

THE STATELESS LEGAL CLINIC: INNOVATIVE MODELS FOR ADDRESSING UNMET LEGAL NEED IN AUSTRALIA THROUGH CLINICAL LEGAL EDUCATION

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I Introduction:

The Stateless Legal Clinic is a unique service providing legal education and aid to eligible stateless children in their application for Australian citizenship.¹ It also provides law students at the University of Melbourne with the opportunity to gain practical legal experience and engage in experiential learning, through a clinical legal education elective subject offered within the *Juris Doctor* (JD) degree.² Students learn within the framework of a three pronged curriculum that combines a theoretical and

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¹ 'Stateless Legal Clinic', *Melbourne Law School* (Web Page) <<https://law.unimelb.edu.au/centres/statelessness/engage/stateless-children-legal-clinic>>.

² The Stateless Legal Clinic is situated within the Melbourne Law Schools Clinics program, the hub for clinical legal education and public interest law at the Melbourne Law School, University of Melbourne. See 'Melbourne Law School Clinics', *Melbourne Law School* (Web Page) <<https://law.unimelb.edu.au/students/jd/enrichment/mls-clinics>>.

doctrinal analysis of statelessness law, practical skill development and case work with real clients and a focus on ethical and social skills designed to support the establishment of students' 'professional identity'.

To be stateless means that no country in the world recognises you as legally belonging.³ Without nationality, stateless people can face discrimination and difficulty in accessing a range of basic human rights including access to education, healthcare and employment.⁴ Statelessness is a phenomena impacting millions of people – including children worldwide.⁵ Australia has resettled stateless persons since at least World War II and ratified the relevant treaties comprising of 'international stateless law.'⁶ Yet little is understood about statelessness in Australia and significant gaps exist in protection for stateless people.⁷ In the absence of a specific visa category or other pathway to permanency for stateless people in Australia, many are left with the only option of seeking protection through an increasingly limited domestic refugee law

³ *Convention Relating to the Status of Stateless Persons*, opened for signature 28 September 1954, 360 UNTS 117, Art 1 ('1954 Convention'); Lindsey Kingston, 'Worthy of rights: Statelessness as a cause and symptom of marginalisation' in Tendayi Bloom, Katherine Tonkiss, Phillip Cole (eds), *Understanding Statelessness* (Routledge, 2017) 29.

⁴ Jason Tucker, 'Statelessness and Displacement: The Cause, Consequences, and Challenges of Statelessness and Capabilities Required of Social Workers' in Nancy J Murakami and Mashura Akilova (eds), *Integrative Social Work Practice with Refugees, Asylum Seekers, and Other Forcibly Displaced Persons* (Springer International Publishing, 2023) 355.

⁵ 'Global Trends in Forced Displacement in 2022', (Report, UNHCR, 14 June 2023) 5 <<https://www.unhcr.org/global-trends-report-2022>>.

⁶ 'Statelessness in Australia', (Factsheet, Peter McMullin Centre on Statelessness, February 2023) <https://law.unimelb.edu.au/__data/assets/pdf_file/0008/4488281/Statelessness-in-Australia.pdf>.

⁷ Ie the lack of statelessness determination procedure (SDP) or visa category for stateless persons: Michelle Foster, Jame McAdam and Davina Wadley, 'Part One: The Protection of Stateless Persons in Australian Law — The Rationale for a Statelessness Determination Procedure' (2017) 40 *Melbourne University Law Review* 401.

framework, which seeks to punish and deter stateless refugees who arrived in Australia seeking asylum by boat.⁸

Significantly, however, despite not providing for *jus soli* (or birthright) citizenship, Australian law does provide the ability for stateless children born in its territory to apply for citizenship, thus ending inter-generational cycle of statelessness within families and allowing these children to access a myriad of essential rights they would otherwise be excluded from enjoying. The problem is that few stateless families are aware of this entitlement to citizenship, and until recently, there was very limited legal support available to assist children through the application process.

To respond to this gap in legal services for stateless children, Melbourne Law School conceptualised a novel legal subject: the Stateless Legal Clinic. The Clinic provides critical legal education and aid to stateless children in their application for Australian citizenship and situates clinical legal education within the relatively new and emerging discipline of ‘statelessness studies.’ It further provides law students with a rich experiential learning experience that prepares them for the reality of legal practice, while also supporting community legal service providers and stateless children; a group otherwise largely overlooked by the law.

⁸ Katie Robertson and Sarah Dale, ‘A Place to Call Home: Shining a Light on Unmet Legal Need for Stateless Refugee Children in Australia’ (Report, Refugee Advice & Casework Service (RACS), March 2021) <https://law.unimelb.edu.au/__data/assets/pdf_file/0007/3645547/StatelessChildrenReport.pdf>; Jane McAdam, ‘Australia and Asylum Seekers’ (2013) 25(3) *International Journal of Refugee Law* 435.

This article will begin by providing an overview of the legal framework for stateless children in Australia. It will consider the context that precluded the author's identification of a need for a legal service dedicated to stateless children. Part III of this article will examine the design and operation of the Stateless Legal Clinic, reflecting on the three main foci of the subject's curriculum. The article concludes that the Stateless Legal Clinic offers a unique contribution to the emerging discipline of 'statelessness studies,' and provides an innovative model for how clinical legal education can help increase access to legal assistance for some of our communities' most overlooked groups.

II The Australian Legal Context

In order to understand the significance of the Stateless Legal Clinic and the circumstances that led to its inception, it is first necessary to consider the key legal concepts and framework governing statelessness in Australia.

(i) *Statelessness – the Legal Definition and Lived Experience*

*'To be stateless means to have no country. This is very hard – and I feel deeply sad about it. I know people who aren't allowed to study or work because they are stateless – I worry about this for my daughter.'*⁹

⁹ Robertson and Dale (n 8) 19.

- Aisha, stateless Rohingya mother of one

The 1954 *Convention Relating to the Status of Stateless Persons* ('1954 Convention') defines a 'stateless person' as a person who is not considered as a national by any state under the operation of its law.¹⁰ In effect, this means that stateless people, including children, are not recognised as legally 'belonging' to any country.¹¹

Some people are born stateless, while others become stateless in the course of their lifetime.¹² Statelessness often has a severe and lifelong impact on people and exists in all regions of the world.¹³ Millions of people are estimated to be denied a nationality globally, meaning they lack access to many basic human rights.¹⁴ One third of the world's stateless population are understood to be children, with the United Nations High Commissioner for Refugees ('UNHCR') estimating that a child is born into statelessness at least every 10 minutes.¹⁵

Statelessness as a phenomenon is not new – indeed it is as old as the concept of the nation-state itself.¹⁶ Under the nation-state world order, rights are afforded through

¹⁰ 1954 *Convention* (n 3).

¹¹ Peter McMullin Centre on Statelessness, 'An Overview of Statelessness' (Factsheet, October 2021) 1 <<https://law.unimelb.edu.au/centres/statelessness/resources/factsheets/an-overview-of-statelessness>>.

¹² For a discussion on the causes of statelessness, see Lindsey Kingston (n 3) 17.

¹³ 'About Statelessness', #IBelong (Web Page, 2023) <<https://www.unhcr.org/ibelong/about-statelessness/>>.

¹⁴ Michelle Foster and Hélène Lambert, 'Statelessness as a Human Rights Issue: A Concept Whose Time Has Come', (2016) 28(4) *International Journal of Refugee Law*.

¹⁵ 'Statelessness Around the World', *UNHCR Australia* (Web Page) <<https://www.unhcr.org/au/about-unhcr/who-we-protect/stateless-people/ending-statelessness/statelessness-around-world>>; 'I Am Here, I Belong: The Urgent Need to End Childhood Statelessness', (Report, UNHCR, November 2015) 4 <https://www.unhcr.org/ibelong/wp-content/uploads/2015-10-StatelessReport_ENG16.pdf>.

¹⁶ For a comprehensive discussion on the evolution and history of 'statelessness' see Mira L Siegelberg, *Statelessness: A Modern History* (Harvard University Press, 2020).

one's connection to a state.¹⁷ Nationality therefore operates as the 'building block' upon which all other rights stem.¹⁸ The inalienability of human rights is premised on the assumption that they are independent of all nation-states.¹⁹ Yet in a paradox highlighted by influential political philosopher Hannah Arendt, as the nation state is the only judicial authority that can effectively acknowledge and ensure human rights, the human rights discourse loses its significance for those who cease to belong to any nation state.²⁰

The international legal definition of statelessness does not do justice to the lived reality of those who exist without nationality in a world of nation-states. Statelessness has the potential to impact almost every aspect of a person's life, inhibiting access to education, housing, employment, medical care and freedom of movement, amongst other essential rights.²¹

Little is understood about statelessness in Australia, including the impact lack of nationality has on the lives of those who experience it. To better understand the

¹⁷ Victoria Reitter, 'Tackling the Nation-State 'Container Model' in Statelessness Research', *Melbourne Law School* (Blog Entry, October 2020) <<https://law.unimelb.edu.au/centres/statelessness/resources/critical-statelessness-studies-blog/tackling-the-nation-state-container-model-in-statelessness-research-the-case-for-ethnography/>>.

¹⁸ Katherine Yon Ebright, 'Nationality and Defining the 'Right to Have Rights' [2017] (56) *Columbia Journal of Transnational Law* 855.

¹⁹ Leila Faghfour Azar, 'Hannah Arendt: The Right to Have Rights', *Critical Legal Thinking* (Blog Post, 12 Jul 2019) <<https://criticallegalthinking.com/2019/07/12/hannah-arendt-right-to-have-rights/>>.

²⁰ Hannah Arendt, *The Origins of Totalitarianism* (Harcourt Brace, 1951). See also, David Owen, 'On the Right to Have Nationality Rights: Statelessness, Citizenship and Human Rights' (2018) 65(3) *Netherlands International Law Review* 299. For a substantive discussion on nationality and statelessness, see Alice Edwards, 'The Meaning of Nationality in International Law in an Era of Human Rights: Procedural and Substantive Aspects' in Alice Edwards and Laura van Waas (eds), *Nationality and Statelessness under International Law* (Cambridge University Press, 2014) 11.

²¹ Michelle Foster and H el ene Lambert (n 14).

human experience of statelessness, in 2019 I conducted empirical research with my colleague Sarah Dale, in which we worked with stateless people residing in Australia to document their lived experience. The result was the documentation of some of these stories in our report 'A Place to Call Home: Shining a Light on Unmet Legal Need for Stateless Refugee Children in Australia' (the 'A Place to Call Home Report.')²²

The lived reality of statelessness is perhaps better understood in the words of Amir, a stateless Palestinian father of four children interviewed for this Report, who states:

'Being stateless has been a huge source of sadness for me in my life. At times it has made me question my very existence and made me wonder why my parents chose to bring me into this world. I've never felt like I have a future. Wherever I've gone, I have no rights.

*I hope for better for my children.'*²³

(ii) Statelessness Law in Australia

Australia has shown a strong commitment to reducing childhood statelessness by ratifying both of the key international treaties on this issue; the *1954 Convention* and the *1961 Convention on the Reduction of Statelessness* ('*1961 Convention*') without reservation.²⁴ Australia is also party to multiple international agreements that protect

²² Robertson and Dale (n 8).

²³ Ibid.

²⁴ Australia acceded to the *1954 Convention* (on the same date as their accession to the *Convention on the Reduction of Statelessness*, 989 UNTS 175 (entered into force 13 December 1975) ('*1961 Convention*'): 13 December 1973. See '4. Convention on the Reduction of Statelessness', *United Nations Treaty Collection* (Web Page, 2023) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5>; '3. Convention relating to the Status of Stateless Persons', *United Nations Treaty Collection* (Web Page, 2023) <https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=_en>.

the rights of stateless children and ensure the right to nationality, including the International Covenant on Civil and Political Rights,²⁵ and the Convention on the Rights of the Child.²⁶

Furthermore, Australia was one of the first states to ratify the *1961 Convention*, and subsequently implemented one of its key articles into Australian domestic law.²⁷

Article 1(1) of the *1961 Convention* provides that a contracting state shall grant nationality to a person born in its territory who would otherwise be stateless – including at birth, by operation of law.²⁸

Section 21(8) of the *Australian Citizenship Act 2007* (*'Citizenship Act'*) aims to directly implement Article 1(1) by providing that a person born in Australia who is not (nor has ever been) a citizen or national of a foreign country, and is not entitled to acquire the citizenship or nationality of another state, is eligible for Australian citizenship.²⁹

This is a hugely significant law for stateless children born in Australia, given that

²⁵ Article 24(3) of the ICCPR provides that 'every child has a right to acquire a nationality': *International Covenant on Civil and Political Rights*, 999 UNTS 171 (entered into force 23 March 1976) (*'ICCPR'*).

²⁶ Articles 7 and 8 of CRC provide that a child will have a right, from birth, to acquire and preserve nationality: *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) (*'CRC'*). For a full list of international agreements protecting a child's right to a nationality to which Australia is party see ICCPR (n 25) Art 24(3); *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195, Art 5(d)(iii) (entered into force 4 January 1969) (*'ICERD'*); *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13, Art 9 (entered into force 3 September 1981) (*'CEDAW'*); CRC Arts 7 and 8; *Convention on the Rights of Persons with Disabilities*, adopted 13 December 2006, A/RES/61/106, Art 18 (entered into force 3 May 2008) (*'CRPD'*).

²⁷ See generally, UNTC 1961 Convention Page (n 24).

²⁸ 1954 Convention (n 3) Art 1(1).

²⁹ *Australian Citizenship Act 2007* (Australia) s 21(8) (*'Australian Citizenship Act'*).

Australia does not otherwise afford *jus soli*, or birthright citizenship to people born within its territory.³⁰

(iii) *'No Way: You Will Not Be Settled In Australia'*³¹ – *The Migration Law and Policy Framework*

All stateless clients the Stateless Legal Clinic has assisted to date have been members of Australia's asylum seeker and refugee population. Indeed, current understandings of Australia's stateless population suggest that the vast majority of stateless persons in Australia are also refugee or asylum seekers, although more knowledge is needed about the overall demographic of this community.³² In order to understand the legal status of the clients with whom the Clinic works (and therefore, the significance of securing citizenship for Australian born stateless children in this cohort), it is first important to understand the migration framework that underpins their citizenship application.

³⁰ Australian citizenship can be obtained by automatic acquisition or application. With the exception of s 21(8) discussed in the text above, automatic acquisition of citizenship for persons born in Australia is limited to certain criteria stipulated in Section 12(1) of the *Australian Citizenship Act 2007* (Cth) including where –

- (i) A parent of the person is an Australian citizen, or a permanent resident, at the time the person was born; or
- (ii) The person is ordinarily resident in Australia throughout the period of 10 years beginning on the day a person is born.

³¹ 2014 Australian Government advisement warning asylum seekers not to travel by boat to Australia seeking protection: Oliver Laughland, 'Angus Campbell Warns Asylum Seekers Not to Travel to Australia by Boat', *The Guardian* (online, 11 April 2014) <<https://www.theguardian.com/world/2014/apr/11/angus-campbell-stars-in-videos-warning-asylum-seekers-not-to-travel-by-boat>>.

³² The Peter McMullin Centre on Statelessness at the Melbourne Law School is currently undertaking the first 'mapping' study of statelessness in Australia, with support from the Australian Research Council. The Report aims to better understand the numbers, needs and demographic of Australia's stateless population.

Pathways to permanent protection are extremely limited — and until recently, in the majority of cases, prohibited — for refugees, including stateless persons, whom arrive in Australia by boat seeking asylum.³³ In 2014 the Australian Government reintroduced the Temporary Protection Visa (“TPV”) and introduced the Safe Haven Enterprise Visa (“SHEV”) limiting the length of protection available to refugees and prohibiting them from accessing a range of essential services.³⁴ The reintroduction of TPVs followed the reinstatement of Australia’s policy of offshore processing in August 2012, and then mandatory offshore processing in July 2013, whereby children (including those born in Australia) of parents who arrived by boat are taken to the remote Pacific island of Nauru and prohibited from ever applying for any form of protection in Australia under law.³⁵

³³ *Migration Amendment (Temporary Protection Visas) Regulation 2013* (Cth) reg 2.08H(2)(d) (*‘Temporary Protection Visas Regulation 2013’*); *Migration Act 1958* (Cth) s 46A(1) (*‘Migration Act’*); Kevin Rudd, ‘Joint Press Conference: Regional Resettlement Arrangement’ (Speech, Brisbane, 19 July 2013) <https://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/2611766/upload_binary/2611766.pdf;fileType=application%2Fpdf#search=%22media/pressrel/2611766%22>.

³⁴ Refugee Advice and Casework Service, *An Overview of the Current Legal Situation for People Seeking Asylum in Australia* (Factsheet, November 2019) 3 <<https://www.racs.org.au/s/101-An-Overview-of-the-Current-Legal-Situation-for-People-Seeking-Asylum.pdf>>; Refugee Advice and Casework Service, *Fact Sheet: Temporary Protection Visas (TPV) and Safe Haven Enterprise Visas (SHEV)* (Factsheet, November 2019) 2 <<https://www.racs.org.au/s/202-TPV-and-SHEVS-Boat-Arrivals.pdf>>.

³⁵ *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* (Cth) sch 6 pt 1 cl 1, 7. The introduction and subsequent reintroduction of temporary protection visas in Australia has been highly controversial, resulting in debate and academic scholarship as to whether temporary protection visas are compatible with Australia’s obligations under the Convention Relating to the Status of Refugees and accompanying international human rights law instruments. See, for example, Mary Crock and Kate Bones, ‘Australian Exceptionalism: Temporary Protection and the Rights of Refugees’ (2015) 16(2) *Melbourne Journal of International Law* 522 and Mohammad Jaamae Hafeez-Baig, ‘Putting the ‘Protection’ in ‘Temporary Protection Visa’ (Pt 28) (2016) 2 *Bond Law Review* 115. For a succinct summary of the recent history of Australian immigration policy pertaining to asylum seekers who arrive by boat, see McAdam (n 8). Offshore processing has also been a highly controversial Australian policy. The Kaldor Centre on International Refugee Law state that this policy violates many of Australia’s obligations under international law: Madeline Gleeson and Natasha Yacoub, ‘Cruel, Costly and Ineffective: The Failure of Offshore Processing in Australia’ (Policy Brief No 11, Kaldor

Stateless persons within Australia's broader refugee cohort who have been previously fortunate enough to be allowed to apply for a temporary visa have spent the past decade living a life characterized by uncertainty; despite being recognized as refugees, they have been required to reapply for temporary protection every three to five years. The ability for stateless parents within this cohort to apply for citizenship for their Australian born children has therefore provided an essential life-line to permanency and protection in a context of an otherwise uncertain legal status, discussed further below.

In February 2023, a newly elected Australian Labor Government announced that it would seek to move TPV and SHEV holders onto permanent visas, offering essential security to many in Australia's refugee population, including eligible stateless persons also recognized as refugees.³⁶

The past decade has marked a particularly fraught and punitive chapter in Australia's treatment of refugees and people seeking asylum, including stateless people. While

Centre for International Refugee Law, August 2021) 11 <https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Policy_Brief_11_Offshore_Processing.pdf>. See also, See also, Ayşe Bala Akal, 'Third Country Processing Regimes and the Violation of the Principle of Non-Refoulement: A Case Study of Australia's Pacific Solution' (2023) 24(1) *Journal of International Migration and Integration* 231; David Cantor et al, 'Externalisation, Access to Territorial Asylum, and International Law (2022) 34(1) *International Journal of Refugee Law* 120; Madeline Gleeson, 'Protection deficit: The failure of Australia's offshore processing arrangements to guarantee protection elsewhere in the Pacific' (2019) 31(4) *International Journal of Refugee Law* 415.

³⁶ Susan Love, 'Resolving the Status of Temporary Protection Visa Holders: a Quick Guide', *Parliament of Australia* (Web Page, 16 May 2023) <https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/publications/rp/rp2223/Quick_Guides/ProtectionVisaHolders>.

the introduction of this permanent 'Resolution of Status Visa'³⁷ ('RoS visa') is a welcome development, many asylum seekers, including stateless persons, currently living in Australia remain ineligible to apply for *any* form of Australian visa (temporary or otherwise). They continue to live in Australia in a state of legal limbo on a 'transitory' basis and remain at risk of removal at any time, with little notice.³⁸ Any new arrivals of asylum seekers entering Australia by sea also remain ineligible for any form of visa in Australia.³⁹ The Australian Government has maintained its practice of turning boats back at sea, thus making it virtually impossible for asylum seekers to arrive in Australia by such means.⁴⁰ Asylum seekers, including minors continue to be sent to Australia's remote regional processing centres.⁴¹

³⁷ Subclass 851 Resolution of Status Visa see 'Subclass 851 Resolution of Status', *Australian Government, Department of Home Affairs, Immigration and Citizenship* (Web Page, 2023) <<https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/resolution-of-status-851>>.

³⁸ As of 22 May 2023, there were 1,152 people in Australia ineligible for any form of visa. Classified as 'transitory persons' under the *Migration Act* (n 33), these are refugees and asylum seekers who were initially transferred to a regional processing country (Nauru or PNG) then returned to Australia for a 'temporary purposes' such as medical treatment under s 198B of the *Migration Act*. Although the Australian government considers their stay in Australia temporary, majority in this cohort have now been in Australia for years with no clear indication they will be removed. An application for a visa is not considered a valid application under the *Migration Act* if it is made by a 'transitory person' who is in Australia and who is either an unlawful non-citizen or a person who holds a bridging visa, a temporary protection visa, or certain other prescribed temporary visas: s 46B(1). Further, if a transitory person, who has been present in Australia for a temporary purpose, no longer needs to be in Australia for that purpose, then the person must be removed from Australia as soon as reasonably practicable: s 198(1A).

³⁹ *Ibid* s 46A.

⁴⁰ Anthony Galloway, 'Albanese Government Turns Around its First Ssylum Seeker Boat', *The Sydney Morning Herald* (online, 24 May 2022) <<https://www.smh.com.au/politics/federal/albanese-government-turns-around-its-first-asylum-seeker-boat-20220524-p5ao2y.html>>.

⁴¹ Maddison Connaughton and Paul Farrell, Background Briefing, 'A Teenager is among the First Boat Arrivals sent to Nauru in Nine Years', *ABC News* (online, 27 Oct 2023) <<https://www.abc.net.au/news/2023-10-27/nauru-new-group-detained-processing-centre/103014910>>.

Children born in Australia to parents who arrived by boat after 13 August 2012 are generally defined as ‘unauthorised maritime arrivals’ under the *Migration Act 1958* (Cth) (*‘Migration Act’*).⁴² By virtue of this status, they are prohibited from applying for any form of visa in Australia unless the Minister for Immigration and Border Protection personally intervenes to allow them to make such an application, in which case, until recently, they have only be eligible for a TPV or SHEV.⁴³ Furthermore, as discussed above, Australian immigration law provides that those arriving on or after 19 July 2013 ‘must’ be removed to a regional processing centre (such as Nauru) as soon as is ‘practicable’, including shortly after birth.⁴⁴

The significance of securing Australian-born stateless children citizenship, in the context of a lack of visa category or permanent protection pathway for stateless people, and the precarious visa options – or lack thereof – under Australia’s refugee protection framework is therefore immense. For the children the Clinic assists, Australia is the only home they have ever known. Their legal status as ‘stateless’ (discussed above) means they have no country to ‘return’ to, having inherited no nationality from their parents.

Despite being classified as an ‘unauthorised maritime arrival’ at birth, stateless children can still preserve their right to apply for Australian citizenship under the *Citizenship Act*. Such an entitlement provides them with concrete rights to remain and

⁴² *Migration Act* (n 33) s 5AA(1A)(b).

⁴³ *Ibid* s 46A.

⁴⁴ *Ibid* s 198AD(2).

participate in the Australian community (therefore preventing their mandatory removal from Australia), far beyond the limited entitlements and protections they would receive under a temporary visa (TPV or SHEV) or a permanent visa (RoS visa).

III Origins of the Stateless Legal Clinic – Identifying the Legal Need

This section of the article will consider the establishment of the Stateless Legal Clinic. It will examine the context that preceded the author's identification of the need for a legal service dedicated exclusively to stateless children, through both legal practice and research.

(i) *Baby Ferouz*

The first stateless client I provided legal assistance to was a newborn baby of Rohingya ethnicity, known as 'Baby Ferouz.' Ferouz's parents had fled Myanmar and arrived in Australia by boat with his two older siblings in September 2013, shortly after the significant changes to the *Migration Act* discussed above. His mother Latifah was examined after their arrival on the tiny Australian territory of Christmas Island, where medics identified her as a high-risk pregnancy. Shortly after her transfer to Nauru, she was separated from her husband and children and flown to Australia for medical care in a Brisbane hospital.⁴⁵ Ferouz was born prematurely in November 2013 and

⁴⁵ Latifah's husband and children were later sent to Brisbane where they were placed in immigration detention for the duration of the birth of Ferouz and immediate aftermath. *Plaintiff B9/2014 v Minister for Immigration and Border Protection* [2014] FCAFC 178 [6]. Regarding health concerns during pregnancy see Joshua Robertson, 'Baby Ferouz, Born in Brisbane, Marks his First Birthday in Immigration Facility',

remained in hospital for some time. His mother was discharged to an immigration detention centre and only allowed to visit her new baby for a limited time at the hospital each day.⁴⁶ Upon discharge, Ferouz and his family were transferred to an immigration detention centre in Darwin and informed by the Australian Government that they would be removed to Nauru.⁴⁷

Working in partnership with the skilled legal team at the Refugee Immigration Legal Centre, my colleagues and I at law firm Maurice Blackburn launched strategic litigation challenging the classification of Ferouz as an “unauthorized maritime arrival” and therefore the Australian Government’s ability to remove him to Nauru.⁴⁸ We also lodged an application for citizenship on behalf of Ferouz under s 21(8) of the *Citizenship Act*, noting that such an entitlement provided an alternative legal avenue to prevent his removal to Nauru. Through the *Citizenship Act*, we were aiming to find a creative way to circumnavigate the recent legislative changes to the *Migration Act*

The Guardian (online, 12 Nov 2014) <<https://www.theguardian.com/australia-news/2014/nov/12/baby-ferouz-born-in-brisbane-marks-his-first-birthday-in-immigration-facility>>.

⁴⁶ ‘Baby Ferouz: Landmark Brisbane Court Hearing for Australian-born Babies in Detention Underway’, *ABC News* (online, 14 October 2014) <<https://www.abc.net.au/news/2014-10-14/landmark-case-about-assylum-seeker-baby-born-in-brisbane-goes-t/5811890>>; Joshua Robertson, ‘Australian-born Children of Asylum Seekers at Risk of Deportation under New Laws’, *The Guardian* (online, 14 October 2014) <<https://www.theguardian.com/australia-news/2014/oct/14/australian-born-children-asylum-seekers-risk-deportation-new-laws>>.

⁴⁷ Robertson, ‘Australian-born Children of Asylum Seekers at Risk of Deportation under New Laws’ (n 46).

⁴⁸ The matter of *Plaintiff B9/2014 v Minister for Immigration* [2014] FCCA 2348 turned on whether the Plaintiff was an “unauthorized maritime arrival” as defined in s5AA of the *Migration Act*. The plaintiff was unsuccessful in this matter and on appeal to the Federal Court of Australia in *Plaintiff B9/2014 v Minister for Immigration and Border Protection* [2014] FCAFC 178.

that prohibited families like that of Ferouz's from settling in Australia, and the policy framework upon which these provisions rested.

Ferouz's legal proceedings garnered national media attention and resulted in my colleagues and I being contacted by other parents of Australian-born children held in immigration detention also facing imminent removal to Nauru.⁴⁹ In turn, we represented over 100 families alongside Ferouz. Thirty-one of these families were identified as stateless, and as such, we ensured that applications for Australian citizenship were also lodged for these children.⁵⁰

Through this process, it became apparent that there were numerous stateless children in Australia's refugee cohort with a *prima facie* entitlement to Australian citizenship.⁵¹

Our interactions with these clients consistently indicated that stateless parents were unaware of their child's entitlement to apply for citizenship and faced significant difficulties navigating the application process without specialized legal support. Furthermore, while a handful of migration agents and community refugee legal centres were assisting children to apply for citizenship on an *ad hoc* basis, there was

⁴⁹ Katie Robertson, Opinion, 'It's Time to Dispel the Myths Surrounding Australia's Asylum Babies', *The Guardian* (online, 14 May 2014) <<https://www.theguardian.com/commentisfree/2014/may/14/its-time-to-dispel-the-myths-surrounding-australias-asylum-babies>>.

⁵⁰ Robertson, 'Australian-born Children of Asylum Seekers at Risk of Deportation under New Laws' (n 46).

⁵¹ For a broader discussion and examination of the challenges facing the stateless children born in Australia to refugee parents who arrived in Australia seeking asylum by boat, see Asher Hirsch, 'Children Born in Australia's Asylum System' (Statelessness Working Paper Series No 2017/06, Institute on Statelessness and Inclusion (ISI), December 2017) <https://files.institutesi.org/WP2017_06.pdf>.

no targeted legal service dedicated exclusively to this legal need, nor was there any specific legal funding for a service of this kind.

(ii) Preliminary Research Indicating Unmet Legal Need of Stateless Children in Australia

After several years of providing legal representation to stateless asylum seekers, my colleague Sarah Dale⁵² and I decided to investigate whether our vocational understanding of this unmet legal need was supported by research. In our resulting report 'A Place to Call Home', we identified three main findings discussed below.⁵³

a) Lack of Knowledge of Legal Rights

*'Our lawyer at RACS first told us about applying for citizenship for our two youngest children – we didn't know this was possible. Sometimes I wonder – if they hadn't told me about this process, how would I know? Applying for citizenship – even knowing it is a possibility – would be too hard for us to navigate without a lawyer.'*⁵⁴

- Amir, stateless Palestinian father of four

Research supported our observed experience that parents of stateless children were unlikely to know their child has a potential claim to Australian citizenship.⁵⁵ Stateless

⁵² Sarah Dale is the Centre Manager and Principal Solicitor at the Refugee Advice Casework Service: 'Our Leadership Team', *Refugee Advice & Casework Service (RACS)* (Web Page) <<https://www.racs.org.au/our-team>>.

⁵³ This research was conducted through the University of Melbourne (Ethics ID 1953655) and supported by a seed funding grant provided by the Stateless Hallmark Research Initiative through the Peter McMullin Centre on Statelessness.

⁵⁴ Robertson and Dale (n 8) 5.

⁵⁵ Ibid 14.

parents were usually informed of this entitlement when (or if) their lawyer protectively flagged it with them, often inadvertently in the course of receiving advice about their refugee and or immigration status.

Poor awareness of the entitlement to apply for citizenship within the stateless community was found to be complicated by a general lack of knowledge and expertise pertaining to statelessness in the Australian legal profession.⁵⁶ Furthermore, we identified a lack of targeted legal outreach within stateless communities regarding this entitlement and, more fundamentally, a lack of legal services to assist stateless children with these claims.⁵⁷

While some refugee legal aid service providers and practitioners had been assisting stateless children to go through this citizenship application process, this was on an *ad hoc* basis– based on the lawyer’s initiative and knowledge of this provision and complimentary to the person’s substantive temporary visa application. There was no targeted service for a dedicated program to assist these children or identify their location and actively educate them on their rights.

⁵⁶ Ibid 15.

⁵⁷ Ibid.

b) Difficulty in Accessing and Navigating the Citizenship Application

Process:

*'We would never have known about or been able to navigate the citizenship process without a lawyer. Accessing free legal advice has been essential for us.'*⁵⁸

- Muhammad and Sumaiya, stateless Rohingya parents to three children

In addition to the lack of awareness of their child's entitlement to apply for Australian citizenship, our research indicated that parents of stateless children experienced difficulties in navigating the complex and administratively burdensome application process without access to free, specialised legal support.⁵⁹

This was complicated by a lack of targeted legal funding for stateless children in Australia. Research indicated that applications for citizenship by stateless children with access to quality legal assistance were more progressed than those who did not.⁶⁰ Furthermore, significant barriers exist for non-English speaking applicants. Information regarding the application process, available on the Australian Department of Home Affairs website, is only available in English.⁶¹ The relevant application form is also only available in English and is lengthy; 27 pages in length

⁵⁸ Ibid 14.

⁵⁹ Ibid.

⁶⁰ Ibid 15.

⁶¹ See 'Become an Australian Citizen (by Conferral): Born in Australia and Are Stateless', *Department of Home Affairs* (Web Page, 17 March 2020) <<https://immi.homeaffairs.gov.au/citizenship/become-a-citizen/born-in-australia-stateless>>.

including 51 questions, the majority of which are not relevant to Australian born stateless children.⁶² Indeed, even where stateless children have a relatively straightforward claim to citizenship, they face an average wait time of 872 days for their application to be processed.⁶³

c) Lack of Data Concerning Australia's Stateless Population:

The final key issue identified in our research is more fundamental; the exact number of stateless persons in Australia — including children eligible to apply for citizenship — is unknown. This is due to a lack of a coordinated or consistent approach to recording such persons.⁶⁴ Underscoring this gap in comprehensive data regarding Australia's stateless population is the fact Australia does not have a procedure within its legislative framework to identify and protect stateless persons, an implicit requirement for effectively meeting obligations under the 1954 Convention identifying stateless people.⁶⁵

⁶² Ibid. See also *Form 1290: Application for Australian Citizenship* (Form, Department of Home Affairs, August 2021) <<https://immi.homeaffairs.gov.au/form-listing/forms/1290.pdf>>.

⁶³ Information obtained by the author in a response to a *Freedom of Information Act 1982* application, received 1 July 2020 (copy on hand with author).

⁶⁴ Michelle Foster, Jane McAdam and Davina Wadley, 'Part One: The Protection of Stateless Persons in Australian Law: The Rationale for the Statelessness Determination Procedure' (2016) 40(1) *Melbourne University Law Review* 401, 416. By the end of 2022 there were 8314 people identified as stateless in Australia, however, in absence of an SDP this figure is limited to stateless persons held in immigration detention and those self-identifying as stateless through the 'Onshore Humanitarian Visa' application process and is therefore 'not an estimate of statelessness in Australia': Statistics and Demographics Section, UNHCR, *Global Trends: Forced Displacement in 2022* (Report, June 2023) 'Annex Table 5 Persons under UNHCR's statelessness mandate 2022' <<https://www.unhcr.org/sites/default/files/2023-06/global-trends-report-2022.pdf>>.

⁶⁵ Foster, McAdam and Wadley, 'The Protection of Stateless Persons in Australian Law: The Rationale for the Statelessness Determination Procedure' (n 64) 421. As noted by the UNHCR: 'Whilst the 1954 Convention establishes the international legal definition of 'stateless person' and the standards of treatment to which such individuals are entitled, it does not prescribe any mechanism to identify

IV Targeted Responses to Address Unmet Legal Need – The Stateless Legal Clinic

The next section of this article will outline the key measures introduced to address the above issues identified, namely, the establishment of the Stateless Legal Clinic.

(i) *Stateless Legal Clinic – Establishment and Design*

In response to the observed experience in legal practice and subsequent research pertaining to the legal need of Australian-born stateless children discussed in Part II of this article, the Stateless Legal Clinic (initially known as the ‘Stateless Children Legal Clinic’) was established in 2021 at the Melbourne Law School. The Clinic operates as a partnership model between the Melbourne Law School Clinics, the Peter McMullin Centre on Statelessness, and the Refugee Advice Casework Service (RACS).⁶⁶ In 2023, the Clinic expanded to also partner with community legal service Refugee Legal.⁶⁷

The Clinic was initially run as a pilot internship program, which provided an ideal setting to test and develop the program’s curriculum and essentially ‘incubate’ the

stateless persons as such. Yet, it is implicit in the 1954 Convention that States must identify stateless persons within their jurisdictions so as to provide them appropriate treatment in order to comply with their Convention commitments’: UNCHR, ‘Handbook on the Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons’ (Handbook, 2014) 6 [8] <https://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/04/CH-UNHCR_Handbook-on-Protection-of-Stateless-Persons.pdf>.

⁶⁶ RACS operates their involvement in SLC through their Stateless Children Program: ‘Our legal services’, *Refugee Advice & Casework Service (RACS)* (Web Page) <<https://www.racs.org.au/legal-services>>.

⁶⁷ Refugee Legal partner with the Clinic on matters relating to stateless adults and RACS is focused on stateless children: *ibid*; ‘What We Do’, *Refugee Legal* (Web Page) <<https://refugeelegal.org.au/about-us-2/what-we-do/>>. The Stateless Legal Clinic also works collaboratively with a range of national community legal centres, including the ASRC and Circle Green.

concept for the clinical subject. Following a successful pilot period, the Clinic was offered as a JD clinical legal education elective subject in 2023.⁶⁸

The Clinic curriculum aims to provide students with a ‘legal apprenticeship’ that prepares them for the varied demands of professional legal work.⁶⁹

The subject comprises of three main learning components that mirror the curriculum proposed in the highly influential “Carnegie Report” published by the Carnegie Foundation for the Advancement of Teaching in 2007:⁷⁰

- Theory and doctrinal analysis: Statelessness Law (providing the basis of professional growth);⁷¹
- Practical: legal skill development, training and casework (leading to acting with responsibility for clients);⁷² and

⁶⁸ The SLC is deeply grateful for the generous support of the Cameron Foundation, which makes its work of supporting stateless adults and children in Australia possible. The model of the Stateless Legal Clinic builds upon other Clinic’s established at the Melbourne Law such as the Sustainability Business Clinic established by Dr Brad Jessup (see Brad Jessup and Claire Carroll, ‘The Sustainability Business Clinic – Australian Clinical Legal Education for a “New Environmentalism” and New Environmental Law’ (2017) *Environmental and Planning Law Journal* 36(4), 542) and the Disability Human Rights Clinic established by Anna Arstein-Kerslake (see Yvette Maker, Jana Offergeld and Anna Arstein-Kerslake, ‘Disability Human Rights Clinics as a Model for Teaching Participatory International Human Rights Lawyering’ (2018) 25(3) *International Journal of Clinical Legal Education* 23).

⁶⁹William M Sullivan et al, ‘Educating Lawyers: Preparation for the Profession of Law’ (Summary, The Carnegie Foundation for the Advancement of Teaching, 2007) 10 <http://archive.carnegiefoundation.org/publications/pdfs/elibrary/elibrary_pdf_632.pdf>.

⁷⁰ Ibid.

⁷¹ Ibid 9.

⁷² Ibid 10.

- Development of legal identity: Careers in statelessness and human rights law (exploration and assumptions of the identity, values and dispositions consonant with the fundamental purposes of the legal profession).⁷³

In order to better prepare students for the varied demands of professional work, the Carnegie Report identified that students need a dynamic curriculum that moves back and forth between understanding and enactment, experience and analysis.⁷⁴ The Stateless Legal Clinic aims to blend the above three pillars of the curriculum to provide a rich learning experience for students that prepares them for legal practice, while also serving members of the community and supporting community legal partners.

Each component of the subject's curriculum is discussed in more detail below.

a) Component 1 – Theory and Doctrinal Analysis: Statelessness Law

'Statelessness studies' is a relatively new and emerging discipline.⁷⁵ Publishing the first comprehensive analysis of the 'state of statelessness' in Australia in 2017, Michelle Foster, Jane McAdam and Davina Wadley noted that despite Australia's active role in the formulation of the relevant international legal treaties, and its early ratification of them, at the time of publication there was 'virtually no academic analysis or research on the extent, predicament or protection of statelessness in Australia.'⁷⁶

⁷³ Ibid 8–9.

⁷⁴ Ibid 8.

⁷⁵ Michelle Foster and Laura van Wass, 'Editorial' (2019) 1(1) *Statelessness & Citizenship Review* 1; David Baluarte, 'The Arrival of 'Statelessness Studies'' (2019) 1(1) *Statelessness & Citizenship Review* 156.

⁷⁶ Foster, McAdam and Wadley (n 64) 404.

Despite the 2014 observation by Mark Manly and Laura Van Wass that ‘there is enough activity to conclude that statelessness has “arrived” as a recognized focus of both academic and policy orientated study,’⁷⁷ the list of subjects and courses dedicated exclusively to teaching this topic at universities remains relatively sparse.⁷⁸ Academic work on this topic, however, has flourished over the past decade, with David Baluarte citing the ‘precipitous rise in scholarly work with practical and theoretical applications’ as signifying the ‘emergence’ of statelessness studies as a field.⁷⁹

Having identified a clear need for a legal service to assist Australian-born stateless children to apply for Australian citizenship, the next step was to consider course design, with a focus on theoretical content to compliment the subject’s emphasis on experiential learning. At the outset, I consulted with members of other academic programs currently, or previously offering subjects through which students provide(d) legal support to stateless persons, who generously shared invaluable general advice on establishing a new subject of this nature.⁸⁰

⁷⁷ Mark Manly and Laura Van Waas, ‘The State of Statelessness Research: A Human Rights Imperative’ (2014) 19(1–2) *Tilburg Law Review* 3, 4.

⁷⁸ There are several examples of stateless legal clinics around the world: Liverpool Law Clinic (UK), Baze Law Clinic (Nigeria), Stateless Clinic at Diego Portales University and Alberto Hurtado University (Chile), the Statelessness Legal Clinics (SLC) partnership project between three universities in Naples, Rome and Turin funded by UNHCR (Italy), mobile legal clinic at Catholic University of Mozambique (UNHCR partnership), United Stateless’ Clinic (in partnership with Towson University and Columbia School of International and Public Affairs) (USA), Human Rights and Migration law clinic at Ghent University (Belgium), and Legal Clinic at Pristina University “Hasan Pristina” (UNHCR partnership). I note that there are a number of programs that incorporate statelessness into a broader focus on (often) associated topics such as immigration as opposed to stand alone subjects focused exclusively on statelessness in JD curriculums.

⁷⁹ Baluarte (n 75).

⁸⁰ I wish to acknowledge and thank Judith Carther of the Liverpool Law Clinic at the University of Liverpool and Associate Professor David Baluarte of the Washington and Lee University School of Law

The doctrinal component of the course aims to provide students with an understanding of statelessness law internationally, regionally and domestically, drawing primarily on the expertise of members of the Peter McMullin Centre on Statelessness, as well as other scholars and external experts. The subject recognizes the interdisciplinary nature of 'statelessness studies,' heeding the caution of scholars such as Lindsey N Kingston that we must resist the temptation of viewing the issue as a solely legal one, as opposed to one intricately connected to broader political and social concerns.⁸¹

The course includes topics such as:⁸²

- The meaning of nationality in international law;
- The core international treaties relevant to statelessness;
- The right to nationality and deprivation of nationality;
- Childhood statelessness;

who both generously shared their time, expertise, learnings and insights with me regarding their respective involvement and leadership in the space of the respective stateless legal clinics they are / have been involved in. These consultations provided invaluable insights and guidance regarding the subject design in general, noting that the Australian context is unique and distinct, and as such, the Stateless Legal Clinic required unique considerations and design.

⁸¹ Lindsey N Kingston, 'Expanding Statelessness Scholarship: The Value of Interdisciplinary Research and Education' (2019) 1(1) *Statelessness & Citizenship Review* 165, 168. For examples of high quality interdisciplinary contributions to statelessness discourse, see 'Critical Statelessness Studies Blog', *Melbourne Law School* (Web Page) <<https://law.unimelb.edu.au/centres/statelessness/resources/critical-statelessness-studies-blog>>.

⁸² 'Stateless Legal Clinic (LAWS90259)', *The University of Melbourne* (Subject Handbook, 2023) <<https://handbook.unimelb.edu.au/2023/subjects/laws90259>>. I acknowledge and thank the contribution to this component of the course by Pro Michelle Foster and Prof John Tobin.

- The intersection between refugeehood and statelessness;
- The prevention of statelessness; and
- Statelessness in Australia.

The course also focuses on a range of case studies concerning statelessness or communities at risk of statelessness.⁸³ It encourages students to consider the settler colonial framework within which concepts of ‘citizenship,’ ‘nationality’ and ‘statelessness’ are considered, particularly within the historical context of Australia.⁸⁴ As noted by Maria Giannacopoulos, the form of legal scholarship, at least in relation to ‘refugee studies’ has remained largely silent on the role played by settler law in establishing and maintaining colonial ordering.⁸⁵ It is critically important this is actively challenged within the discipline of statelessness studies.

This component of the course aims to provide students with an advanced knowledge of statelessness law (international and domestic) in order to support students to develop the ability to apply relevant statelessness law to individual client situations.⁸⁶

⁸³ I acknowledge the contribution to this component of the course by my colleagues Andrea Immanuel, Sumedha Choudhury, Bongkot Napaumporn and Jade Roberts.

⁸⁴ I wish to acknowledge the contribution by my colleague Dr Jordana Silverstein to the course with her guest lecture ‘*Looking at Statelessness from Within Histories of Australian Settler Colonialism*’ and broader contribution to the field.

⁸⁵ Giannacopoulos, Maria, ‘Nomocide or the Nonperformativity of Colonial Law’ in Suzanne Little, Samid Suliman and Caroline Wake (eds), *Performance, Resistance and Refugees* (Routledge, 2023), 159 <<https://www.taylorfrancis.com/chapters/edit/10.4324/9781003142782-12/nomocide-nonperformativity-colonial-law-maria-giannacopoulos?context=ubx&refId=855fbeeef-22a8-4a82-80aa-0fe41c474185>>. See also Hage, Ghassan, *White Nation: Fantasies of White Supremacy in a Multicultural Society* (Taylor & Francis Group, 2000), 14–25, <<https://ebookcentral.proquest.com/lib/unimelb/detail.action?docID=652883>>.

⁸⁶ ‘Stateless Legal Clinic (LAWS90259)’ (n 82).

b) Component 2 – Practical: Legal Skill Development, Training and Casework

Traditionally, legal education has concentrated on the first component or ‘legal apprenticeship’ discussed above, related to theory and doctrinal analysis. Priority is placed almost exclusively on providing students with the intellectual training to learn the academic knowledge base deemed important to the profession.⁸⁷ This process of enabling students to “think like lawyers” has historically taken place through the medium of the Socratic case-dialogue method of teaching.⁸⁸ As observed in the Carnegie Report, this approach has resulted a ‘remarkably uniform’ legal pedagogy across law schools and a striking conformity in outlook and habits of thought among legal graduates.⁸⁹ In order to better prepare students for the varied demands of professional work, the report identified an ‘increasingly urgent’ need by law schools to bridge the gap between analytical knowledge and practical skills and experience.⁹⁰

Legal skills: Client-Centered Lawyering and Fostering Interpersonal Skills:

The Stateless Legal Clinic aims to bridge this gap by providing students with practical skill development including in the areas of client interview skills, working with

⁸⁷ William M Sullivan, ‘After Ten Years: The Carnegie Report and Contemporary Legal Education’ (2018) 14(2) *University of St. Thomas Law Journal* 331, 334.

⁸⁸ Sullivan et al (n 69) 5. See also Jamie R Abrams, ‘Reframing the Socratic Method’ (2015) 64 *Journal of Legal Education* 562, 563. As observed by Abrams, the Socratic method of teaching law persists universally in law schools: *ibid* 565.

⁸⁹ Sullivan et al (n 69) 6.

⁹⁰ *Ibid* 8.

interpreters, legal writing skills and file management.⁹¹ A particular emphasis is placed on ‘relational lawyering,’ a kind of lawyering that values a collaborative and mutually respectful relationship between the lawyer and client which recognizes the importance of good inter-personal skills.⁹² In teaching students the interpersonal skills essential to modelling what I refer to with students as ‘human lawyering,’ they are encouraged to adopt a ‘client-centred approach’ to all aspects of their legal skills development and client interactions. As noted by Binder, Bergman and Price, the client-centred approach involves more than a set of techniques; rather it requires a commitment to looking at problems from a student perspective and making clients true partners in the resolution of their problems.⁹³

In accordance with this ‘client-centred approach,’ students of the Stateless Legal Clinic are encouraged to connect with their clients on a ‘human level’ with the aim of making their client comfortable in the lawyer-client interview setting. For example, students

⁹¹ Michael R Pistone and John J Hoeffner argue that the system wide concentration on an extremely limited range of legal skills has assured what they identify as ‘mediocrity’ in legal education. See Michael R Pistone and John J Hoeffner, ‘No Path But One: Law School Survival in an Age of Disruptive Technology’ (Working Paper No 2014-1007, Villanova University School of Law, 2013) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2419451>. As noted by Brent E. Newton, law school courses should emphasise problem solving, risk management and strategic thinking, not just pedagogical “think like a lawyer” training: see Brent E Newton, ‘The Ninety-Five These: Systemic Reforms of American legal Education and Licensure’ (2012) 64(1) *South Caroline Law Review* 55.

⁹² Serena Stier, ‘Review: Reframing Legal Skills: Relational Lawyering’ (1992) 42(2) *Journal of Legal Education* 303. See Susan L Brooks and Robert Madden, ‘Relationship-Centered Lawyering: Social Science Theory for Transforming Legal Practice’ (2009) 78 *University of Puerto Rico Law Review* 1; Susan L Brooks, ‘Fostering Wholehearted Lawyers: Practical Guidance for Supporting Law Students’ Professional Identity Formation’ (2018) 14 *University of St. Thomas Law Journal* 412.

⁹³ David Binder, Paul Bergman and Susan Price, ‘Lawyers as Counselors: A Client-Centered Approach’ (1990) 35(1) 29. See also Anthony Alfieri, ‘Reconstructive Poverty Law Practice: learning Lessons of Client Narrative’ (1991) 100(7) *The Tale Law Journal* 2107 and Lucie E White, ‘Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G’ (1990) 38 *Buffalo Law Review* 1.

observe the Clinic supervisor beginning a client call by asking after the well-being of the client and her family and engaging in friendly conversation, with the aim of building trust and rapport with the client and making them comfortable in a manner that will greater facilitate the legal discussion that follows.

In addition to placing the client at ease, it is my observation that engaging in a social interaction of this nature has the dual benefit of also relaxing the student and helping to build their professional confidence. Students often approach the initial client interaction with a high degree of trepidation, stemming from a lack of both professional and personal experience in such a scenario. This is compounded by the fact law students traditionally come from what Fran Quigly describes as a 'disproportionately high level of economically-privileged or at least non-poor backgrounds.'⁹⁴ Faced with interacting with a stateless client of a typically vastly different socio-economic background and life experience to them, students in the Clinic are encouraged to engage in what Susan Brooks describes as the process of 'stretching and leaning into discomfort' and to view this as a normal and natural part of learning to become a lawyer.⁹⁵

Prior to engaging in this client interaction, students have often never spoken to a 'real' client in a legal setting, particularly in a way that demonstrates empathy.⁹⁶ Up until

⁹⁴ Fran Quigley, 'Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics' (1995) 2(37) *Clinical Law Review* 37, 45.

⁹⁵ Brooks (n 92) 427; Quigley (n 94).

⁹⁶ Empathy with a client, as defined by Stephan Ellman and others, starts with the expression of the lawyer's understanding of the client's expression of her problems and situation. See, for example,

this point, students have been confined to understanding legal clients through the prism of the case-dialogue method, in which the client's experience is confirmed to a set of 'facts' outlined in a text book.⁹⁷ In teaching students the interpersonal skills required to effectively interact with clients, the Clinic draws upon the work of Philip Lynch by recognizing the powerful role lawyers can play in client empowerment and the promotion of human dignity and respect.⁹⁸

Although challenging initially, students identify the experience of meeting and working with clients in the Stateless Legal Clinic as one of the best experiences of their law degree. As stated by one former student –

*'The highlight of my Clinic experience was definitely meeting the clients in person. Seeing the children whose claims for citizenship we are assisting with made me realise the tangible significance of the work being done by the Clinic. I found it to be a very energising experience, and one that I think will stay with me for a long time.'*⁹⁹

The value and importance of honouring the Lived-Experience of statelessness in subject design and implementation:

Stephan Ellman, 'Empathy and Approval' (1992) 43 *Hastings Law Journal* 991 (1992) and Ellman as cited by Quigley (n 94) 45.

⁹⁷ For a discussion on the features and limitations of the case-dialogue method, see Abrams (n 88) 45.

⁹⁸ Lynch, Philip, 'Human Rights Lawyering for People Experiencing Homelessness' (2004) 10(1) *Australian Journal of Human Rights* 4.

⁹⁹ Zahraa quoted in 'Stateless Legal Clinic', *Melbourne Law School* (Web Page) <<https://law.unimelb.edu.au/centres/statelessness/engage/stateless-children-legal-clinic>>. The author has collected data from former students about their experience in the Stateless Legal Clinic as part of her ongoing research into best practice models for addressing the legal needs of stateless communities through legal clinics.

Inherent to the respect with which students are encouraged to foster towards their clients in this subject is an understanding of the intrinsic value the client brings to broader issue of statelessness through their lived experience. Staff and students work closely with Stateless Legal Clinic Ambassador, Fadi Chalouhy, a stateless Australian based man on the curriculum development and implementation of the program.¹⁰⁰ Fadi's engagement in the Clinic is informed by his own experience of growing up stateless in Lebanon; an experience he lived but struggled to identify in the way conceptualized by international legal doctrine or academia.¹⁰¹

¹⁰⁰ Mawunyo Gbogbo, 'When no Country in the World Recognises You as a Citizen, Life is an Obstacle', *ABC News* (online, 4 October 2019) <<https://www.abc.net.au/news/2019-10-04/what-it-is-like-to-be-stateless/11566518>>.

¹⁰¹ Fadi also provides a guest lecture each Semester in the Stateless Legal Clinic where he shares his personal story of living stateless, and why students should feel motivated to engage in the Clinic and continue this work, should they choose to, in their future careers. In the words of Fadi: 'For 25 years my mother and I struggled to find answers or even understand what statelessness is, and how to fight it.' See *Stateless Legal Clinic website*. Fadi's experience is echoed by stateless person and founder of State Free Christiana Bukalo, who calls for efforts to close the knowledge gap between stateless people and research on statelessness. See Christiana Bukalo, 'Knowledge to Empower: Closing the Gap between Stateless People and Statelessness Research', *Critical Statelessness Studies Blog* (Blog Post, December 2020) <<https://law.unimelb.edu.au/centres/statelessness/resources/critical-statelessness-studies-blog/knowledge-to-empower-closing-the-gap-between-stateless-people-and-statelessness-research>> and Sumedha Choudhury and Thomas McGee, 'Stocktake of Critical Statelessness Studies to date (2020 - 2023): Renewing the Call for Innovative Contributions to the Field', *Critical Statelessness Studies Blog* (Blog Post, November 2023) <<https://law.unimelb.edu.au/centres/statelessness/resources/critical-statelessness-studies-blog/stocktake-of-critical-statelessness-studies-to-date-2020-2023-renewing-the-call-for-innovative-contributions-to-the-field>>. As noted by Jozefien Boone, existing scholarship on statelessness lacks representation of the people affected by statelessness: see Jozefien Boone, 'A Power Imbalance in Academic Scholarship on Statelessness: A Thematic Analysis of the Academic Literature on Statelessness from 2014 Onwards' (2023) 5(1) *Statelessness & Citizenship Review* 76. For a powerful contribution to scholarship on statelessness by an author directly impacted by the issue, see Lindsey N Kingston and Ekaterina E, 'Responding to Netflix's Stateless Series: Misrecognition and Missed Opportunities' (2023) 5(1) *Statelessness & Citizenship Review* 4.

The chance to meet with people directly impacted by statelessness, including Fadi and the families the Clinic works with, provides students with a powerful learning experience.

As stated by one former Clinic student –

*'Interning at the Stateless Children Legal Clinic has been an experience unparalleled with anything else in my three years at law school. The opportunity to engage first-hand with clients has equipped me with a wealth of practical legal skills, and provided me with humbling insights into the challenges faced by stateless persons in Australia.'*¹⁰²

The Clinic also prioritizes enrolment placements for students who themselves have lived experience of statelessness in their family, recognizing the potential they have to drive advocacy on this issue as future leaders. These students bring a wealth of insights to class discussions on the issue of statelessness beyond the confines of traditional academic pedagogy and speak proudly of the personal motivations they bring to assisting stateless families in the community.

As stated by 2023 Stateless Legal Clinic student Hanna –

*'Growing up, I have always been around the idea of statelessness – and the many implications that such a label entails... Applying for a position with the Stateless Legal Clinic has thus been deeply driven by my lived experiences and interests.'*¹⁰³

¹⁰² Claudia quoted in 'Stateless Legal Clinic' (n 99).

¹⁰³ Written comment from Hanna Amin to Katie Robertson, 14 November 2022.

In the words of another Stateless Legal Clinic student, Michael;

*'I have a unique understanding of statelessness as I am of Palestinian ethnicity – having understood the perils that arise from ethnic displacement from an early age. In addition to making my family proud, assisting people in accessing their basic rights would be an invaluable personal achievement and my first step of many in the field.'*¹⁰⁴

c) Component 3 – Development of Legal Identity: Careers in Statelessness and Human Rights Law

The Carnegie Report identified the failure by law schools to complement the focus on the skills of legal analysis with the effective support for developing students' ethical and social skills.¹⁰⁵ Law school provides the beginning of students' professional competence and identity.¹⁰⁶ Underpinning the focus on legal 'skill' developed by students in the Stateless Legal Clinic (discussed above) is an ongoing reflection on the 'values' the students identify with in terms of best practice lawyering. As noted by Bobette Wolski, in order to develop skills, students must be committed to certain values; they must possess certain qualities and they must demonstrate certain attitudes.¹⁰⁷

¹⁰⁴ Written comment from Michael Carim Armanios to Katie Robertson, 14 November 2022.

¹⁰⁵ Sullivan et al (n 69) 6.

¹⁰⁶ Ibid 8.

¹⁰⁷ Bobette Wolski, *Skills, Ethics and Values for Legal Practice* (Thomson Reuters Professional Australia Pty Ltd, 2nd ed, 2009) 15. See also Brooks (n 92) 420.

The Stateless Legal Clinic curriculum focuses on developing and supporting students' 'professional identity' formation.¹⁰⁸ It further aims to provide students with an enhanced capacity to utilize the personal attributes and ethical awareness needed to provide legal assistance to stateless people in the Australian community.¹⁰⁹

As noted by Susan L. Brooks, experiential courses, such as clinics, offer important opportunities for professional identity development.¹¹⁰ Traditionally, legal education has not encouraged students to actively consider their professional identity; rather, there has been an assumption that this is something that develops 'organically' once they graduate and enter the profession.¹¹¹ Scholars such as Field, Duffy and Huggins argue that it is important, however, for this process to begin in law school as it enhances the overall learning process and better supports student psychological well-being, rendering them 'fit' for law school and their future careers.¹¹²

¹⁰⁸ As noted by Field, Duffy and Huggins, the notion of a professional identity can be 'tricky' to define specifically and involves a complex combination of the values we hold, the expectations that we have of ourselves and behaviours we adopt to meet those expectations when we think about ourselves as a professional person in our chosen work context. See Rachel Field, James Duffy and Anna Huggins, *Lawyering and Professional Identities* (Lexis Nexis, 2nd Ed, 2020) 8.

¹⁰⁹ 'Stateless Legal Clinic (LAWS90259)' (n 86).

¹¹⁰ Brooks (n 92) 420–1.

¹¹¹ Rachel Field, James Duffy and Anna Huggins (n 108) 9.

¹¹² *Ibid* 15. Susan L Brooks has observed that the study and practice of law holds itself out as value-neutral, 'a characterization that is both false and hazardous to the health and well-being of law students within a legal education setting that 'too often' undermines self-esteem and wellbeing: Brooks (n 92) 417.

The Stateless Legal Clinic focuses on equipping students to understand the importance of prioritizing their wellbeing and managing vicarious trauma to assist them in both the Clinic environment and their future legal careers.¹¹³

The high rates of stress and anxiety experienced by members of the legal profession are well documented.¹¹⁴ A 2019 report by the Victorian Legal Services Board found that overall, psychological distress was experienced widely across the legal profession, with rates of depression appearing to be particularly high among law students as well as solicitors and barristers.¹¹⁵ Significantly but perhaps not surprisingly, the Report found that the culture of overwork and stress driving the findings of psychological distress in the profession begin in law school.¹¹⁶ A recurring theme in respondent's reflections on wellbeing in the legal profession was that they had not been trained in the interpersonal and personal coping skills they would need to manage relationships with clients and exposure to vicarious trauma.¹¹⁷

¹¹³ Deeya Haldar and Sarah Katz, 'Preventing Vicarious Trauma and Encouraging Self-Care in Clinical Legal Teaching' in Matthew Atkinson and Ben Livings (eds), *Contemporary Challenges in Clinical Legal Education: Role, Function and Future Directions* (Routledge, 2023) 87, 87–8.

¹¹⁴ See, for example, IBA Presidential Task Force on mental wellbeing in the legal profession, 'Mental Wellbeing in the Legal Profession: A Global Study' (Report, International Bar Association, October 2021) <<https://www.ibanet.org/document?id=IBA-report-Mental-Wellbeing-in-the-Legal-Profession-A-Global-Study>>; 'Australia & New Zealand Wellness Survey', (Report, Meritas, 2019) <<https://www.swaab.com.au/assets/download/Meritas-Wellness-Survey-Report.pdf>>; Janet Chan, Suzanne Poynton and Jasmine Bruce, 'Lawyering Stress and Work Culture: An Australian Study' (2014) 37(3) *UNSW Law Journal* 1062.

¹¹⁵ Michelle Brady, 'VLSB+C Lawyer Wellbeing Project: Report on legal professionals' reflections on wellbeing in the legal profession and suggestions for future reforms' (Report, Victorian Legal Services Board & Commissioner, 2020) 6 <<https://lsbc.vic.gov.au/sites/default/files/2020-07/Lawyer%20Wellbeing%20report.pdf>>.

¹¹⁶ *Ibid* 9.

¹¹⁷ *Ibid* 2.

The Stateless Legal Clinic provides students with specific resources and educational material to support their work in the Clinic and equip them with a greater understanding of the importance of managing vicarious trauma and prioritising their wellbeing in their studies and future careers. This includes a specific seminar delivered by an accredited mental health professional with expertise working with legal professionals, and regular and consistent debriefing sessions with students.¹¹⁸

The Clinic aims to recognize that as clinical legal educators, we have a unique and valuable opportunity to help change the culture of stress, anxiety and depression in the legal profession, by training students in the importance of wellbeing at the outset of their careers.

Learning through Reflection:

The Stateless Legal Clinic subject is, at its essence, a Clinical Legal Education (CLE) subject, designed to develop students' capacity to engage in legal practice in this area and build their skills through the process of experiential learning.¹¹⁹

¹¹⁸ Robyn Bradey is a Mental Health Accredited Social Worker who specialises in working with the legal profession on trauma informed practice. See Robyn Bradey, *The Resilient Lawyer: A Manual for Staying Well @ Work* (Manual, Queensland Law Society, 2014) <<https://www.qls.com.au/getattachment/c198ec41-5b0b-4702-b236-625231d3b772/booklet-the-resilient-lawyer.pdf>>.

¹¹⁹ The definition of CLE is not settled. As Adrian Evans and his colleagues note, in the Australian context, the concept generally refers to experiential learning that places students in the role of 'lawyers' representing clients with legal problems in a law school setting. Through CLE, law students are confronted with the realities, complexities and demands of legal practice and in doing so, are provided with powerful 'real-life' reference points for learning the law. See Adrian Evans et al, 'Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School', Australian National University, 2016) 41 <<https://library.oapen.org/bitstream/handle/20.500.12657/31597/626828.pdf?sequence=1&isAllowed=y>>.

The pedagogy of CLE consists of reflection, self-critique and supervisory feedback through which students 'learn how to learn.'¹²⁰ Reflection is widely regarded as one of the most important elements of CLE,¹²¹ with Georgina Ledvinka referring to it as 'the magic ingredient which converts legal experiences into education.'¹²²

Reflective practice is embedded into the teaching model for the Stateless Legal Clinic, and is implemented through debriefing, reflective journaling exercises, workshops and individual and group exercises. Reflective practice allows students become more aware of their own thoughts, feelings and reactions with the aim of making more intentional choices and help shape and develop their professional development and identity.¹²³ The Clinic also encourages students to consider each other as colleagues, and in doing so foster a class culture of collaboration, rather than competition.¹²⁴ The smaller class size allows for a seminar model that fosters dialogue between the students and teacher in a way aimed to empower law students to actively participate in class discussion and reflection exercises, including students who may not have the confidence to contribute as fully in a traditional lecture setting.¹²⁵

¹²⁰ Australian clinical legal education models and definitions see *ibid*. See also Roy Stuckey and others, *Best Practice for Legal Education: A Vision and a Road Map* (Report, Clinical Legal Education Association, 2007) <https://www.cleaweb.org/Resources/Documents/best_practices-full.pdf>.

¹²¹ Evans et al (n 119) 153.

¹²² Georgina Ledvinka, 'Reflection and assessment in clinical legal education: Do you see what I see?' (2006) 9 *International Journal of Clinical Legal Education* 29, 29–30.

¹²³ Brooks (n 92) 427.

¹²⁴ See Jenny Morgan, 'The Socratic Method: Silencing Cooperation' (1989) 1(2) *Legal Education Review* 151, 159.

¹²⁵ As noted by Jenny Morgan (n 124), critics of the traditionally Socratic method of teaching have commented on its ability to subordinate students. See *ibid*; Jennifer L Rosato, 'The Socratic Method and Women Law Students: Humanize, Don't Feminize' (1997) 64(4) *California Law Review* 562.

Career Exploration:

Students are further supported to develop their 'professional identity' through meeting with, and learning from, lawyers practicing in the fields of statelessness and human rights law. Time is allocated throughout the course for lawyers, advocates and experts working in the field of statelessness to meet with the students and share their career journeys.

Speakers also talk candidly with students about their tips for working in the field as well as managing the challenges of working in the legal profession. This component of the course allows students to understand the practical steps towards a career in this field. It also provides students with valuable relationships with professionals and associated networking opportunities. Significantly, it allows students to understand and probe the values that respective guest speakers carry, with a view to understanding how they may seek to adopt certain attributes to inform their professional identity.

V Conclusion

The Stateless Legal Clinic provides an innovative example of how clinical legal education subjects can provide critical legal assistance to groups within the Australian community otherwise overlooked by the law. It also seeks to make a unique contribution to the emerging field of 'statelessness studies' through the prism of experiential learning, whereby students' doctrinal understandings of statelessness

law are greatly enhanced by the ability to develop practical legal skills through the provision of legal assistance to real clients.