legal Education*. Members of the international reference group are:

- Professor Peter Joy, Vice Dean of Law, Washington University, St Louis, USA;
- Kevin Kerrigan, Dean of Law, Northumbria University, UK;
- Professor Philip Plowden, Pro Vice Chancellor, University of Derby, UK; and
- Professor Emeritus Roy Stuckey, University of South Carolina, USA.

Development and Dissemination (July 2011 – July 2012)

The preliminary research outcomes informed the development of the *Best Practices in CLE*. The project team's approach and perspective evolved from an intention to develop and prescribe *Standards* in CLE, to *Recommendations*, and eventually concluded that the project objectives could best be achieved by proposing *Best Practices*. This approach allowed the achievement of research outcomes at an aspirational level while maintaining a level of prescription that would have been achieved had the research output been couched in the terminology of *Standards*.

Several themes emerged naturally from consideration of the diverse responses recorded in the *Regional Reports*. As they appear in this document, these are:

1. Course Design
2. Law in Context in a Clinical Setting
3. Supervision
4. Reflective Student Learning
5. Assessment
6. Staff
7. Infrastructure.

These seven themes cover the theoretical and practical dimensions of designing and delivering an Australian clinical course at best practice levels. However, we do not argue that these themes or their associated best practices are necessarily applicable in other jurisdictions. While we have certainly benefited from the well regarded UK and US clinicians who acted as our reference group, it is plain that local factors have affected what we prioritised and emphasised.

For each theme, we make a brief introductory contextual *statement*, followed by one or more statements of *principle* to guide the reader to a number of applicable *best practices*. Finally, to assist law schools and clinical supervisors to understand particular best practices, we provide specific *examples* of those best practices where we were able to identify them in our research.

Various drafts of the *Best Practices* have been delivered to various audiences for their input and consideration at specific workshops. From July 2011 through to July 2012, members of the project team conducted workshops at these national and international fora:

- Global Alliance for Justice Education Conference (GAJE), July 2011, Valencia, Spain;
- National Clinical Conference, September 2011, Sydney;

- Stakeholder Project Workshop, December 2011, Melbourne;
- Council of Australian Law Deans meeting, July 2012, Sydney; and
- Australasian Law Teachers Association (ALTA) Conference, July 2012, Sydney.

Project Evaluation

The project was evaluated by Professor and Vice Dean Peter Joy (Washington University School of Law), who is well known for his work in CLE, legal ethics and trial practice. He is co-director of and clinical supervisor within the Washington University St Louis Criminal Justice Clinic, a member of the American Bar Association (ABA) Section on Legal Education and Admissions, a member of the ABA Law Schools' Accreditations Committee and chair-elect of the Association of American Law Schools (AALS) Professional Responsibility Section.

The evaluation determined the usefulness of the project, that is, its value in the context of its information-gathering objective, its objective of encouraging better clinical standards in Australian law schools and promoting workplace integration in legal education, and in its ultimate objective of improving law school curricula. Professor Joy has developed a multi-faceted evaluation process for the project, including:

- ongoing evaluation throughout the life of the project;
- evaluation of the project team's presentation at a CALD meeting (June 2012) and at the ALTA Conference at the University of Sydney (July 2012); and
- one-on-one interviews with stakeholders on their views of the project and the project's outcomes.

The external evaluation component consists of three components:

1. The external evaluator has provided comments on the process for developing proposed *Best Practices* as well as the *Regional Reports*. He also provided comments to the final draft of *Best Practices*.
2. The external evaluator has conducted interviews with and surveyed key stakeholders concerning the process used to develop *Best Practices*.
3. The external evaluator has conducted interview surveys of key stakeholders concerning the proposed *Best Practices*.

Regional Consultation and Regional Reporting

Summaries of Analyses

The complete *Regional Reports* appear on the Project website (<http://www.law.monash.edu.au/about-us/legal/altc-project/>). These documents were considered too voluminous to fully integrate into this Final Report. The following summaries of the Reports' analyses are sufficient to provide an overview of the salient insights of each report.

Victoria and Tasmania

Sustainability

Monash University

Monash clinics consist of deeply entrenched programs, each acting through popular electives within the core LLB/JD courses. All are financially supported by the Law Faculty and receive funding from external bodies, that is, Commonwealth, Victoria Legal Aid (VLA) and local council. These programs are as secure as they can be in an era of uncertain national commitment to tertiary education.

Clinicians at Monash-Oakleigh Legal Service (MOLS) are all employed by the Law Faculty, whereas at Springvale Monash Legal Service (SMLS), aside from the Director, the clinical teachers are employed by SMLS (as a CLC). The relationship between Monash and SMLS is relatively stable because there have always been a few academic staff who taught in the clinical program and, often, these teachers have had influential positions in the Law Faculty with more or less acceptable research performance. Because they met conventional academic criteria, these teachers have been able to head off opposition to the cost of clinical teaching from other teachers who were less enthusiastic or passively opposed to experiential learning or who leaned towards positivist perspectives of law. In this sense, Monash clinical sustainability has depended on recognising that the prevailing attitude to clinics in the Law Faculty was and is benign, but still essentially conservative in its attitude to individuals' acceptable academic credentials. Clinicians have recognised they could not overcome this orientation, but could still be fairly powerful in clinic defence when necessary, so long as they were otherwise ticking conventional boxes in terms of student-assessed teaching quality, service to the Law Faculty and university and some academic publications.

Another factor in sustainability is the provision of graded clinical assessment. Students often excel at (elective) clinical experience and achieve high results because their commendable justice instincts are highly stimulated by a teaching paradigm that values client service as much as students' learning. This feeds back in a loop to the quality and depth of their learning and, frequently, their reasons for undertaking a legal education. The opportunity for grades as opposed to pass/fail results is a part of the package (along with double credit points) that attracts students to clinic enrolment. This keeps the overall enrolment levels up and, in due course, generates positive student word-of-mouth reports inside the wider student population about the worth of experiential learning. The existence of highly positive student attitudes, reinforced by the opportunity to earn high marks, is a constant and critical factor in reminding successive law deans of the worth of the program and hence contributes to its sustainability.

A final important factor in Monash program sustainability has been SMLS connections to the regional legal establishment. SMLS has had an independent Board and a consistently outward-looking orientation to community engagement and law reform activity. Its high profile, skilful management of relationships with successive Attorneys-General and the local

law society and placement of many successful clinical alumni within government, bar and judiciary, has enabled it to martial effective political pressure; which has been judiciously applied to the Law Faculty on several occasions over 30 years. This independence of the 'external' SMLS board was (ironically) strengthened by a Monash dean who required a Memorandum of Understanding (MOU) with the then SMLS Board which insisted on four of the 13 positions on that Board being reserved for his appointees, thus ensuring that the other nine positions were elected by the wider community.

La Trobe University

Victoria Legal Aid's (VLA's) Preston office and West Heidelberg Community Legal Service (WHCLS) are both well-established La Trobe live-client clinic sites. VLA focuses on teaching a core legal ethics unit through the CLE method and WHCLS operates a conventional live-client clinic model. Both programs appear secure as the academic staff are funded by La Trobe and they are long-term partnerships. Despite successive internal law school concerns about cost, their wider external reputations have in all respects operated as supportive influences in the quest for ongoing funding.

This positive reputation has been a critical factor in La Trobe clinic sustainability. However, other factors have also played a role: the law school has had a few long-term key clinicians who are active researchers as well as politically astute. These individuals have wide institutional and personal connections to the larger legal community, State and local government. In a similar manner to Monash, they have managed occasional negative pressure from the law school with personal resilience and appropriate responses. La Trobe clinicians have communicated their unique ethics-in-action clinical model at VLA in such a way as to emphasise to the law school itself that La Trobe as a whole occupies a crucial niche in clinical methods and that that niche (resident inside a highly visible VLA branch) is a substantial marketing advantage to La Trobe in a city with too many (six) other law schools.

Secondly, WHCLS has developed a separate and powerful community identity (similar to SMLS which is 40 km to the south on the other side of the city of Melbourne), such that its existence and advocacy on behalf of northern suburban communities assists La Trobe to assert its regional identity and legitimacy in a wider political setting.

Thirdly, La Trobe has a separate and successful central city and northern suburban externship program, which probably has more depth than any other Victorian law school. This program focuses strongly on non-traditional legal practice, low-cost administration and links with the not-for-profit, government and community legal sector. As La Trobe externships reach many students in a relatively low-cost manner, clinicians are further able to argue that the whole of the clinical mix is cost-effective and therefore sustainable, while still enhancing La Trobe's reputation as a responsible community institution.

Deakin University

Deakin operates an externship model only, with over 30 partnerships. The large number of students who have access to these externship placements allows the law school to achieve high levels of student experience in a variety of practice-related environments, which is therefore Deakin's best practice. Its strongest partnership is with Western Suburbs Legal Centre, where 15 students are placed. Deakin offers donations to WSLC to maintain the relationship and support the students' involvement. The relationship with WSLC is of fairly long standing. To the extent that this model is presumably relatively low cost, it is sustainable, but stability is harder to gauge. As externships involve relatively little money changing hands (and, in the case of WSLC, funds paid are in the nature of donations only), the commitment of partners can (though need not) be on a less secure basis than may be the case if big sums are involved and there is a lot at stake for both partners in maintaining their relationship. However, Deakin's model has not generated any notoriety and appears to be in a stable setting within the law school.

Victoria University

Victoria University (VU) offers a limited externship model that nevertheless develops very useful reflection skills in students. Students are assessed purely on their reflective journaling or blogging in relation to their work experience and observation at self-organised external placements. This very limited model must be sustainable at least in financial terms because of its cost-effective utility to the law school. However, it could be less viable over the longer term if the Australian Learning and Teaching Council (ALTC) Teaching and Learning Outcomes (TLOs) in law skills training are applied rigorously to this experience and audited by the Tertiary Education Quality Standards Agency (TEQSA). The TLOs mandate a wider range of skills than reflective journaling and, if VU has no other mechanisms to achieve that wider range (in relation to which this analysis has no information), then its clinical program will not be stable and will require modification.

Integration

All programs investigated in Victoria are elective units and therefore optional to students. To this extent, an objective of integrated learning – 100 per cent capture of all students – is not achieved anywhere.

Monash University

Minimal efforts have been made to integrate clinical methods into the Monash LLB/JD degrees, although a current curriculum review has some prospect of changing this. Clinical electives are also not well understood or emulated inside core degree units. For example, there have been no successful efforts to consistently utilise case studies taken from SMLS or MOLS as teaching vehicles within contract, tort or criminal law. The only exception is provided by some first year units, which offer an optional exposure program whereby students may attend and observe a clinic intake session and submit a report on their observations.

La Trobe University

La Trobe is the only university that has incorporated a core unit, ethics, into a CLE elective. This is a core subject and acts as a substitute to the conventional ethics elective. This means that the CLE unit is not compulsory for students but students can choose between the conventional theoretically-taught subject or the clinically-taught ethics elective. To this extent, La Trobe represents best practice in Victoria in this area of analysis.

Deakin University

Deakin's best practice in relation to integration is its requirement that all students complete 30 days (six working weeks) of legal work experience before graduating. The time exposure is impressive because, under current Victorian Council of Legal Education rules, it does not substitute for required postgraduate PLT experience. However, this work experience requirement is neither accredited nor assessed and quality is therefore an unknown. Undertaking a clinical unit will contribute to the requisite days required under the internal legal work experience requirement.

Victoria University

VU has only the one subject that assesses journaling/blogging in respect of an externship that students must organise on their own.

Pedagogy

Supervision

Generally, both in-house and external clinics in Victoria allow students to give advice to clients without the physical presence of the supervisor in the room. There is a consensus that this model gives students a better learning experience and creates more desirable learning outcomes, particularly in relation to responsibility and confidence-building. Conversely, the one clinic that opposes this model of learning suggests that students embrace responsibility merely by being present in the room with the supervisor conducting the interview. The skill said to be gained through this process is meticulous file construction and note-taking. In addition, one respondent considers that students may learn more with a supervisor in the room as the supervisor may pick up on what students have done correctly/incorrectly and provide more elaborate feedback than is possible if the supervisor is debriefing the student after a student-conducted interview.

However, a majority in this region consider that the relevant standard for the method of 'student advice-giving' in a live-client clinic should be unsupervised in the literal sense and that the absence of a supervisor is a positive quality. Nearly all respondents noted that the physical absence of a supervisor does not mean inadequate or improper supervision, provided that students are properly prepared for the interview experience and supervisors routinely discuss with their students what happened in each interview, immediately afterwards. We conclude that this method should be employed, provided post-interview debriefs occur and adequate training and information regarding ethical conduct requirements is communicated to the student. The following are examples of what this training might include:

- Mock client interviews/simulated experiences (supervisors observe and make note of those students who may find the interview process difficult. Care should be taken with students on a case-by-case basis).
- Knowledge of the professional conduct rules/*Legal Profession Act 2004* and the potential ramifications for students' future ability to practise should they breach those rules.
- Awareness that the supervisor is close by, available and able to assist when the student is interviewing, should this ever be necessary.

Assessment

Although this issue is perennially difficult in some jurisdictions, all clinical models and institutions in Victoria use the graded approach (as opposed to the pass/fail method). Each respondent advocated the grading method for its motivational quality, its ability to boost enrolment and to give credibility to the program and subject/unit. Nevertheless, each respondent noted and appeared to accept the difficulty inherently involved in the marking process and the degree of subjectivity inherent in all qualitative assessment.

Students are generally ranked by supervisors with respect to the rest of the cohort. It was noted that grading students improves the quality and depth of supervision by clinical supervisors.

Quality

Quality control in clinical teaching is a factor in sustainability. A 'quality' clinical program is less susceptible to internal faculty and external political and regulatory criticism. Quality issues at most Australian universities are managed by a variety of direct and indirect means. The direct measure is often an online student questionnaire, which purports to assess whether the unit as a whole is delivered satisfactorily and whether the teacher's role in that delivery is also satisfactory. This tool can be used in clinical subjects or placements but is not

well suited to small enrolment or specialised clinics because the accompanying statistical analyses (designed, for example, to show mean student satisfaction levels, etc) are unreliable with very small sample sizes. In these subjects therefore, there is no direct measurement of quality.

Queensland and Northern New South Wales²¹

Sustainability

Few law schools have embedded their clinical programs into the wider law degree. Often, there is extensive (and perhaps excessive) reliance on a small number of external organisations with limited interaction. Relationships developed through clinical programs were identified as being particularly important. Engagement with various communities is recognised as a key benefit of clinics. Law schools need to identify and articulate the reasons why external organisations can benefit from participation in their particular clinical program. The clinicians interviewed for this report recognised that students can be considered to be a potential drain on the resources of external agencies – in terms of supervision, space and computers. Of course, there are a range of contributions that students, clinicians, clinical programs, law schools and universities can offer to external organisations. Partnership models that use collaborative frameworks have the potential to enable clinical programs to provide students with a range of learning and service opportunities. It will be important for the partners to develop realistic expectations of what can be achieved through such partnerships and the need to adequately support and resource such collaborations.

Lessons can be learnt from the practices in other disciplines where supervisors are employed in the regions where the remote-access students live. Such arrangements are valuable but take time and resources to develop and maintain.

Staffing arrangements are central to the sustainability of clinical programs. Program coordination and development needs to be recognised and fostered. Staff continuity is also important – in terms of academics, administrative staff (often critical to program cohesion) and sessional staff.

It is important to avoid perceptions that the clinical program is a pet project of one person. But at the same time it is important to ensure that the key people focus on the project. If there is a very limited number of academics engaged in the clinical program and key clinic-fluent staff members take on leadership responsibilities, then this can create challenges for the ongoing operation of the program. Programs recognised the need to involve further people, partly with a view to giving the program a sustainable platform.

Some programs have several staff members involved and this is helpful. Sustainability is likely to benefit from at least one of those staff members taking on a particular leadership role and engaging more deeply with design issues across the program. Some law schools do not appear to put significant resources into the program in terms of teaching allocations. The work-integrated learning (WIL) agenda is important in encouraging the law schools to embrace the use of clinics.

In terms of sustainability of the clinics generally across the region, good work is being done but there is little communication both within and between institutions. The regional colloquium was very well attended and identified a range of ways in which greater information sharing and awareness can be fostered. Most of the clinics have not prioritised

²¹ Northern New South Wales law schools surveyed were the University of the Southern Cross and The University of New England.

scholarly research in the midst of the range of other responsibilities they must address. A small group of clinicians has published extensively in the area of CLE. There were examples of clinic students being used to collect data. Activities that recognise the research potential of clinical pedagogy and casework may be valuable in fostering sustainability.

Broader concerns were expressed across universities in relation to declining levels of student attendance. Will the increasingly busy nature of the lives our students lead (some work full-time and study full-time) create sustainability issues for clinics? Will the apparent trend of students working in law-related jobs while studying limit interest in clinics? Some law schools are seeking to characterise relevant paid employment as both WIL and a clinical experience.

Integration

There is limited integration of clinical methodologies across law programs. Clinics are characterised as electives and often the availability of clinic-based learning opportunities is confined to high-achieving students. There are examples of well-developed programs that utilise simulation-based activities to prepare students for work involving real clients in law-related workplaces. Such programs recognise the need for incremental development of student skills and understandings in order to make best use of the opportunities provided by clinical experiences. Most of the programs rely extensively on external organisations as clinic sites and this limits the prospects for comprehensive integration. These clinic sites are often some distance from the law school and there is a need to address the challenges generated by geographic isolation. There are also challenges generated by continuing perceptions of the theory/practice divide.

Some universities have seen considerable momentum generated by work-integrated learning initiatives. However, this might best be characterised as workplace-based learning. Clinical integration is more concerned with making effective use of clinical methodologies across a law program. Several programs referred to clinical links to practical legal training (PLT) requirements. Most of the clinical programs saw a clear difference between clinics and PLT programs with clinics not being focused on preparing students for the practice of law. Some saw scope for recognising common interests of clinics and PLT programs in the dynamics of the practice of law. Some placement programs have adopted placement guidelines that are used by (and therefore recognised as meeting the placement requirements of) PLT providers.

Discussions about clinical integration raised issues about how we define CLE. In particular, there are issues related to the role of simulations in CLE and the importance of reflective practices. Some programs (including relatively small programs) had engaged more comprehensively with the clinical and experiential learning literature than others. They had recognised the need to clearly articulate program objectives and to draw on the literature to shape their clinical program to best satisfy those program objectives.

Pedagogy

Several of the issues raised in the Sustainability and Integration sections could have been included here. These include the importance of effective supervision practices and of recognising the range of objectives that can be advanced through the use of clinical methodologies. There was recognition from some programs that they could usefully focus on finding ways to enable students to make best use of clinical experiences.

The classroom components of some programs were relatively limited. Some of the people interviewed indicated they would be interested in accessing materials designed to promote effective use of clinical pedagogy. Assessment was a particular issue identified both in the interviews and at the regional colloquium.

There were some similarities across various programs (student-supervisor ratios, types of

placements, assessment items), which may suggest that the practices of established clinics set some parameters for developing programs. It may be that arrangements could be made to facilitate established clinical programs in supporting new programs elsewhere. Half the programs interviewed raised issues relating to how they might most productively provide clinical opportunities for remote students. This is likely to be an important future issue in terms of how clinical methodologies can be used to engage with such students. Virtual clinics are one way of addressing this challenge. Remote students, whose study experiences are generally of an individual nature, are likely to benefit from the group dimension of some clinic models. Street Law (an approach to teaching practical law to grassroots audiences using interactive teaching methodologies) is one such model. Technology may be useful in supporting the clinical experiences of remote students. Technology may also be valuable more broadly in fostering clinic-based work. The development of online reflective journals is one way of enabling clinic supervisors and academics to effectively engage with students.

Some programs also raised issues related to the need to cater for students at multi campuses. University requirements in relation to cross-campus consistency do not necessarily sit well with the distinctive nature of many clinic sites.

Most of the research and writing by clinicians is focused on areas of scholarship beyond CLE. Most of them write in areas of socio-legal studies addressing areas of substantive law that are not a focus for much of the legal academy.

Quality

Supervision appears to be the issue most in need of close attention. Those involved in clinical programs acknowledged the limits of their knowledge of how to make the most effective use of clinic-based student learning. The recognition of the importance of quality supervision needs to be matched by a greater focus on what that means and how it can be fostered. Quality control of supervision is limited. Assumptions are made as to the suitability of law offices and law-related organisations to effectively supervise students.

The extent to which students get to take responsibility for work on behalf of a client is an important aspect of quality. Many of the programs are focused on either project work or the shadowing of a professional. The opportunities for students to directly engage in client work can be limited. Some programs emphasise the process of applying to participate in a particular placement – this can account for several weeks of the semester.

Structured reflection is also important and some programs could usefully focus on developing ways to develop effective self-reflection practices among both students and clinicians. Online and virtual approaches may enable students to reflect using technologies they are comfortable with.

It was recognised that, in discussing the prospects for the development of standards for clinical programs, we will need to pay close attention to the various sorts of standards that are increasingly being applied across law schools and universities more generally. This raises the issue of what can most constructively be added to those standards, in terms of clinic-specific content.

Some programs raised the diversity of placement options as an aspect of quality. Diversity may raise issues regarding the depth of the experience for students and the capacity of those responsible for clinical programs to ensure comparability of experiences.

How clearly are objectives set for each clinic and how effectively are they met? Evaluation needs to be an important aspect of the work of clinics, just as it is of any academic endeavour.

Western Australia and Northern Territory

Sustainability

This is an important issue yet it is difficult to discuss because many of the programs surveyed are very new. Sustainability will depend on a few factors.

Within this jurisdiction the clinics that have proved to be sustainable are those closely tied to their universities in that they have staff from the law schools actually supervising the students. However, this is just the particular circumstances of the programs surveyed and does not necessarily reflect any positive indicators for sustainability. The issues that need to be considered are:

- the so-called split model of legal supervisor vs. academic and how this can be strengthened and supported;
- reliance on a few members of staff (whether they are academic or legal supervisors);
- the cost of clinical programs and how this cost is articulated and measured; and
- institutional recognition of the programs and their needs.

'Split model'

Most programs surveyed use the split model of a practitioner-supervisor and an academic teacher (although, in many cases, each have substantial experience across that divide). Fundamental problems are the divide between academic and supervisor positions, what the universities are prepared to fund and support and what the CLCs are being asked to contribute.

Only Murdoch employs a person who actually teaches in the clinical program. This means that clinic staff and academics in other programs have additional challenges in working together to ensure that their clinical program runs smoothly, develop and remains sustainable. In terms of conditions of work, clinic staff and academics are poles apart and over time this separation could become a problem unless the defined roles are extremely clear.

There is an added issue (which will be taken up in Pedagogy) that refers to the ways in which the split model deals with the link between supervision, teaching and assessment.

Reliance on few

Scarcity of suitable clinical teachers continues to be an issue for *all* the clinics surveyed. However, some clinical teachers have good back-up by sharing the responsibility across various academic or supervisory staff. In the interests of sustainability this back-up process requires ongoing attention. The discussion at the regional colloquium came up with some strategies to address this issue in all programs. For example, it was suggested that locating clinical work within substantive law units can lead to more sharing out of clinical work across various members of law academic staff. It was also suggested that a campaign of 'embedding' needs to be undertaken by inviting the law school as a whole and other university teachers to see the clinic in action and then to collaborate with it. Other suggestions were the need to apply for suitable awards and to continue to do media to enhance the profile of the clinic.

Cost

The sustainability of all clinical programs is also tied to their cost. There are many different ways of looking at this issue. For example, the program that operates within a CLC with no resources flowing to that CLC (except the students' presence) shows that a clinical program is cost effective because it is cheaper to place students in an existing environment rather than create an artificial one for the purposes of their education. This approach clearly factors in the educational value in clinical work as a kind of opportunity cost. It is interesting that many of the comments coming from the academic side raise the cost of clinical units in terms of teaching allocation and the ratio of students to each supervisory staff member.

Institutional recognition

University recognition of a clinical program is a major factor in sustainability and draws on a range of practices from how clinical work fits within the teaching allocations (or not) within law schools to what kind of resourcing is given to the legal practice in which the clinical work takes place. In all programs surveyed, institutional recognition tended to be higher on rhetoric but lower on the substantive involvement in the structures and processes.

Possible other issues include the identity of the clinic and its physical presence within law school marketing material, particularly its profile on the law school's website. Even the more established clinics are struggling with the need for vigilance to ensure that that profile is maintained. It is often important to ask if students know that the clinic exists and if so, is it branded as a CLC, or the legal practice or the educational unit or a mixture?

Live clients

One very clear sentiment that came through in the colloquium discussion was to do with the importance of using live clients in clinical work. It was felt by many participants that the use of live clients (that is, in real legal situations) is crucial to giving the clinical process meaning and therefore crucial to its sustainability. It was pointed out that we are assessing and developing skills in far more areas than legal knowledge and without the live clients this becomes artificial and self-defeating. It was also noted that CLE should not be pre-professional type training but should draw on the graduate attributes and be in large measure a platform that will enhance the learning of legal content.

Clientele was also discussed in the context of 'scalability', that is, ensuring that clinical programs are available to the largest number of students (for further discussion on this aspect see the Scalability section below). However, it was agreed that live clients do provide the soundest rationale for good CLE and therefore make it sustainable. This insight elicited discussion about the need to train up and prepare students for live clients. Students need ethical and professional preparation, which might include role plays and simulations.

Integration

Integration of clinical units within the broader law school curriculum was not a major theme for those surveyed in this jurisdiction. There are two approaches within this group:

1. A clinical unit that is run as a practice unit based on the work that is done by the CLC or legal practice.
2. A unit that focuses on a particular content and links it to a substantive law unit.

In the second example some of, but not all, the assessment for the substantive unit comes from the clinical experience. However, this assessment is generally through a reflective journal rather than direct assessment of the clinical work completed by the student. In fact, in this model there is no actual assessment of the student's work in the clinic itself.

Beyond those units that are both substantive and have clinical components there is very little integration of clinical practices into the broader law school curriculum in all universities in the region. This may be a product of the fact that those involved in clinical work are often a small group of academics or that all the clinic sites are physically separate from the law school – some just a few metres; others many kilometres; and some even thousands of kilometres. It is probably also indicative of the fact that the majority of these units are new and therefore a very recent undertaking within the law schools hosting them.

There has been some success with a longer running program in taking real cases from clinical experience and using them in teaching substantive law. For example, a refugee case that went to the Federal Court is used as an extended example across a group of tutorials in Administrative Law.

There also needs to be more recognition of the nexus between clinical and research opportunities, both in the areas of CLE as part of legal education and the issues raised by the legal practice.

Scalability

All clinical units in all law schools are electives and are available to only a limited cohort of students. In this way they are a little on the edge of the mainstream law school. At Murdoch there is a hesitance to integrate or promote the units too actively due to the quota and demands on already limited resources. This issue of scalability or accessibility of clinical units to more students was actively discussed at the colloquium.

The question was posed as to whether it is justifiable to use extensive resources to provide clinical units when only a limited number of students can access them. It was pointed out that this already happens across law degrees, for example, mooting. The difference with a clinical program that is positioned in a CLC or legal aid practice, as compared to mooting, is that the former encourages multi-disciplinary work and client service – which feed into a wider range of the graduate attributes we say we are trying to develop in law students.

Pedagogy

One of the main issues coming out of this jurisdiction is how the split model works as a pedagogical practice. This along with the other issues of pedagogy can best be looked at in terms of supervision and assessment.

Supervision

Supervision of the legal work in all these programs is done by the legal practitioner in the CLC or legal practice. These staff members describe a varying understanding of teaching concepts such as problem-based learning, scaffolding for student learning and student responsibility and autonomy. It is interesting to note that all say that the client or service needs will trump student or pedagogical needs. Most even articulate this reality as an important part of what they are teaching the students, referring to, for example, “the enormity of the obligation we are under” and stating that “legal practice is client-centred”.

In the two split models the academic staff also play a role in teaching (some of which seems to include substantive law issues) and in so doing they offer support to the supervising solicitors. But generally the academic supervision seems to be more focused on the experience of clinical practice and encouraging student reflection. There are definite benefits to the split model in fostering reflection because the supervising solicitors are often preoccupied with the legal work and do not offer the kind of supported guidance for students to think more broadly about their experience. This last point seems particularly true in those clinical units that do not use the split model.

In the colloquium the discussion revealed that the split model relies on regular discussion between the academic staff and the students, so it seems to work best if there is also regular communication between the supervisor and the academic.

The need for constant communication can place unrealistic time requirements on both the academic and the supervisors in split models. There are also issues concerning the consistency and quality of the supervision and an underlying question remains about who is responsible for ensuring the quality of the supervision and how that might be done (including training and support for supervisors).

Assessment

The split model leads to some interesting results in assessment. The actual legal work undertaken by the student is either not assessed at all (as in one model) or is assessed in a very general way by one staff member without the assistance of clear and articulated assessment criteria. In the clinic where the legal work is not assessed, the assessment for having undertaken the clinical unit comes completely from a reflective journal and, importantly, forms only a small and elective part of the assessment for the whole unit.

Pedagogical rationale

The colloquium produced much discussion about the pedagogical rationale (and value) of clinical programs. The link between a clinical program and the Threshold Learning Outcomes (TLOs) was articulated in terms of the role that the clinical program plays in getting students to threshold levels to then enter PLT. It was felt that the fact that a clinical program offers an authentic situation increases the depth and value of the skills and attributes flowing from the experience. However, after much discussion the idea that a clinical program had some further gate-keeping role to play for students was rejected as not being an aim of clinical experience.

There was also discussion at the colloquium about the pedagogical value of live clients to students' learning. It was suggested that students learn more from the clients than from the supervisors and that the major educational advantage of real clients is in their demonstration of the role of law and the legal system in context. It was also pointed out that by its nature CLE teaches critical legal theory, but that sometimes this is not recognised or articulated by the students until later (that is, after they have completed their law degree). However, during the clinical process there is enormous value in exposure to social issues that intersect with the law such as poverty, deprivation, diversity and discrimination.

Quality

The clinical programs in this jurisdiction are all concerned with the quality of their program, although many are still grappling with what improvements in quality might look like. For example, does higher quality mean exposing more students to clinical work, or increasing the depth of each student's experience with a particular client and their legal problems?

One of the main issues that came up in discussion concerned the supervision of supervisors. Many articulated this quality issue in terms of the importance of supervisors having access to educational/pedagogical knowledge and training.

Supervising the supervisors

There was a clear desire for supervisors to have access to their own supervision and support; and that such supervision should include training in educational theories and skills as well as ongoing professional development in their areas of law. There also seemed to be a desire for more opportunities to discuss and workshop supervision and clinical practice generally. This interest is very encouraging in this region, where for a long time there has been only one clinic.

Who defends quality of education?

Another interesting and recurring issue in the region is that often it is the clinical teachers who make the arguments to the universities and law schools as to why they should ensure the support is there to maximise the educational outcomes for the clinical unit. For example, the comment noted above that it is cheaper to put students in existing structures (that is, CLCs) than to create artificial teaching environments assumes that law schools are interested in making the most effective teaching environment for their students – which is often not the case. Within current funding structures law schools may be more concerned with numbers of students and with covering the curriculum for the lowest possible cost. It was pointed out at the colloquium that it may not be the best approach for a university to organise itself sustainably if it squeezes the very people who are teaching the important aspects of graduate attributes and skills.

South Australia

Sustainability

The clinic run jointly by The University of Adelaide and Flinders University is longstanding and seems well embedded in both degrees. The University of Adelaide utilises a range of agencies, including the Magistrates' Court, two more university-run clinics, CLCs and other agencies in an amalgamation of live-client clinics (at the Magistrates' Court, Holden Hill and the Adelaide Legal Outreach Service (ALOS)) and externships.

There is a small number of committed academic staff who drive the programs at both The University of Adelaide and Flinders. The jointly run clinic, the Adelaide Magistrates' Court Legal Advice Service, receives a university funding allocation from both universities and employs a non-academic supervisor on site at the Magistrates' Court. Other volunteer academics and non-academic supervisors are also involved. Although the universities are aware it is more expensive than other subjects, (as one interviewee commented, the 'hook ... is the contribution to *pro bono* by the law school and universities' engagement with the community'). This low-cost collaboration enables a significant number of students to have a clinical experience across three semesters, utilising a wide range of agencies and a court.

The new in-house clinic at the University of South Australia (UniSA) is an innovation to the current offerings in South Australia. UniSA has directed funds towards establishing a clinic within the law school building. This fits with the theme of a 'client-centred' law school. A non-academic supervisor has been employed to run the legal practice aspects of the clinic and an academic runs the seminars, etc. This model is hoped to be more cost effective than having lecturers rostered on as supervisors (as one interviewee commented, 'this takes up not only time but emotional energy and having to remember things about the files and teaching'). Additionally, having a solicitor/supervisor who is actually on university staff rather than relying on *pro bono* members of the profession on a roster basis is likely to be more reliable and ensure enhanced quality. The clinic is in its infancy and many aspects are still a work in progress.

One issue for the ongoing sustainability of the South Australian clinics is the reliance on a small number of academic staff. There is a need to negotiate the clinical teachers' workloads to reflect the additional administration and time involved in teaching, liaising with profession/organisations, etc. Sustainability also relies on the ongoing involvement and support of the multiple agencies and the Magistrates' Court. These relationships require continual maintenance. This work does not receive adequate recognition from the universities.

Integration

There was general agreement that integration is the ideal, but it is very hard to achieve. It

was thought that clinical methods are time consuming and academics are reluctant to devote time to experiential learning. If clinic means 'live-client', then the interviewees thought it difficult to factor in clinic to a doctrinal subject because of the professional responsibilities to the client. However, interviewees thought there are more opportunities to use aspects of clinic methodology within standard subjects. Interviewees had a number of suggestions for integration, for example, anonymised files, guest lecturers, clinic students presenting to other students.

The interviewees stressed the integration of clinic experience and theory relies on the academic component of the course as this links them together. 'The seminar program is important as the students discuss their experiences ... in the terms of the law and society and access to justice and it tends to take a while for the links to be forged.'

Given the low levels of funding of CLE, one interviewee noted that the only way real integration will be achieved is when the accreditation bodies require it, as has happened in medicine.

Pedagogy

There was some difference in opinion about whether clients or students have priority in CLE. The University of Adelaide and Flinders University's view was that 'client service is the primary consideration', particularly as the supervisors are legal practitioners who have a professional responsibility to the client. 'Client service has to be preeminent. If it is, the education follows'.

Additionally, the focus of their clinic was strongly on access to justice. However, it was generally agreed that in the clinic it was possible to spend longer than strictly necessary working on client service to further the educational opportunity for a student (although this may be seen as overworking a file).

In contrast the UniSA approach is to err on the side of the student being more important. This is possible because the supervisor/clinic is not on the record as acting and the clinic is helping people to help themselves. The rationale is that in return for the receipt of free legal advice, clients may have to wait longer while students work on the matter. 'It is the educational structure that surrounds the student, when they are on placement' that ensures a quality learning experience and differentiates clinic from work experience, *pro bono* or volunteering. The importance of the seminar/classroom content was stressed. It was agreed that there are a variety of advantages in having real clients. 'Feedback from students is that they suddenly get it, suddenly it actually means something. It's the actual dealing with the client and dealing with different kinds of people, learning how to react, when you say something and the client takes offence to it, and you'd have no idea that they would take offence.'

A good example of clinical pedagogy is the use of students working in pairs doing interviews. This enables a sharing of responsibility, peer review and reflection as well as added protection around the quality of advice given. Similarly, there is a strong focus on reflective practice that is assessed via journals and portfolios.

There was a clear preference for students giving advice without the supervisor present. Interviewees felt that in the absence of a supervisor the student is forced to engage with the client and the client also engages with the student instead of the supervisor/lawyer. Otherwise, the student becomes merely the observer.

There is a consistent approach that student work in clinic is not generally assessed. This is particularly relevant in the externships. There was interest and general support for the pass/fail approach to the grading of students in CLE although all clinics do, in fact, grade.

There was also agreement that although PLT could be taught through a clinical method, the objectives would be different. The benefits of linking with other undergraduate courses and, in particular, the access to justice objective could be lost.

Quality

All the South Australian clinicians were acutely aware of their professional responsibilities to users of the clinics and hence agreed there needed to be minimum standards in relation to, for example, professionalism, conduct rules, confidentiality. The supervisor must be properly qualified and competent and have expertise in the areas of client need.

Additionally, the educational imperative of CLE requires a certain standard in relation to supervision, including attributes of patience, compassion and interest in students' learning. It was noted that currently no formal educational qualification is required of supervisors although interviewees thought this should be the case.

The preferred ratio was one supervisor to eight students, although this is likely to be tested in the new in-house clinic. It was also common belief that a period of 18 to 20 days over at least 10 weeks was the preferable option for length of placement.

The variety of supervisors in the externships raises the issue of how to ensure quality supervision. This is recognised by the lack of assessment on the clinic work. It was acknowledged that not all supervisors (in externships) are interested in pedagogy or able to give appropriate feedback. There is no regular supervision training.

New South Wales and Australian Capital Territory

Sustainability

The overall position in New South Wales and the Australian Capital Territory is that a clinical program is as sustainable as the law school's commitment to providing the option. It is usually the case that the option is sufficiently well established to enable the clinic to feel a high level of comfort in its security. This is probably most true of first, the Lawyers In Practice (LIP) externship at the University of Wollongong (UoW), which was integral to the design of the law degree at the outset, and has defined the distinctiveness of the degree; and secondly, the general clinic at The University of New South Wales (UNSW), Kingsford Legal Centre (KLC), which has established a strong external profile and is significantly supported by secure external funds. But even those clinics have been challenged: the LIP program has been reduced in size and overtures to close KLC have been used by the Law School to highlight its funding difficulties. Similarly, a less entrenched program such as the External Placement Program (EPP) at the University of Sydney (USyd) has had the value of both its student credit points and its teaching credits reduced.

Occasionally a clinic is established under specific contracted funding (for example, the UNSW Human Rights Clinic (HRC) and the University of Western Sydney (UWS) Clinic) and so is only as secure as those funds.

A feeling among some clinics is that sustainability is as reliant on a particular staff person's availability and enthusiasm as it is on funding. Assuming that funds are available within a law school's budget for running a certain number of courses, then the departure of an advocate for the clinic among the staff could threaten the law school's commitment.

Unusually for a clinic, enrolment numbers for the EPP at USyd have reduced recently, due perhaps to internal 'competition' with the Social Justice Clinic (SJC) at USyd. This development is not currently a threat to sustainability, but it suggests a consideration to keep in mind.

While not currently a threat to sustainability, both the Youth Law Clinic and Welfare Rights Clinic at the Australian National University (ANU) have been under pressure because of internal difficulties at the placement sites, with suggestions more than once that the arrangements might be cancelled or suspended. Similarly, the LIP externship at UoW has reduced in size because of difficulties in locating placement sites.

Sustainability needs, therefore, to be assessed according to a matrix of considerations, with different emphasis in each case, ranging from historical commitment, institutional design and staff availability within the law school, to external issues such as the viability of a placement agency.

Specifically:

ANU	ANU clinics are probably sustainable, but rely on individuals rather than evidencing an institutional commitment to clinical teaching. They may also vary in quality depending on who is supervising at the hosting agency and their understanding of clinical teaching.
Macquarie University (MACQ)	The Public Interest Advocacy Centre (PIAC), Macquarie Legal Centre (MLC) and Family Relationship Centre (FRC) and international internships are all probably sustainable. There appears to be a commitment from the Law Faculty to provide students with these opportunities. The academic staff position has not ceased as people have left and others have volunteered to do the work. The form of the opportunities offered by MACQ may vary depending on funding availability (for example, the international internships and FRC are both funding-based initiatives).
UNSW	The clinics are funded on a recurrent basis with Law Faculty commitment; they exhibit a strong identity and enjoy wide Law Faculty recognition.
Newcastle	The law school is committed to offering a distinctive legal education with a staged, integrated approach to learning using CLE as one of its key methodologies. It appears sustainable due to the commitment of the law school. A challenge will arise when there are greater numbers of students and the approach may be compromised.
UoW	The clinics are funded on a recurrent basis with Law Faculty commitment. The external placement requirement for all students is integral to the degree, and a distinctive aspect of it since establishment. Length of placement has been wound back from previous levels but is not at risk.
USyd	The clinics are funded on a recurrent basis with Law Faculty commitment. They are part of a new direction and are well supported by access to infrastructure.
UWS	This model provides a large number of students with an exposure to real clients and their issues for a short time frame (that is, 200 students with five days exposure each). It employs only one clinic supervisor and another half-time supervisor. It relies on external funding currently and so is not necessarily sustainable despite the large number of students being taught.

Integration

The overall position in New South Wales and the Australian Capital Territory is that there is limited clinical integration. Clinics are almost entirely stand-alone exercises. The only

exception to this is the clinical component of the ethics course ('Law, Lawyers and Society') at UNSW and the course at Newcastle (see below). The activity held up as 'clinical integration' is doubtful, as such activity is either simulations or visits and observations, with a limited degree of student responsibility.

This is unsurprising in light of other factors, such as choice of clinical supervisors who are also academics. As far as we can determine, no law school requires as a criterion for appointment an interest in or capacity for clinical teaching. Clinical faculty are either appointed for the purpose of an existing stand-alone clinic or on the basis of who happens to be interested. This is hardly likely to generate clinical activity within 'mainstream' courses.

The exception of course is Newcastle, although the extent and continuation of clinical activity for undergraduate teaching purposes (as distinct from the graduate skills-development purposes in the distinctive degree structure – see Pedagogy, below) needs closer scrutiny.

Specifically:

ANU	ANU clinics are not integrated across the curriculum and there is probably little awareness within the Law Faculty of clinical teaching. All current clinical teachers expressed interest in further integrating clinical teaching within core subjects.
MACQ	The clinics are not integrated across the curriculum and this appears to be partly because of their structure as electives and also possibly because of an ethos that students require greater maturity and some basis in legal doctrine before doing clinical work.
UNSW	There is a novel and ambitious clinical component in the compulsory ethics course for all students; otherwise there is an impressive but <i>ad hoc</i> range of examples, depending on the interest of other teachers.
Newcastle	The approach to the curriculum is a skills-development approach and CLE is one of the methodologies used. Real-client issues are used in a range of doctrinal subjects to teach particular areas. Clinical teaching is thus well integrated into the range of methodologies that the Law Faculty uses to teach law.
UoW	CLE's history as a significant separate experiential component seems to have kept it apart from other courses.
USyd	There has been a conscious decision to retain separate identity as a clinical stream.
UWS	CLE does not seem to be integrated across the curriculum, although there is interest in trying to integrate it further into core subjects. It is unclear what the relationship is with the professional skills course.

Pedagogy

Overall in New South Wales and the Australian Capital Territory there is considerable diversity in approach across the institutions. This complicates (in a good way) the 'neat' characterisation of CLE. Certainly it suggests there is no single 'right' or even 'best' way to deliver a clinical program, and shifts attention from the delivery model to aspects of the student engagement as the measure of a clinic.

Broadly speaking, externships are a common method of delivery, although the law schools often use the (preferable?) term of 'partnerships'. However, the ways the externships are constructed, and the ways that students engage, differ considerably. For example, what we might think of as essential features of the clinical method — supervision, responsibility and reflection – are present to different degrees and, at times, may be absent; in such cases, the activity tends more to observation or providing assistance.

Another example of diversity in approach is that three law schools achieve high levels of exposure of their students to CLE, but in very different ways. The University of Newcastle uses the clinical method pervasively throughout its degree (approximately 45 per cent of students; and see Integration, above). UoW requires all students to undertake a 20-hour clinical placement at some stage during their degree. UNSW requires all students, in the compulsory ethics subject, to undertake a client interview in the law school's 'live-client' clinic.

In the partnership clinics, much of the content of students' work is at the discretion of the partner organisation, and may range from casework to law reform activity. Similarly, assessment of that aspect of the students' performances is left to the partner organisation, which is often given little guidance and asked simply to report on satisfactory performance, although some programs offer the partner organisation an assessment matrix. At the law school end, assessment usually incorporates a written reflective component, although the basis on which this is assessed, and the extent to which students are taught reflective practice, warrants further inquiry.

There is significant variation in the existence, frequency and content of a classroom component in clinical courses.

Specifically:

ANU Mixed pedagogies. All clinics include research reflection on the experiences students are having and also have inbuilt tutorials. Student experience in the WRC and YLC is probably patchy, dependent on external agencies and supervisors who are not trained. The clinics are based on students having responsibility for work and the clinical supervisors recognised the rich learning possible for students with real clients, rather than simulations. There were mixed views about the balance between client service and education goals. WRC and YLC supervisors thought that client service was paramount; and the virtual clinic supervisor thought education goals were paramount with minimum standards for client service.

MACQ	The pedagogy varies substantially over the clinical offerings. The PIAC course does not really fit as a clinical course, it is more a specific law reform/campaign-based course on access to justice issues. The observation component is more of an exposure experience than focused on students having any active role. The MLC and FRC programs give some responsibility to students, but not for files themselves. Students are sometimes responsible for answering phones, and at FRC they may help with drafting family law consent orders. The role seems to be more observation-based with some responsibility. All assessment appears to happen externally through reflective journals and research essays, which means that reflection and analysis are clearly strong points of the courses. Students are not being assessed on how they deal with clients, or draft documents, etc. However, it is impossible to be sure of these conclusions as the supervisors at FRC and MLC were not interviewed. In the international internships, students appear to be given the most responsibility, drafting submissions and doing research for the local non-government organisations (NGOs). The program recognises the rich learning possible with real-client experience, rather than mock clients or simulations.
UNSW	After the first-year one-off 'exposure' clinical experience for Indigenous students and a second- or third-year interviewing component in the ethics course, the clinical teaching is 'conventional'. That is, it involves later year students under supervision, with growing levels of responsibility over the semester, supported by classes. There is significant non-client casework, commitment to law reform, community development and community legal education, all of which is treated on a par with client casework. There is some limited opportunity for student court appearances.
Newcastle	The approach to teaching is very much one of a gradual exposure and involvement in real-client issues throughout the curriculum. This begins with the first-year observation of a client interview and reflection on this experience. The intensive clinical experience which includes 180 hours at the in-house clinic and 180 hours at the externships come later in the degree. The ethos of teaching is of giving responsibility to students for their work and the supervision is intensive while they are at the in-house clinic. The time requirement is the heaviest of all the clinics reviewed, that is, 180 or 360 hours over two years but this can also be explained because of the course's dual nature in also satisfying PLT requirements. The in-house clinical teachers are very conscious of their responsibilities in their approach to clinical teaching and there is no question that teaching/education is the primary focus of the clinic.
UoW	There is a very large program to ensure all students have clinical placement experience. The day-to-day experience is largely left to the discretion of agency placement supervisors.
USyd	There is a very strong focus on public interest litigation activity for students. The day-to-day experience is largely left to the discretion of agency placement supervisors. A weekly class on public interest law is common to all clinic students.

UWS The course, due to its short time-frame of five days per student, acts more as an exposure experience with some limited responsibility given to students for answering phones, drafting legal advice and follow up letters. The assessment is all weighted to reflection and preparation of materials, rather than to client interaction or casework. The course's aims of providing as many students as possible with these experiences are achieved. However, depth of learning will not be achieved due to the short time-frame and that the experience happens over five consecutive days, rather than over a semester. It integrates both law reform and community development perspectives into its program.

Quality

The overall position in New South Wales and the Australian Capital Territory on 'quality' seems to be a function of both sustainability and the diversity in pedagogy. As a general proposition, it looks as if the greater a law school's commitment to clinic (sustainability), the more the staff are able to think about and explore the dimensions of ensuring quality; and the more informed, in clinical terms, the design of the clinic (pedagogy), the more likely that the clinic will offer quality.

Specifically:

- ANU There are elements of quality, but they are not well integrated and there is a lack of training of onsite supervisors. However, good reflection is built into all clinics and there is a clear understanding of a responsible-student model. Nevertheless, there is patchy implementation of this model, with the YLC possibly less able to deliver, and a mixed model at WRC.
- MACQ The PIAC course does not really fit into the definition of CLE but seems an interesting opportunity for students. The MLC and FRC courses have large emphases on reflection on the legal process but perhaps not as much is being drawn from the local hosts and client work as could be. The model of the responsibility of students for work is not being used, except in international internships. The clinic appears to provide more of an observational role for students (but note that on-site supervisors were not interviewed). There is a lack of training of on-site supervisors and a very stark division between the academic supervisor and on-site supervisors. The international internships are relatively new but seem to be offering diverse experiences to students with structured reflection.
- UNSW The UNSW general clinic at KLC follows the classic live client clinic model and is supported by a detailed course design based on close student/supervisor relationship and reflection, with low student/supervisor ratio.
- Newcastle The clinic is of high quality, with some focus on law reform and community engagement but substantially based on individual public interest casework. The limitation, and at the same time the strength, of the clinic is that it is a unique model of teaching law, with clinical, real-client experiences and skills teaching being integrated throughout the law curriculum in a staged approach. This specific approach is unlikely to be replicated across Australia. A potential challenge is the number of students the clinic teaches and whether it is a model that could expand to accommodate greater numbers of students.

UoW	There is an impressive diversity of opportunity and the satisfaction levels of both students and supervisors are closely monitored. A discretion is left to placement supervisors in day-to-day activity but clear guidelines are given for expected outcomes and assessment.
USyd	There is a very definite practice orientation, with emphasis on public interest lawyering skills. There is also emphasis on modelling and learning from experts. Limited guidance is given to placement supervisors for expected outcomes and assessment.
UWS	As above, in Pedagogy.

Best Practices

Several themes emerged naturally from consideration of the diverse responses recorded in the *Regional Reports*. As they appear in this report, these are:

1. Course Design
2. Law in Context in a Clinical Setting
3. Supervision
4. Reflective Student Learning
5. Assessment
6. Staff
7. Infrastructure.

These seven themes cover the theoretical and practical dimensions of designing and delivering an Australian clinical course at best practice levels. However, we do not argue that these themes or their associated best practices are necessarily applicable in other jurisdictions. While we have certainly benefited from the well regarded UK and US clinicians who acted as our reference group, it is plain that local factors have affected what we choose to have prioritised and emphasised.

For each theme, we make a brief introductory contextual *statement*, followed by one or more statements of *principle* to guide the reader to a number of applicable *best practices*. Finally, to assist law schools and clinical supervisors to understand particular best practices, we provide specific *examples* of those best practices where we were able to identify them in our research.

Course Design

Clinical legal education (CLE) can help law schools achieve many significant educational objectives. The focus and content of a clinical subject or course can vary, but to ensure a quality CLE experience for students, the basic principles of course design must apply. In addition, the practical skills component must relate to the objectives of the course.

Learning Outcomes

The following is a set of potential Learning Outcomes for CLE courses and programs. The chosen Learning Outcomes impact on course content, practical experience and assessment.

Upon the completion of a clinical course, the clinical student will demonstrate:

- critical analyses of legal concepts through reflective practice;
- an ability to work collaboratively;
- an ability to practice 'lawyering' skills;
- developed interpersonal skills, emotional intelligence and self-awareness of their own cognitive abilities and values;
- a developing ability to 'learn from experience';
- an understanding of continuing professional development and a desire for life-long self learning;

- an understanding, and appropriate use, of the dispute resolution continuum (negotiation, mediation, collaboration, arbitration and litigation);
- an awareness of lawyering as a professional role in the context of wider society (including the imperatives of corporate social responsibility, social justice and the provision of legal services to those unable to afford them) and of the importance of professional relationships;
- a developing personal sense of responsibility, resilience, confidence, self-esteem and, particularly, judgment;
- a consciousness of multi-disciplinary approaches to clients' dilemmas – including recognition of the non-legal aspects of clients' problems;
- a developing preference for an ethical approach and an understanding of the impact of that preference in exercising professional judgment;
- a consolidated body of substantive legal knowledge, and knowledge of professional conduct rules and ethical practice; and
- an awareness of the social issues of justice, power and disadvantage and an ability to critically analyse entrenched issues of justice in the legal system.

Principles

- 1. A clinical course is designed:**
 - 1.1. to promote specified student Learning Outcomes suited to clinical legal education;**
 - 1.2. to engage students in the operation of law, to ensure they are supervised in that engagement and to enable them to critically analyse the law and reflect on their experience;**
 - 1.3. with academic and practical content to support the Learning Outcomes and with assessment tasks that align with the Learning Outcomes.**
- 2. The clinical experience should recognise the importance of finding the correct balance between high quality services to clients and providing the best educational experience for students.**

Best Practices

1. Course learning objectives articulate the focus and content of the clinical experience and are drawn from the Learning Outcomes.

Example:

- To think critically about law, rules and practices from a range of perspectives.
- To assist the provision of legal services (by the clinic) to those unable to access other legal services.

2. The curriculum is designed according to quality educational standards. In addition to any substantive content, the curriculum dedicates materials, class time and activities towards achieving the Learning Outcomes.
3. Observation followed by simulation precedes live-client clinical experience in the law degree. Clinical approaches are integrated throughout the law degree with different aims at each stage.

Example:

These stages may occur across a course, within a year or over the entirety of the degree.

- Stage 1: observation, followed by simulation with reflection in either classroom-based or clinic courses (whether in-house live-client clinic, agency clinic or externship) – designed to expose students to the Learning Outcomes, particularly the importance of interpersonal skills.
- Stage 2: enrolment in fully supervised in-house live-client clinic, agency clinic, externship or clinical component – to form and consolidate some or all of the Learning Outcomes.
- Stage 3: enrolment in agency clinic and externship – to provide capstone and graduating clinical experience.

4. Students develop and engage in reflective practice. See Reflective Student Learning at page 58.
5. Every clinic shall have a classroom component that regularly provides students with opportunities to place their experience in the context of academic materials, to engage in guided reflection of their experiences and to share reflections on their clinical experience. Academic staff are responsible for designing, teaching and assessing a classroom component. A classroom component regularly provides students with opportunities to:
 - 5.1. understand their experience by reference to academic materials;
 - 5.2. engage in guided reflection on their experiences; and
 - 5.3. share reflections on their clinical experience with other students.

Example:

The classroom component could be a two-hour seminar that focuses on content related to the Learning Outcomes or student experiences. Usually this component will be classroom-based and on campus or accessed online.

6. The practice focus of the clinical component reflects the objectives of the course.
7. The nature of the work to be conducted by any agency clinic and externships is negotiated with the agency and designed to address the priorities of both the agency and the law school and to support the objectives of the course.

Example:

A legal ethics course may include a clinical component in which students interview real clients. This component could emphasise duties of confidentiality and the avoidance of conflicts of interest. The component could also enable students to discuss whether there is a broader ethical duty of all law graduates to improve the 'justice system' in some way.

8. Simulations are used in preparing students for their clinical experience. Use of a simulation in the curriculum provides adequate opportunity for the students to 'debrief' and to reflect on their learning experience.

Example:

Advocacy simulations are used to prepare students for appearing before a court or tribunal. An actor can play the part of the witness being examined while a lawyer with relevant expertise acts as the judge or magistrate. Such simulations should be designed to foster incremental skills development, providing students with feedback as they move from making straightforward submissions to examination-in-chief and cross-examination.

Students involved in presenting legal information to schools and community groups prepare through simulations involving their supervisor and fellow students. Each group makes a full presentation and then receives from the rest of the class feedback designed to identify how the presentation can be enhanced for its ultimate audience.

9. Students read, analyse and use academic, professional and practical material. The literature facilitates students' engagement with the practice, policy and legal content of clinic work.
10. The process of student selection conforms to the university's regulations (in consultation with external agencies if relevant). The selection process is transparent and non-discriminatory. The prerequisites for selection are clearly articulated. The reasons for choosing particular methods of selection (which can include ballot, interview, stage of study or completion of a prior clinic) are articulated. There is no presumption that access to CLE courses and clinical experiences should be limited to later-year students.

Example:

Ballot: a process of random selection from all eligible students who express interest.

Interview: the selection of students based on signs of personal engagement with clinical rationales, stage of course, prior volunteer experience in the community, non-government organisations (NGOs), not-for-profits (NFPs).

Completion of prior clinic: in clinical courses where there is a progression of clinical experience, prior clinical graduation is generally seen as an indicator of likely future clinical subject success. For example, at Monash University, admission into Advanced Professional Practice generally requires satisfactory completion of Professional Practice.

Completion of prior substantive course(s): The Griffith Advanced Family Law Clinic requires students to have completed the classroom-based Family Law course.

11. Selection of client casework is at the discretion of the supervisor consistent with the Learning Outcomes. Clear criteria are used for the selection of client casework.
Externship: Subject to the agency's right to choose cases and projects, preference should be given to matters that best address the learning objectives.
12. Clinical courses require a student to be on site and engaging with the clinical experience over a sustained period of time.

Example:

A clinical course may require a student to attend at least:

- one day per week over a semester; or
- two days per week for half a semester.

13. Clinical courses run over a semester, rather than a shorter block period, to give students the necessary time to reflect on their experience and consolidate their learning.
14. Clinical course design has regard to Best Practices in regard to Law in Context in a Clinical Setting (page 53), Supervision (page 55), Reflective Student Learning (page 58), Assessment (page 60), Staff (page 64) and Infrastructure (page 66).
15. Each periodic review of the law school curriculum should include a review of all clinical courses.

Example:

There is an explicit and agreed curriculum theory behind the program and that theory is appropriate to current operations and projected objectives.

A review of each clinical course should consider whether the clinic:

- has explicit aims and objectives and is meeting its aims and objectives;
- achieves its aims using effective practices; and
- is linked to the broader curriculum.

Law in Context in a Clinical Setting

Through its immersion of students into real legal and client work, clinical legal education (CLE) provides an extra dimension for studying law in context: teaching law students to think critically about law, rules and practices from a variety of perspectives and theoretical understandings of law. These perspectives include gender, race, disability, socio-economic, philosophical, cultural, Indigenous, political and other social constructs. Studying law in context also means analysing the role of power in shaping the law and legal system; and analysing the role of lawyers and how they perpetuate, challenge and reform structures, institutions, systems and relationships.

Teaching law in context is different from conventional 'positivist' law teaching, which tends to allow students to accept that the law simply 'is' as stated and that its social context is irrelevant to understanding it. A clinical setting provides opportunities for students to see, analyse, reflect on and deal with the various ways in which law actually manifests in people's lives, and to consider the need for law reform.

Principle

1. The Learning Outcomes for clinical courses include enabling students to be involved in, analyse and reflect on law in context issues through legal work with an individual client and/or a community agency or group.

Best Practices

1. When selecting clinic work for students, and subject to a supervisor's operational discretion, preference is given to matters that best enable students to critically analyse the context of law's operation.

Agency clinic: Subject to the agency's right to choose cases and projects, preference is given to matters that best enable students to critically analyse the context of law's operation.

Example:

A clinical course may choose to take cases in victims' compensation, particularly for domestic violence and sexual assault. This will enable discussion, for example, of how women's injuries are recognised in law and whether law is an adequate mechanism to compensate victims.

2. Skills training, provided to prepare students for work with clients, incorporates a client-focused approach to legal practice, awareness of the subjective circumstances of clients and specific access to justice barriers (for example, cultural awareness and sensitivity, communication strategies, and issues for people living in poverty, with disabilities and in minority or vulnerable groups).
3. Under supervision, students are responsible for their work with clients. Responsibility for work enables students to experience more fully, and reflect more deeply on, the ways in which law operates in the client's life.

Example:

A student may begin the semester working with a community agency to develop content for a community education presentation on an aspect of the law. The student

will attend meetings with the agency and its clients, initially along with their supervisor but eventually on their own. At the end of the semester the student will present the workshop, watched by their supervisor but without comment. At the beginning of preparing the workshop on, for example, domestic violence apprehended violence orders, the student may assume certain facts about women's experience of these orders. These assumptions may be changed through consultations with the agency and its clients and then further challenged in the final presentation when clients ask difficult questions about the court process and the support available to them.

4. The supervisor and academic engage in structured analysis of students' experiences in order to develop students' capacity to critique and respond to the range of legal perspectives and relationships that the student is observing.
5. Supervision balances the legal advice dimensions of an issue by drawing out the law-in-context dimensions of each client interaction.

Example:

After each client interview, the clinical supervisor will spend time discussing with the student the student's views of the legal and other issues the client faces. The supervisor could, for example, explore with the student the relationship between a client's identity (cultural/gender/socio-economic etc) and the law in the particular circumstances.

6. Each clinic includes classes that enable students as a group to examine the broader context of law and the legal system.
7. The readings for the clinical course encourage a broad, critical and contextual analysis of law.
8. Assessment of students includes assessing students' ability to reflect critically on how law operates from a range of perspectives, and on their own role within the legal system.

Supervision

Effective supervision is fundamental to clinical legal education (CLE). It is essential to ensure a sound educational experience as well as quality services to clients. However, supervision is important beyond just ensuring the provision of effective legal work. Clinical supervision is also fundamentally concerned with developing student understandings and abilities.

Students benefit from having opportunities to take appropriate levels of client responsibility. Such responsibility increases incrementally as students' skills, understandings and experience develop during their clinical experience. Supervisors should focus on creating a supportive environment in which students can be appropriately challenged and can receive timely feedback about their performance.

Supervisors need to emphasise the advancement of the interests of the client, the promotion of justice and the students' professional development. In many circumstances, it is possible to simultaneously address these objectives.

Principles

1. The supervision needs of students vary according to:
 - 1.1. the objectives of the clinic and clients' needs; and
 - 1.2. the experience and level of training the students already possess.
2. Supervision arrangements are designed to assist students to link theory and practice and to work collaboratively with supervisors in addressing clients' needs. The arrangements also enable students to encounter a range of work (both areas of law and legal tasks) during their clinic experience.
3. Supervision is structured, with ground rules and clear learning objectives. As a system, it ensures students' right to supervision and feedback, together with support and respect for both supervisees and supervisors.
4. Supervisors meet with each student on a regular basis as well as have the capacity to respond to unpredictable events.
5. Development of a strong supervision relationship relies on supervisors as role models.

Best Practices

1. Supervisors:
 - are able, both as teachers and practitioners;
 - model constructive work relationships;
 - provide feedback and constructive criticism (see 'feedback' below);
 - are available, in that they are co-located with the students or are able to meaningfully interact through use of technology;
 - are approachable;
 - are adaptable and flexible in maintaining a constructive and student-focused approach;
 - communicate effectively; and
 - self-evaluate and accept evaluation by supervisees and peers.

2. The clinic ensures that its processes are designed to advance the interests of clients at the same time as supporting and extending students.

Example:

If a student appears likely to miss an imminent court deadline, then the supervisor should take corrective action to protect the interests of the client. Rather than learning through 'trial and error', it is better for the student to learn through reflection on the averted error.

If any legal advice is conveyed to a client by a student then it is first to be approved by their supervisor once the supervisor has had the opportunity to:

- review any instructions the student has received;
- review any research the student has undertaken; and
- discuss the advice with the student.

Example:

In clinics where students receive instructions without their supervisor present and then confer with their supervisor before conveying the supervisor's advice, ensure that:

- the client is aware the interviewer will be a student working under supervision and that the client consents to that arrangement;
- the student has undertaken appropriate training in interviewing technique;
- the supervisor is confident of the student's ability to act professionally and in accordance with legal regulatory requirements; and
- the supervisor recognises the risks associated with giving the student responsibilities associated with live-client interviews and takes steps to limit those risks.

3. Students are thoroughly prepared/ trained to conduct interviews with clients, when necessary. This preparation includes:
 - understanding prescribed readings and instruction;
 - mock interviews (simulations) with the provision of feedback;
 - a thorough understanding of legal profession regulations, including a full understanding of what constitutes providing legal services;
 - conducting interviews with their supervisor (or an experienced student); and
 - sensitivity and awareness of important matters they are likely to encounter relevant to the particular client group.

Students are trained in procedures and protocols relating to an agency or externship site.

4. All supervisors, including short-term, locum and agency-employed supervisors, are trained in the process of supervision and provided with the time and resources to fulfil their responsibilities.

Supervisors are able to participate in specific supervision training courses and skills development processes. Universities give ongoing commitment to the professional development of supervisors.

In agency clinics and externships the training is provided to supervisors by the law school in conjunction with the agency. Training addresses the ways in which the dual purposes of client service and student learning can be advanced together. There is a shared commitment to meaningful liaison between academic staff and externship agency staff.

Training includes a clear understanding of:

- the Learning Outcomes of the externship;
- the role of the supervisor in supporting the student learning; and
- how the assessment from the agency staff feeds into the students' academic progress.

5. Law schools and their clinical courses provide to supervisors:

- structures to effectively support junior and sessional supervisors;
- a supervisor manual;
- access to other clinical supervisors for mentoring purposes;
- sufficient time to develop supervision skills before a full supervision load is required of them; and
- sufficient time and resources to ensure their professional development – in both clinical teaching and the areas of law in which they are practising.

In agency clinics and externships supervisors receive an induction into clinical methodology and some training in supervision. This training addresses the provision of feedback to students.

6. Supervisors are sufficiently accessible to deal promptly with unexpected critical incidents. Supervisors also enable the student to incrementally develop the understandings and skills identified by the clinic as important.

Externships: Supervision arrangements, including regular meetings, are discussed and established collaboratively by the student, the supervisor and the clinical academic responsible for the course.

Clinical component: Frequency of feedback is planned before the use of clinical components to ensure that such feedback:

- is consistent across the student body; and
- supports the clinical process.

7. The constructive provision of feedback is central to student supervision.

Feedback is clear and is focused on enabling the student to build on good performance and develop their skills and understandings.

Feedback is provided in a timely manner so as to enable the student to address and build on the feedback.

Students are trained to constructively receive feedback.

Agency clinic and clinical component: The nature and timeliness of feedback is planned collaboratively between university and externship agency.

Reflective Student Learning

Reflection involves exploration of our thoughts and actions in order to better understand the assumptions, values and ethical frameworks we may be using both consciously and (often more importantly) unconsciously. Reflection also describes the process of evaluating elements of the self, the task and the environment with regard to their impact on practice, with the aim of guiding effective decision-making and action.

Clinical legal education (CLE) environments are well suited to fostering reflective learning practices among students. In such settings reflection can be:

- supported and modelled through the student-supervisor relationship;
- a collaborative process (including peer exchanges), rather than confined to introspection; and
- based firmly in practice, going beyond an academic exercise and demonstrating reflection's role in developing ethical and effective practice.

The practical and 'live' nature of clinics coupled with their knowledge of the theoretical bases of reflection provide a valuable opportunity for students to better understand the role (and benefits) of reflection in legal practice and more generally. Therefore reflection within a clinical setting becomes the foundation for developing a 'reflective practitioner' in each and every student. This in turn assists them in developing responsibility, resilience, confidence, self-esteem, self-awareness, courage and humility.

Principles

- 1. The purposes of structured reflective learning are:**
 - 1.1. to develop the ability of students to learn from experience; and**
 - 1.2. to provide support to students and enable them to better understand their experiences and to improve their skills.**
- 2. Reflective learning gives students the opportunity to think about:**
 - 2.1. how they practise law and their role as practitioner, researcher or teacher, or law reformer in law reform and policy work;**
 - 2.2. their role as part of a team, including their interaction with their supervisor;**
 - 2.3. the role of law (including its benefits and limitations in wider social and cultural contexts); and**
 - 2.4. analytical frameworks to develop theories about the practice of law (discussed below). These enable students to develop theories of action with which to gauge their own performance.**

Best Practices

- 1. In all clinical courses and components, debriefing and discussion that encourages reflection are emphasised. Further structured opportunities for reflection are a clearly articulated and important part of any clinical course. Reflection is informed by relevant literature and incorporated into every clinical course in a structured, planned and thoughtful way.**

Example:

Some clinics use a regular facilitated student meeting in which students have the opportunity to discuss with their peers some of the challenges and difficulties they are facing in their work. Murdoch and Griffith are examples of clinics that make use of group de-briefing sessions.

In some clinics, a reflective journal is used to encourage students to write about their clinical experience.

On-line and virtual approaches may enable students to reflect using technologies with which they are comfortable. Clinics at QUT and Charles Darwin University make use of on-line journals and discussion groups to foster student reflection.

In the case of externships, there should be an opportunity provided for the student to undertake reflection with the academic responsible for the course.

Other clinics use students' presentations to their peers as another mechanism for encouraging reflection on an aspect of their work (Kingsford Legal Centre).

2. Clinical courses provide students with a framework for reflecting on their experiences.
3. CLE pedagogy involves a three-stage process: planning; reflection (self-critique and feedback); and planning the next step. Reflection is achieved through the use of some or all of:
 - debriefing sessions with supervisors, whether individually or in a group;
 - debriefing with clinical academics;
 - debriefing with clinic peers;
 - keeping a reflective journal or blogging;
 - written essay or paper; and
 - students' presentations critiquing their clinical experiences.
4. Prompt feedback is provided to students on oral and written reflection. Feedback should address the process of reflection in addition to the content of reflection.
5. Reflective learning practices build on those already undertaken throughout the students' learning. Note is taken of the exposure to reflective learning the students may have had in other law units.
6. Reflection is assessed. Assessment is criteria-based and can be focused on the reflective process and/or the content of the reflection. The criteria are explicitly linked to the Learning Outcomes.

Assessment

Clinical legal education (CLE) courses offered by law schools can and should be assessed. This can be done in many ways including, where appropriate, overall clinic performance, essays on points of law arising in clinic cases, reflective journals, the quality of court advocacy on behalf of clients and the quality of law reform submissions. Clinics can support students to achieve deep and active learning through the timely provision of feedback to them. Clinical assessment is most helpful when provided in a timely and constructive manner, in close proximity to the actions of the students.

Principles

1. Clinical assessment is timely and constructive, and will promote deep active learning, with explicit opportunities for students to gauge the extent of their learning.
2. Clinical assessment processes are sufficiently documented to facilitate external review.

Best Practices

1. Assessment tasks are aligned with Learning Outcomes. Clinic-based assessment is informed by quality assessment principles: assessment is valid (achieving its intended purpose), reliable (referenced to specific criteria rather than to the performance of other students) and fair.
2. Formal assessment, using publicised criteria, is combined with informal feedback delivered when opportunity presents itself or necessity requires it.

Formative assessment	Formative assessment occurs during a course of study and is designed to 'form' student development. It is usually qualitative rather than numerical and typically takes the form of verbal guidance by a teacher to assist a student to improve or attain their outcomes. In that sense, it is assessment for learning.	'Mid-semester' conversation between clinical supervisor and student in which specific areas are identified as requiring improvement.
Summative assessment	Summative assessment is often numerical and 'summarises' learning at a particular point in time. In that sense, it is assessment of learning.	Final grade achieved in a clinic.

3. Summative and formative assessment are used:
 - 1.1. summative assessment is informed by formative assessment; and
 - 1.2. formative and summative assessment are designed to foster and reward collaboration between students and their supervisor.
2. Assessment is graded, or assessed on a pass/fail basis. Both approaches provide detailed summative and written feedback.

There are legitimate differences of opinion as to whether clinical casework can be fairly

graded or is best left to a pass/fail assessment. A hybrid approach is to allocate students to 'unsatisfactory', 'satisfactory' and 'highly satisfactory' categories.

Example: A pass/fail assessment method

Kingsford Legal Centre assesses students on a pass/fail basis with substantial feedback given throughout the semester. At the beginning of semester, students develop their own specific learning goals in addition to those of the course. At mid-term assessment, students complete a self-assessment against the learning goals of the course and their own individual goals. They then meet with their clinical supervisor for a formal mid-term assessment and are given detailed feedback about their performance in each area of their work. At this meeting, additional goals for the second half of semester are identified by the student and the clinical supervisor. In the last week of semester, there is a final assessment meeting between the student and their clinical supervisor.

Both the mid-term and final assessments are informed by a student interaction spreadsheet that documents particular elements of the student's work and is contributed to by all members of the Centre. The student is given a copy of the final complete spreadsheet at the end of semester.

Example: A graded assessment method

Students' legal service casework may be given a grade by considering their achievement of the course Learning Outcomes in various clinical areas. The following example has been adapted from the Monash clinical courses and shows how students can be graded for their legal service casework:

- Understanding of the purposes of taking Instructions (including fact gathering, interview control, communicating advice): out of 10.
- Depth of discussion initiated with supervisor (including application of law, awareness of alternatives, degree of justice/injustice in the case, summation of advice): out of 25.
- Development of lawyering skills (including initiative, research, written communication, maintenance of files, understanding of word processing quality control, mailing, emailing, payment and accounting processes): out of 45.
- Understanding of the requirements of professionalism (including punctuality, team approach, ethical sensitivity, reliability, sensitivity to clients' needs): out of 10.
- Reflection on improvement or lack of improvement during the course (extent to which a student is aware of, and is learning from, their mistakes and taking appropriate initiatives): out of 10.

Example: A hybrid assessment method

The Alternative Dispute Resolution Clinic at Griffith Law School involves students in a placement at the Dispute Resolution Branch of the Queensland Department of Justice and Attorney-General. Placement performance accounts for 50 per cent of the assessment for the course and students are supervised by a designated Dispute Resolution Branch staff member.

Student performance is provisionally assessed by the supervisors as either 'Highly Satisfactory' (mid-point of the Distinction grade), 'Satisfactory' (mid-point of the Credit

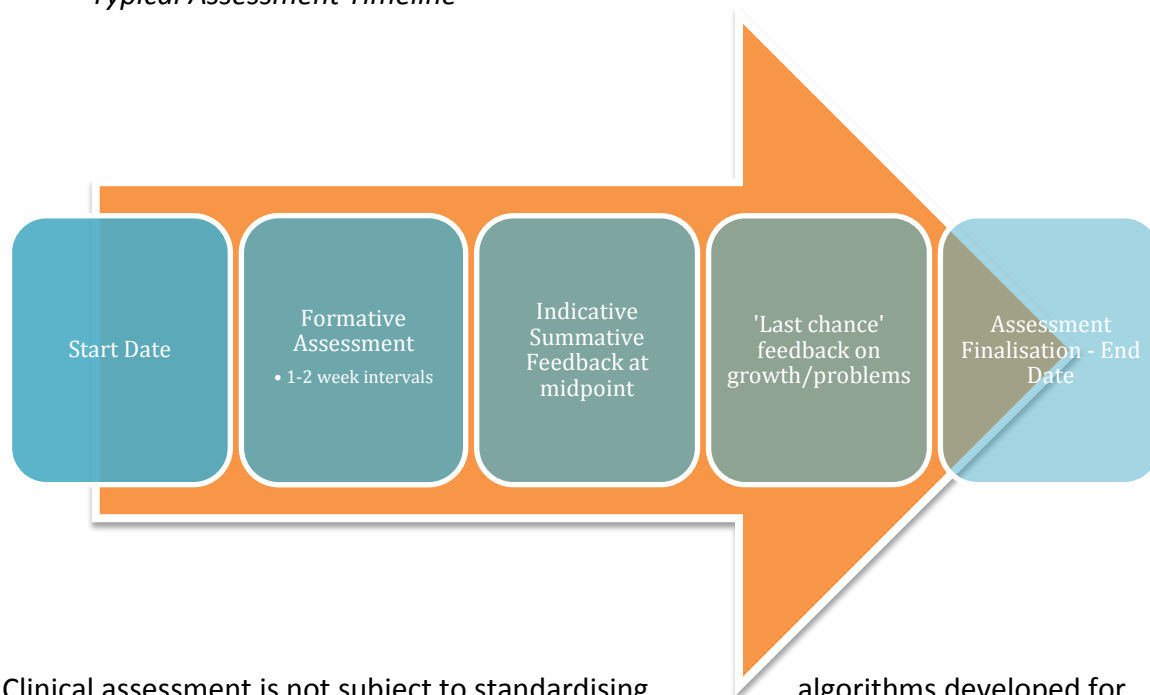
grade) or 'Unsatisfactory' (mid-point of the Fail grade). The supervisor and Course Convenor then liaise regarding the provisional assessment before finalisation by the Course Convenor.

3. In externships, 'Learning Contracts' or some other mechanism are used to ensure shared understandings of the Learning Outcomes and assessment among the agency, the student and the law school.
4. Clinical assessment practices are criteria-referenced and accord with law school and university assessment policies. Recognising that student assessment will be contributed to by staff at the clinical site (non-academics, supervisors and administrative staff), assessment is carried out by, and signed off or approved by, an academic.

In-house live-client clinics: Assessment of students is often conducted collaboratively by all clinic staff, with ultimate responsibility for any grading held by the academic.

5. Clinics incorporate a mid-semester review of the whole of student performance, with the student given the opportunity for structured self - reflection to identify how they can complete their clinic as constructively as possible.

Typical Assessment Timeline



6. Clinical assessment is not subject to standardising large enrolment mainstream law school subjects. If algorithms developed for algorithms are to be applied, then they are developed specifically for each clinical subject or process where enrolled numbers are sufficient for the mathematical relationships to be expressed with integrity.
7. In the clinical course context, moderation takes place in the following form. To ensure that all supervisors are marking to the same standards and have access to colleagues' experiences, clinical supervisors seek feedback from other clinical colleagues involved in working with the same students in relation to the students' performance.

Example:

Clinical supervisors may seek feedback from other clinical colleagues involved in working with the same students about the students' interpersonal skills.

Staff

The effectiveness of a clinic will depend on the strength and sensitivity of the supervision provided. Clinical supervisors require a combination of legal practice backgrounds, a concern for improving access to justice and a deep interest in student learning.

Clinical supervisors gain unique insights through their work that can benefit the rest of the law school in research collaborations and community engagement. They can enhance law schools by bringing legal practice realities and community insights on multiple levels into collaborations with other legal academics as well as with other disciplines. Clinical supervisors are often legal practitioners and have the ultimate responsibility for the client files (in a live-client clinic). This reality adds to their workload and responsibilities.

Principles

1. Law schools should recognise that staff involved in clinical legal education (CLE) have capacity to enhance the law schools' teaching, research and community engagement.
2. Clinical legal supervision requires a complex mix of skills and attributes.
3. CLE teaching (supervision) and research is of the same status as other legal teaching and research. Structures will be established to enable clinical supervisors to participate in a fulfilling academic career.

Best Practices

1. Clinical supervisors have academic status consistent with their position as permanent or sessional staff of the university and without regard to their physical workplace. Other professional staff supporting CLE are university employees.

Agency clinic: A clinical supervisor/ teacher with academic status has overall responsibility for the course and provides support on campus. Placement supervisors are employed in accordance with the host organisation's employment practices.

2. Staff employed in the clinic (both clinical supervisors and professional staff) are appointed on comparable terms and conditions of employment to their law school peers.

Clinical supervisors/ teachers are required to undergo assessable teaching and supervision training while on probation.

Agency clinic: Supervisors receive appropriate supervisor training within three months of commencement as supervisors.

Clinical component: Staff engaged in clinical components are supported with appropriate resources and training.

3. The workload allocation and research expectation policies that apply to clinic staff recognise actual hours spent in clinical supervision as student contact hours.
4. Clinical supervisors have discretion as to individual students' file loads, depending on the nature of the clinic, the complexity of such files and the actual responsibility of students in relation to those files.
5. Clinical supervisors who also have academic positions have research and publication obligations. To allow those obligations to be met, the clinical supervisor-single student ratio for clinical academic supervisors in live-client clinics is no higher than eight such

students working with one full-time supervisor per semester/clinical period. If clinical supervisors do not have research and publication obligations, then higher ratios may be negotiated.

During a specific live-client clinical intake/advice session, where the student conveys the solicitor's/supervisor's advice to the client, the clinical staff-single student ratio is no higher than 1:4.

Appropriate adjustments in these ratios and to student file loads apply when students work in pairs or teams.

Example:

At the Murdoch-SCALES clinic a single supervisor in the general intake session, which provides advice and opens ongoing client files each session, is responsible for no more than four students during that intake session. Typical ongoing file loads per student are four to eight.

At the Monash-Oakleigh multi-disciplinary clinic, three supervisors, each with current professional accreditation in one of law, social work or finance jointly supervise four teams of three students, with each team consisting of a student from the faculties of Law, Social Work and Finance. Each intake session runs for four to five hours and will typically deal with five to seven clients who have been previously assessed as requiring multi-disciplinary assistance. The clinical legal supervisor will be responsible for their four law students' performance within discipline and in terms of a range of criteria related to multi-disciplinary functioning. Similar criteria apply to the other two disciplines. Typical ongoing file loads per student are in the range of five to ten.

6. Clinical academics' scholarship is facilitated and supported by the university. Clinical academics' research output is supported by access to study leave, research support funding and non-teaching periods to the same degree as non-clinical academic staff.
7. Primary criteria for appointment of clinical supervisors in live-client clinics are:
 - eligibility to obtain a current practising certificate;
 - practice experience;
 - communication skills; and
 - patience and an understanding of CLE pedagogy.

Preferred criteria: clinical supervisors have:

- experience directly relevant to the practice and law of the clinic; and
- awareness of critical perspectives about the purpose of law and legal practice.

Agency clinic and externships: Ability to communicate and manage relationships with the external agency.

8. There are clinical supervisors within the clinical course that have significant practice experience.
9. The law school encourages and facilitates the opportunity for suitable law school academic staff to act as supervisors in clinics on a rotating basis.

Infrastructure

Infrastructure investment is required for law schools to achieve Learning Outcomes. University and law school commitment to infrastructure and resources is necessary if clinical legal education (CLE) programs are to operate in a sustainable and quality manner.

Principle

1. A law school provides appropriate infrastructure and resources to support its CLE program.

Best Practices

1. The university provides adequate insurance to cover the activities of the law school's CLE program. This includes professional indemnity, workers' compensation, travel and public liability insurance for staff and students. The university pays for the practising certificates of clinical supervisors.

Externships: Appropriate levels of travel, professional indemnity, workers' compensation and public liability insurance exists to cover the external agency, the law school, supervisors and students.

2. The law school and staff develop and implement policies that address ethical and fiduciary obligations owed to clients.

In-house clinics: Policies are developed so that in-house clinics serve as model ethical law offices with particular attention to the scope of, and exceptions to, client confidentiality and other ethical and fiduciary obligations owed to clients.

Externships: Policies are developed so that each student is apprised of their ethical obligations, with particular attention to the scope of, and exceptions to, client confidentiality and other ethical and fiduciary obligations owed to clients.

3. Written policies relating to supervision, assessment and conflicts of interest are clearly articulated and readily available for all staff and students.

Agency clinic and externships: There is a Memorandum of Understanding (MOU) between the university and external agency. The MOU incorporates these best practices and contains at a minimum:

- the objectives of the clinic;
- the numbers of students per semester;
- arrangements for university staff supervisors;
- resources available to agency from university;
- grievance procedures; and
- relevant contacts.

4. Staff and students have access to the university's library facilities, including access to appropriate printed and on-line research resources.
5. Clinical staff and students have access to university IT networks on site in the law clinic. The university is to supply adequate hardware and support to enable the clinical supervisors and students with computer access while working in the clinic.
6. Legal practice casework support for in-house live client clinics:

The university employs sufficient administrative support (no less than 0.5 to three supervisors) to allow client cases to be handled expeditiously in accordance with professional standards.

All clinical models require administrative support.

The university provides administrative support for the coordination of all clinical courses at the rate of 0.5 EFT to 100 students.

Externships: Each placement with client contact or caseload has sufficient administrative support for that contact or caseload.

The university will provide administrative support for the coordination of all the clinical courses at the rate of 0.5 EFT to 50 students.

7. The university (and, if an agency clinic, the external agency) ensures that all relevant occupational health and safety requirements are complied with, including the provision of adequate supervision, accommodation, facilities and furniture.
8. The nature of CLE requires an ongoing commitment to service delivery. The university must provide adequate *locum* support to take responsibility for the workload of a clinical academic during periods of leave.

Conclusion

Competition for first preference enrollees among law schools is steadily increasing in each State and Territory. Public perceptions as to the quality of a law degree are important to universities and law deans. As the extensive consultation process within this project and its results have filtered through to law schools and stakeholders, legal educators as a whole are coming to understand the connection between better clinical standards and better educated law graduates. This connection will progressively become clearer to law school administrators, who will come to recognise the long-term link between higher clinical standards and their own institution's reputation.

Progressive presentation of the aims, processes and draft outcomes of the project to key gatherings of local and overseas clinical supervisors, stakeholders and legal academics²² throughout the 27 months of the project have gradually developed project recognition to the point where the penultimate version of *Best Practices* was accepted and unanimously endorsed by the Council of Australian Law Deans (CALD) at its meeting in Melbourne on 16 November 2012.

Clinical programs that consistently improve graduates' understanding of law and social need and their commitment to better justice (because of nationally uniform and higher program expectations) will also feed back into the entire legal education loop. Among the law schools of project members there are repeated examples of alumni identifying the quality of their law degrees as a whole with the excellent clinical programs they have experienced. Law alumni networks are extensive and clinical alumni, in particular, lobby their former law schools as to the need for more and better clinical programs in their various law degrees, because as alumni they are frequently influential in their law firms' employment of new graduates. They repeatedly express the view that the best graduates have clinical experience and they consistently make this clear to law deans. The connection between the quality and reputation of a law degree as a whole and the good reputation of the attached clinical program is not lost on these deans. But this process of progressive feedback has tended to exist only among the law schools participating in this project. Some law schools still have clinical programs in name only and these do not add much to the quality or reputation of their associated law degrees.

Law deans' efforts to improve legal education centre upon the need to deal with the fact that staff-student ratios in law are very high. There is an historical but incorrect assumption that adequate legal education can be achieved through a single lecturer addressing a large number of law students at one time. In consequence, law as a discipline is federally-funded on the lowest band. The cost of clinical programs militates against innovation and extension, but nation-wide clinical standards will help legal academia to define the cost of a new program by clarifying what is a clinical program and what may not be (for example, a *pro bono*, practical placement or nominal work experience program). If law deans are able to accurately calculate the cost of a new program because its ingredients are a known quantity, then they will be more confident of the cost of new clinical proposals.

Even if the community does not necessarily want more lawyers, it does want better, community-accountable lawyers. Media recognise this, but law deans need specific studies that make an objective research-based case to government for the wider benefits to legal

²² Apart from numerous project workshops and colloquia, key presentations were made to the Global Alliance for Justice Education Conference (GAJE), July 2011, in Valencia, Spain; to the National Clinical Conference, September 2011, in Sydney; to a Stakeholder Project Workshop, December 2011, in Melbourne; and to the Australasian Law Teachers Association (ALTA) Conference, July 2012, Sydney.

education and the community available through additional funding of clinical programs, clarifying why such programs produce better lawyers and how the community can benefit from the establishment of clinical programs. In clarifying best practices for effective clinical programs, this project has made the achievement of these benefits more realistic and more achievable because such practices will establish norms for a whole range of quality inputs to such programs.

There is one final conclusion that the project team has determined is justified by the whole of its investigation. While it is completely accurate to assert that clinical methods are among the most effective in achieving educational quality in law and that the range of clinical methods extends from simulation to live-client experiences, it is likely that law schools that offer at least one live-client clinic will be providing to their students the best possible clinical experience.

The project team thanks the Office of Learning and Teaching and its functional predecessor, The Australian Learning and Teaching Council, for the opportunity to undertake this project.

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Appendix A

Survey Instrument

ALTC Clinical Standards Project PP10-1603: [Strengthening Australian Legal Education by integrating clinical experience: identifying and supporting effective practices]

Interviewer name:

Date of interview:

Location:

Interviewee name, position and contact details:

Section 1: What is happening in your clinic(s)? [Current practices]

Name of university:

Name of clinic:

Clinic contact phone number and website address:

- a) Briefly describe your clinical program
- b) How many students per annum?
- c) What per cent of law students at your university enrol in or attend your clinic(s)?
- d) How many full time clinical teachers/supervisors employed by the university?
How many part time?
- e) How many other staff and who are they employed by?
How many part time?
- f) How many hours per week on average do students spend on clinic tasks? Please explain how this time is divided between various tasks i.e. client interviews, file work, classes etc.
- g) How many weeks student attendance are required in your clinical placement(s)?
- h) What do students do in your program?
- i) By whom is your clinic funded and in your opinion is that funding 'secure'?
- j) Does your law school attempt to incorporate clinical components into its substantive law subjects? If so, how?
- k) How are clinical teaching responsibilities allocated among faculty members in your law school?
- l) What attributes/qualities/ experience does your law school require of its clinical teachers?

- m) Do clinical teachers have access to the same terms and conditions of employment as other law teachers at your law school?
- n) On what basis do you assess students in your clinics, if at all? Please describe the process of assessment.
- o) Do students have an opportunity to evaluate the clinic?
- p) If your clinic has an exposure process or a limited clinical program please describe how this operates, adding sufficient information to cover the relevant questions above?
NB: exposure process can be a limited preview to students of the wider clinical program.
- q) Are students exposed to mock client interviews prior to the commencement of their clinical program? If so, please explain how these interviews are conducted.
- r) What exposure do students have to client interviews and their clients prior to being responsible for their own files?
- s) Does your clinical program offer an option for students to participate in court appearances? If so, how is this assessed/is it supervised?
- t) What is the student: supervisor ratio in your clinic? What do you think is the most effective ratio?

Section 2: Debates as to good clinical programs

A. Your opinion about the key elements of a good clinical program

9. Is the term 'good' always relative or are there minimum standards that clinics should achieve?
10. What learning outcomes are best achieved in a live-client clinic? Can the same outcomes be achieved to the same extent with simulated experiences using role-plays, and with externships and virtual (online) clinics?
11. In a live-client clinic how would you describe the desirable balance/relationship between client service and students' education?
12. What are the benefits of students giving advice to clients in the absence of a supervisor? What has your clinic decided to do and why?
13. If students give initial advice to clients only in the presence of a supervisor, do you think that the focus on client protection can stifle students' confidence development and sense of responsibility?
14. If the latter, what precautions should govern students' 'first contact' autonomy?
15. What might cost-effective clinical experience look like? How can greater number of students benefit from clinical experience without spreading financial resources too thinly and reducing the overall quality of student-live-client interaction?
16. What role do law reform and community development approaches play within your clinics? What role do you think they should play in clinics?

B. Necessary clinical supervision standards in an Australian law school setting

1. Are there minimum effective time periods for good clinical programs? If so, what are these minimums?

2. Are there more appropriate stages of undergraduate study at which clinical experience should occur?
3. In relation to live-client clinics, are there more or less appropriate practice environments in which clinical experience should take place? For example, environments such as community legal centres, legal aid, private practices etc. Please frame your response in terms of the purpose of your clinic.
4. Do you include in your course outline or student guide (or in related material) the following?
 - learning objectives,
 - summative feedback/assessment,
 - types and intervals of clinical feedback
 - assessment criteria
5. How would you assess the following qualities in live-client clinics: If you have views as to appropriate standards for assessment in these areas, please provide details.
 - a) Students' levels of client sensitivity and communication:
 - b) Ethical awareness:
 - c) Intellectual grasp of substantive law-practical implementation:
 - d) Drafting, negotiation and advocacy skills:
 - e) Self-organisational ability:
 - f) Socio-legal awareness:
 - g) Comprehension of law reform processes:
6. Which of these standards apply and in what way to other types of clinics, such as externships or virtual clinics? Are these same areas assessed in externships or virtual clinics? Are there minimum standards in those?
7. Is there a place for client assessment of student performance and if so, in what contexts and intervals?

C. The extent to which clinical programs are integrated within the larger law curriculum and the law school itself

1. Should a student's clinical experience be integrated with other law subjects or stand alone inside a law degree?
2. Should clinical components be incorporated into doctrinal law courses? If you think the answer is 'yes', what do you mean by 'clinical' components?
3. What expectations should there be of, and what support should there be for, clinical teachers' research output, and administrative and 'conventional' teaching workload?
4. What access should clinical teachers have to 'conventional' law teachers' terms and conditions of employment?

D. The desirable relationship between clinics, 'externships' and a myriad of related pro bono placement initiatives

1. Please describe the desirable relationship between clinics/externships/pro bono and please explain if your response is based on educational/ theoretical or pragmatic political grounds, or a mixture?

2. If not, is there any progressive, sequential educational relationship between live-client and externship experience or can they operate in parallel to one another without affecting students?
3. How do the considerations in questions D.1 and D.2 apply to the relationship between live-client clinic and pro bono experience? Should clinical courses come before, after, or at the same time as other pro bono experiences?
4. What is truly distinctive about a live-client clinic compared to a pro bono or externship experience or is the real educational question one of: what are the essential qualities of in-depth student learning? Is there anything distinctive about a live client clinic compared to an externship experience? Is there anything distinctive about a live client clinic compared to volunteer work?
5. Can the relatively high cost of clinical teaching and its limited availability be simply addressed by transferring the whole of clinical experience to post-graduate practical legal training, which is compulsory and therefore, by definition available to all law students?
6. Are the most effective legal education outcomes obtainable from full integration of simulation, live-client and doctrinal teaching throughout the academic phase? In the manner of The University of Newcastle law school? Is the best legal education one which includes all: clinics, doctrinal teaching, simulation as they do at The University of Newcastle law school?

E. Adequate staffing of clinical programs.

1. Taking into account your views in C above, what mix of attributes/skills/experience and knowledge is needed for clinical supervision?
2. Should clinical supervisors be required to have certain formal qualifications and experience? If yes, what are they and what are acceptable minimum standards?
3. If clinical supervisors require certain standards and cannot always be recruited with highly developed standards, what are the most effective ways to train them to acceptable minimums?
4. What insights from clinical supervision in health sciences are likely to be relevant to the training of clinical legal supervisors?

F. Assessment of students' performances

1. Should students be assessed at 'satisfactory' levels of performance according to stated criteria (that is, pass/fail approach)?
2. If not, should students be eligible to record higher levels of achievement similar to other law subjects? If so, how?
3. What are the advantages and disadvantages of allowing students to be eligible to record higher levels of achievement?

Appendix B

Additional Survey Questions

1. How are students selected to participate in your clinical program?
2. Scholarship/research: have you published anything in the area of clinical education? If so what was the topic/publication?
3. Classroom component: what is taught in the classroom component of your clinical program? How many hours/days/weeks are taken up by this component (for each program)?
4. Cost: How much does it cost to run your clinical program?
5. Insurance: Is your clinical program/supervisors covered by PI insurance?
6. Case selection: what types of cases are chosen in your live client clinic? How do you organise the selection process? What is the role of 'public interest' or test cases in your clinic?
7. Course credit: how much credit is your clinical program worth?

Appendix C

ALTC Threshold Learning Outcomes (TLOs), December 2010²³

TLO 1: Knowledge

Graduates of the Bachelor of Laws will demonstrate an understanding of a coherent body of knowledge that includes:

- (a) the fundamental areas of legal knowledge, the Australian legal system, and underlying principles and concepts, including international and comparative contexts,
- (b) the broader contexts within which legal issues arise, and
- (c) the principles and values of justice and of ethical practice in lawyers' roles.

TLO 2: Ethics and professional responsibility

Graduates of the Bachelor of Laws will demonstrate:

- (a) an understanding of approaches to ethical decision-making,
- (b) an ability to recognise and reflect upon, and a developing ability to respond to, ethical issues likely to arise in professional contexts,
- (c) an ability to recognise and reflect upon the professional responsibilities of lawyers in promoting justice and in service to the community, and
- (d) a developing ability to exercise professional judgement.

TLO 3: Thinking skills

Graduates of the Bachelor of Laws will be able to:

- (a) identify and articulate legal issues,
- (b) apply legal reasoning and research to generate appropriate responses to legal issues,
- (c) engage in critical analysis and make a reasoned choice amongst alternatives, and
- (d) think creatively in approaching legal issues and generating appropriate responses.

TLO 4: Research skills

Graduates of the Bachelor of Laws will demonstrate the intellectual and practical skills needed to identify, research, evaluate and synthesise relevant factual, legal and policy issues.

TLO 5: Communication and collaboration

Graduates of the Bachelor of Laws will be able to:

- (a) communicate in ways that are effective, appropriate and persuasive for legal and non-legal audiences, and
- (b) collaborate effectively.

TLO 6: Self-management

Graduates of the Bachelor of Laws will be able to:

- (a) learn and work independently, and
- (b) reflect on and assess their own capabilities and performance, and make use of feedback as appropriate, to support personal and professional development.

²³ See, S Kift and Ors, *ALTC Threshold Learning Outcomes (TLOs)*, December 2010 <<http://www.altc.edu.au/standards/disciplines/law>>.

Appendix D

CALD Standards Generally Related to Clinics and Clinical Legal Education

[FORMALLY ADOPTED AT CALD MEETING 2009/3, CANBERRA, 17 NOVEMBER 2009]

- 1.3.3 The law school's mission encompasses a commitment to the rule of law, and the promotion of the highest standards of ethical conduct, professional responsibility, and community service.
- 2.3.2 General requirements: The curriculum seeks to develop knowledge, understanding, skills and values: knowledge of the law; understanding of legal principle and of the context within which legal issues arise; skills of research, analysis, reasoning, problem-solving, and communication; and the values of ethical legal practice, professional responsibility, and community service.
- 2.3.3 In particular, the curriculum, seeks to develop –
- a. knowledge and understanding of –
 - the theory, philosophy, and role of law, and the dynamics of legal change
 - the broader context within which legal issues arise, including, for example, the political, social, historical, philosophical, and economic context
 - international and comparative perspectives on Australian law and of international developments in the law
 - the principles of ethical conduct and the role and responsibility of lawyers, including, for example, their pro bono obligations.
 - b. the intellectual and practical skills needed to research and analyse the law from primary sources, and to apply the findings of such work to the solution of legal problems.
 - c. the ability to communicate these findings, both orally and in writing.
 - d. awareness of and sensitivity to, and, so far as is practicable, internalisation of, the values that underpin the principles of ethical conduct, professional responsibility, and community service.

2.9 Pastoral responsibility

- 2.9.1 The law school's commitment to sound educational methods and outcomes includes a commitment to, and the adoption of practical measures to promote, student well-being, with particular reference to mental health and awareness of mental health issues.

6.2 Physical facilities

- 6.2.1 The law school has sufficient physical facilities, for both staff and students, to ensure that its educational, research and outreach objectives can be achieved.

9.6 Interaction with the legal profession and the wider community

- 9.6.1 The law school seeks to engage with the legal profession and the legal sector generally.
- 9.6.2 The law school seeks to engage with the wider community by encouraging its staff and students to use their knowledge and skills for the benefit of the community in outreach programs, including, for example, and so far as is practicable, clinical programs, law reform, public education, and other forms of pro bono community service.