

## DESIGNING AND IMPLEMENTING AN ENHANCED CLINICAL PROGRAM IN THE AGE OF DISRUPTION. PART ONE: THE ENVIRONMENT FOR CLINIC

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Clinical legal education (CLE) has become a transnational project with a borderless community of expertise and support. No contemporary discussion of the globalisation of legal education and training is complete without



appropriate reference to CLE.<sup>2</sup> The annual conference of the *International Journal of Clinical Legal Education* in different corners of the globe is a testament to CLE's evolved global state and reach. Far from being a niche area of legal education and law school activity, on a grander scale CLE forms part of the ecosystem of socio-economic justice and broader access to justice under the rule of law, in ways explored in this article.

Accordingly, this two-part article takes as a starting point the inherent value of CLE, existence of a global community of CLE practice, and extensive body of pedagogical

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<sup>2</sup> E.g. W. van Caenegem and M. Hiscock (Eds), *The Internationalisation of Legal Education: The Future Practice of Law*, 2014 (Edward Elgar, Cheltenham UK and Northampton MA, USA).

and other scholarship about CLE by individual lawyers across all arms of the legal profession. It addresses from an Australian decanal perspective some of the less extensively explored aspects of CLE beyond its pedagogy, practice, and range, through the lens of contemporary law school environments under pressure from numerous disruptive forces confronting the university, legal services, and community legal sectors.

This article begins by locating CLE in law schools within the evolving societal and regulatory contexts for access to justice, before moving to a particular institutional example of how to expand and otherwise enhance a CLE program – the ‘Clinical Guarantee’ offered by the Faculty of Law at Monash university. It ends by connecting that earlier discussion to broader questions about the involvement of law schools and CLE in contemporary lawyering, democracy, and social justice.

In doing so, this article joins others in this collection in honouring Emeritus Professor Adrian Evans, based upon the Festschrift celebrating his work and contribution to the international CLE community at the 2018 Melbourne conference for the *International Journal of Clinical Legal Education*. At that conference, I was honoured to make public the news that Monash University had conferred the title of emeritus professor upon Professor Evans, to take effect upon his formal retirement at the end of 2018. Emeritus Professor Evans thereby becomes the first emeritus professor from and associated with the clinical program at Monash University’s Faculty of Law. His outstanding contributions over his career to international scholarship on legal ethics, clinical legal

education, and contemporary lawyering<sup>3</sup> are matched only by his equally outstanding service, collegiality, mentoring, and care for his colleagues, students, and CLE community colleagues.

#### **Access to Justice and CLE<sup>4</sup>**

Access to justice is a fundamental political and legal issue in both developed and developing countries. It is co-existent with concerns for human rights, requirements of effective legal and judicial systems, conditions for the rule of law, and evolving features of democracy, in ways explored further below. Arguably, the societal need to ensure adequate access to justice has never been more acute, given the current global inability to organise effective collective action or even litigation to address the emergency of climate change, with ripple effects for battles over water rights, modern slavery, political destabilisation, corporate inaction and abuse of power, migratory movements, and burgeoning refugee numbers. To that extent, access to justice is also connected to one or more of the world's Sustainable Development Goals (SDGs).

The local and transnational significance of access to justice in countries that say they subscribe to the rule of law is captured in a speech by (former) Chief Justice Marilyn Warren from the Supreme Court of Victoria, as follows:<sup>5</sup>

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<sup>3</sup> E.g. A. Evans, *The Good Lawyer: A Student Guide to Law and Ethics*, Cambridge University Press, Melbourne.

<sup>4</sup> Parts of this section use and amplify material first presented by the author at the annual Council of Australasian Tribunals (COAT) Conference in 2016.

<sup>5</sup> Chief Justice Marilyn Warren, 'The Access to Justice Imperative: Rights, Rationalisation or Resolution?', Eleventh Fiat Justitia Lecture, Monash University Law Chambers, 25 March 2014, at p 4.

A recent international report on access to justice noted that in OECD countries ‘for many today the law is not accessible, save for large corporations and desperate people at the low end of the income scale charged with serious criminal offences’. In other words, only the very rich and the very poor can readily access representation in the courts.

In short, if you find yourself needing to engage with a court or tribunal, you cannot afford a lawyer, and you do not qualify for publicly funded legal aid (which is never able to cover every legal need and is more thinly spread than ever), presently your remaining options are largely confined to seeking assistance from a community legal centre (CLC) or law school-supported legal clinic, or doing it yourself – hence the growing significance of the topic of self-represented litigants. Yet access to justice is imperfectly realised at best and a meaningless mantra at worst if justice is not really accessible to most people because they are neither corporations who can afford it nor criminal defendants in a trial.

CLE provides a clear pathway towards enhanced access to justice. In *The Good Lawyer*, Professor Evans defines and personalises CLE and its fostering of lawyerly values for law students in the following way:<sup>6</sup>

(Y)our own emotional intelligence, client sensitivity, understanding of how the law works in practice, ethical judgment, and, through a *real* personal experience

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<sup>6</sup> Adrian Evans, *The Good Lawyer*, 2014, Cambridge University Press, Melbourne, at p 12; original emphasis.

of social inequality, a sense of compassion for victims of injustice [are] qualities [that] are developed by best practice clinical legal education (CLE) – a form of work-integrated learning (WIL, also known as ‘service learning’ or ‘learning by doing’) that puts law students in a position of responsibility for real clients who are facing immediate and demanding legal problems. CLE has been endorsed by the Council of Australian Law Deans (CALD) and *Best Practices for CLE* have been identified for law schools that offer such programs.

CLE is now much more than just an aspect of university education for aspiring lawyers. It has systemic, professional, collaborative, and community significance too. Key recommendations from the Australian Productivity Commission Report, *Access to Justice Arrangements* (‘A2J’), are illustrative of this multi-dimensional significance of CLE. Recommendation 7.1 says:<sup>7</sup>

The Law, Crime and Community Safety Council [i.e. the successor to the Standing Committee of Attorneys-General], in consultation with universities and the professions, should conduct a systematic review of the current status of the three stages of legal education (university, practical legal training and continuing professional development). The review should commence in 2015 and consider the:

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<sup>7</sup> Australian Productivity Commission, *Access to Justice Arrangements: Productivity Commission Inquiry Report* (Report, Volume 1 No. 72, 5 September 2014) 46.

- appropriate role of, and overall balance between, each of the three stages of legal education and training
- ongoing need for each of the core areas of knowledge in law degrees, as currently specified in the 11 Academic Requirements for Admission, and their relevance to legal practice
- best way to incorporate the full range of legal dispute resolution options, including non-adversarial and non-court options, and the ability to match the most appropriate resolution option to the dispute type and characteristics into one (or more) of the stages of legal education
- relative merits of *increased clinical legal education* at the university or practical training stages of education
- regulatory oversight for each stage, including the nature of tasks that could appropriately be conducted by individuals who have completed each stage of education, and any potential to consolidate roles in regulating admission, practising certificates and continuing professional development. Consideration should be given to the Western Australian and Victorian models in this regard.

The Law, Crime and Community Safety Council should consider the recommendations of the review in time to enable implementation of outcomes by the commencement of the 2017 academic year. (emphasis added)

First, these sadly neglected recommendations rightly call attention to the need for both taking stock and developing a more nuanced view of what range and level of legal education and training should occur at each of its three discrete stages of university career, practical legal training (PLT), and continuing professional development (CPD). Secondly, all of CLE, ADR, and related work-situated education and training are together mainstreamed as core components of legal education and training for each of those three phases of legal education and training, as a joint or collective responsibility for the various arms of the legal profession at different points in a qualified lawyer's lifelong learning and career.

Thirdly, the significance of CLE as one prong of such a review is reinforced by the mainstreaming of CLE within standard legal education at university and its heightened relevance for law school accreditation, law school competitive positioning, law student and university expectations, law student employment prospects, and employer and community expectations of job-ready law graduates. Fourthly, these recommendations crystallise the relevance of a large group of equal stakeholders – government, courts, law schools, the legal profession, the legal aid community, CLCs, and accrediting and funding bodies – in forming a key constituency and network for improving how legal education and training advances the community's growing access to justice needs. In that enterprise, such a multi-constituent community also plays important professional, institutional, and societal roles that connect CLE to access to justice, contemporary democracy, and the rule of law.

Finally, such recommendations go to the heart of what law schools can do in making CLE part of the university student experience, through initiatives such as CLCs as well as partnerships with courts and tribunals that also serve the wider public interest in enhanced access to justice. Commencing from 2018 onwards, the Monash Faculty of Law has started implementing a 'Clinical Guarantee', whose origin and implementation are outlined further below.

We have also opened a CBD clinic for the first time in our Faculty's proud history of CLE, and 'Monash Law Clinics' – our new clinical identity – now operate in suburban, CBD, and overseas locations. Our range of clinics has expanded beyond criminal law, family law, and general practice, to embrace international trade law, corporate governance and social responsibility, modern slavery, family violence, small business, public commissions and inquiries, and death penalty cases in the Asia-Pacific region, with further areas of coverage and expansion planned in successive phases of implementation.

### **'Think Globally, Act Locally' – The Monash Law Experience**

The world-class law school that I have the privilege to lead pioneered CLE in Australian university legal education almost 50 years ago, and aims to continue leading the way in CLE training, research, and innovation. Ours was the first law school in Australia to have a clinical program and clinic-based experiential legal



education.<sup>8</sup> As described by Professor Jeff Giddings in his landmark text on CLE (long before he joined our law school as a staff member), the Monash Law Faculty established a model since followed by other Australian law schools that combines four key ingredients – law school involvement in CLE, through ‘a live-client clinic’, located in ‘a community legal aid setting’, and drawing upon ‘a mixture of funding sources’.

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The Monash Law Faculty now pursues its involvement in CLE by funding and staffing three CLCs<sup>10</sup> with extensive CLE programs,<sup>11</sup> providing work-situated student placements with courts and other organisations,<sup>12</sup> modelling relationships between courts and lawyers in delivering access to justice for local communities,<sup>13</sup> spreading

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<sup>8</sup> J. Giddings, *Promoting Justice Through Clinical Legal Education*, 2013 (Justice Press, Melbourne), at p 163.

<sup>9</sup> J. Giddings, *Promoting Justice Through Clinical Legal Education*, 2013 (Justice Press, Melbourne), at p 163.

<sup>10</sup> Monash Law Clinics @ Clayton (formerly Monash Oakleigh Legal Service (MOLS)), Monash Law Clinics @ Melbourne CBD, and Springvale Monash Legal Service (SMLS) – the first two wholly funded and managed by the Faculty of Law, with some Australian Government and Victorian legal aid funding support.

<sup>11</sup> LLB students and JD students who meet eligibility requirements can do an elective clinical unit of one kind and duration or another, for course credit.

<sup>12</sup> More than 300 Monash law students each year benefit from a variety of work-situated experiences in legal clinics, internships, and externships that are organised by the Monash Law Faculty and its centres with community legal centres, law firms, courts, other legal organisations, and NGOs in Australia, Asia, Europe, and North America.

<sup>13</sup> Although well-developed in the USA, student appearance regimes are still relatively novel developments elsewhere. The long-term development of relationships and trust between local courts, local lawyers, and the Monash Faculty of Law’s community legal clinics has reached the point where local courts by leave permit students to represent needy clients in court under the supervision of a qualified legal practitioner. In practice, very few requests for such leave to appear are refused by judicial officers. Many alumni and local lawyers who are familiar with this system offer to provide such supervision in court to enable this form of in-court student involvement in facilitating access to justice for people who cannot afford it and do not receive any legal aid.

the lessons of CLE to international audiences,<sup>14</sup> and facilitating communities of practice for academic scholarship and expertise devoted to CLE.<sup>15</sup>

As an organisation with collective responsibility for thousands of clients and their families who cannot afford a lawyer and who do not qualify for free public legal aid, and with a significant stake in three of Victoria's active community legal clinic sites of operation, the Monash Law Faculty is also a major stakeholder in access to justice and governmental, professional, and community debates about it. Accordingly, the Faculty made a submission to the Victorian Government's 2016 *Access to Justice Review* and participated in follow-up governmental discussions aimed at implementing its recommendations, together with CLCs and other stakeholders. It is another illustration of what CLE-engaged law schools contribute as participants in a broader ecosystem of legal and policy reform in a fair and just society.

### **Strategic and Resourcing Implications of 'The Clinical Guarantee'**

In 2017, the Faculty made a public commitment to have a 'Clinical Guarantee' for its law students. The journey towards this public commitment is instructive. It was

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<sup>14</sup> Two-way international exchanges of clinical legal training and expertise are provided through a variety of means in the Monash Law Faculty's CLE program. A Visiting Clinical Scholar scheme funded by the Susan Campbell Memorial Fund provides for a period of residence with the community legal centres for an international expert in clinical legal training and scholarship. In addition, the model of CLE pioneered at Monash Law has recently been the subject of site visits and exchanges involving judges, legal practitioners, legal academics, and law students from countries such as Vietnam and Indonesia. The lessons of the Family Law Assistance Program (FLAP) are being shared with local courts, lawyers, law schools, and communities in Indonesia through a publicly funded research project in partnership with other organisations.

<sup>15</sup> For example, see the various contributions to CLE training and scholarship by the Monash Law Faculty outlined in: Jeff Giddings, *Promoting Justice Through Clinical Legal Education*, 2013, Justice Press, Melbourne.

neither accidental nor easy. Under the Clinical Guarantee, all commencing undergraduate law and JD students from 2018 onwards who want and qualify for it have the opportunity of at least one clinical experience during their law degree for course credit. It gives them real-life work experience and inculcates an ethic of service and professionalism, while doing something that also contributes to access for justice for those most in need of it. So, a natural starting point for this discussion is the strategic significance of embedding CLE in a law school's DNA and at scale.

Many clinical legal academics and practitioners across the globe operate with scant resources and support, toiling largely alone with the help of a few like-minded academic colleagues and local lawyers if they are fortunate. While passionate about the value of CLE, their particular clinic(s), and the importance for their students and community clients, they often operate with less than fulsome understanding, recognition, and support from their other academic colleagues and institutions. The dividing line between clinical legal academics and other legal academics reflects deeper gulfs in orientation, experience, and valuing between legal theory, substantive law, and legal practice.

How do a law school and its management and staff bridge this divide, if it is a reality to any extent for their constituency? More significantly, how is CLE embedded in a law school's DNA and at scale from an institutional and strategic perspective? Every dean at every law school anywhere in the world with a CLE program could offer something of value about the numerous paths available and the issues to be navigated

on that journey. Some of those lessons will be bespoke to a particular law school in question, and others will need sorting as different species of the same genus, given the various permutations of legal clinics that are possible. Still, some broader patterns and common themes are discernible.

Documenting and analysing such things from the reflective standpoint of those charged with the care of a law school and its experiential education is just as valid and necessary an object of legal scholarship as anything else,<sup>16</sup> although it is not as voluminous as other aspects of CLE and broader legal scholarship. To that extent, this article also seeks to fill a gap in the literature.

#### *First Big Step – Strategic Alignment and Positioning*

The first big step in developing and launching something as ambitious and extensive as Monash Law's Clinical Guarantee lies in strategic alignment with institutional values and history, strategic priorities, and competitive differentiation from other law schools. Like many law schools, ours has a long-standing commitment to social justice, community lawyering, and access to justice more broadly. As a law school founded from the outset to be innovative and different from more traditional counterparts, engagement with CLE became an important way of translating those values into reality.

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<sup>16</sup> Eg M. Coper, 'My Top Ten Tips for Good Deaning' (2012) 62:1 *Journal of Legal Education* 70; and M. M. Barry et al, 'Exploring the Meaning of Experiential Deaning' (2018) 67:3 *Journal of Legal Education* 660.

Our publicly declared ambition as a law school is to have the leading blend of international, clinical, and technological expertise for our educational and research audiences in Australia's near region. Victoria is a full legal education market, with eight accredited law schools, not all of which offer both an LLB and a JD as equal pathways to admission as a legal practitioner, and none of which have anything approaching the scale and resourcing commitment of the Clinical Guarantee, as a differentiating feature in the increasingly competitive world of attracting the best students from all backgrounds and destinations. In short, CLE and the Clinical Guarantee are a good fit for our past history, present circumstances, and future trajectory.

*Second Big Step – Resourcing and Implementation*

The second big step is to plan and resource such a large-scale clinical commitment. Everyone knows that the best laid plans can come unstuck if their implementation and resourcing are not adequate. For something as strategically significant and resource-intensive as the Clinical Guarantee, with a need to bring both faculty and university stakeholders on board, and without sufficient business development capability in-house, we developed a brief for and with external consultants on the business case assessment for the Clinical Guarantee, with a multi-year projection, phased implementation, and return on investment. Most importantly, especially in convincing academic sceptics and building cross-institutional consensus internally, we had strong support and guidance from our alumni and the representatives of

various arms of the legal profession on our External Professional Advisory Committee.

### Strategic Business Case to Convince All Stakeholders

In terms of normal institutional politics, the strategic business case was an important step in socialising such an ambitious and resource-intensive proposal at both university and faculty levels, including within the internal clinical community. The business case rests upon a mixed funding model, with contributions from each of the annual operating budget (funded largely by student teaching income), a dedicated philanthropic and alumni campaign as part of a broader university-level fundraising campaign, and retained strategic investment funds based upon annual surpluses from exceeding university-set budget targets, in addition to pre-existing annual governmental funding for clinical programs providing access to justice. Such a mix of funding is essential in an national tertiary sector environment that lacks widespread institutional endowments and a culture of alumni philanthropy (as in the USA), and without recourse to other regulated funding mechanisms, such as access on public interest grounds to interest accrued on funds held in trust for clients by their law firms.

### Institutional and Other Funding

At the same time, no institution could move quickly or easily from not having a CLE program to having something like the Clinical Guarantee, at least not without a dedicated multi-million-dollar bequest or donation to that effect anyway. Long before

our law school entertained the idea of the Clinical Guarantee, we already made regular multi-million-dollar commitments annually to prioritising and resourcing our existing CLE program, and to supporting our involvement in more than one CLC. A natural result of our involvement in more than one CLC, and our status within Victoria and Australia as a leading 'player' in delivering access to justice to thousands of people who are most in need of it, is a recent move towards one Monash law identifier (or 'brand') for our clinical efforts across various locations and with multiple partners.

Other important sources of pre-existing institutional funding support come from individuals and foundations in philanthropic donations, a dedicated faculty fund whose interest supports small annual bids from each of our CLCs in rotation, and the publicly supported Sue Campbell Fund.<sup>17</sup> The latter honours the memory of one of the pioneers of our CLE program and facilitates visiting CLE experts from overseas and an annual oration in her memory that brings together the local clinical community – another aspect of our broader leadership role in this field as a leading clinically-orientated law school.

Every single alumni I meet who went through our CLE program almost always says that it was the most valuable experience of their university legal education, not least in making law real and come alive for them, and often in stimulating life-changing

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<sup>17</sup> The late Sue Campbell was one of the pioneers of Monash Law's clinical program: see Richard Fox and Adrian Evans, 'Clinical in legal teaching to get justice', *The Age* (Melbourne, 18 April 2011) 12.

career choices because of their clinical experience. Still, most of those alumni went through law school when student numbers were smaller and anyone suitable who wanted a clinical option got one. Those alumni are taken aback when I report that we are not able to provide the same life-changing clinical experience for all suitable current students based just upon governmental and university funding, and without their philanthropic and in-kind support.

### Leadership and Recruitment

Another key component of resourcing CLE generally and the Clinical Guarantee in particular from a decanal perspective is the attraction and retention of appropriately skilled staff and partners. Resourcing and replenishing leadership in the clinical space is just as significant as other faculty recruitment and leadership capacity-building. In terms of Faculty governance and resourcing, the clinical program straddles functional and enabling portfolios servicing education, research, academic resourcing, engagement, and finance. So, academic and professional leadership is critical in ensuring the clinical program's success. In this context, as deans come and go, it is important in gaining traction to have broad university support for CLE as the exemplar of WIL in law, so that CLE initiatives are maintained throughout successive deanships.

In the lead-up to developing the Clinical Guarantee, the Faculty introduced new clinical leadership by creating roles such as the Director of Work-Integrated Learning and Placements, with Associate Professor Ross Hyams – one of our most experienced



clinicians and lecturers – becoming the inaugural holder of that role. Starting with a platform of dedicated and passionate clinicians, we also recruited a renowned Australian and international leader in CLE and ADR (Professor Jeff Giddings) to develop and steer the team implementing the Clinical Guarantee, backed with additional recruitment of new ongoing staff with CLE management and supervisory experience. That additional recruitment includes, for example, some part-time staff from the broader legal profession (e.g. with practical experience in family law) and partner organisations (e.g. a supervisor from The Capital Punishment Justice Project (formerly known as Reprieve Australia) to supervise the pilot anti-death penalty clinic).

Most pleasingly, the demonstrable prioritisation of CLE through the Clinical Guarantee and the need to have sufficiently diverse clinical options to cater for student demand have together resulted in some existing academic staff with relevant substantive law expertise being willing to become involved in and learn about CLE as part of their teaching allocations. Other existing academic staff have looked for new ways to include a clinical component in classroom learning and assessment. The resulting ripple effects have been a more diverse range of topic areas for clinics, an increase in the number of both staff and students involved in clinics, and a cross-fertilisation of the clinical and non-clinical constituencies within the Faculty.

Soon after his arrival, Professor Giddings was also appointed as the Associate Dean (Experiential Education) and – through that appointment – a member of the Faculty

Executive Committee, commensurate with such roles elsewhere, and hence with a key seat at the table where decisions are made about faculty-wide strategic priorities, resourcing, recruitment, and external engagement. His appointment added new leadership and perspectives for the existing cohort of committed and passionate clinicians. It also required us to take the professionalization of our approach to managing the clinical program to another level, in terms of examining the inter-relationships between the various management roles within the expanding clinical program and locations.

#### Clinical Spaces and Amenities for Staff, Students, and Clients

The penultimate aspect of resourcing concerns the physical space and amenities provided for clinicians, supervisors, other staff, students, and clients. In committing to the Clinical Guarantee, we also made the case at University level for centrally allocated capital expenditure to expand and upgrade the available space for clinics at our two wholly funded and operated CLCs. Again, the strategic positioning, competitive differentiation, and demonstrable business case were all critical in securing central funding and support.

The three-year roll-out of the Clinical Guarantee commenced in 2018. Most importantly, the Faculty of Law expanded its own clinical facilities and locations, while also developing new external relationships and potential clinical partners. By the end of the first-year of the roll-out of the Clinical Guarantee, the Faculty (with University support) had committed capital expenditure to expand its existing clinical

facilities at the Monash-Oakleigh Legal Service (now known as Monash Law Clinics @ Clayton), and established a Melbourne CBD clinical presence for the first time in the Faculty's history, mainly for JD students who already take classes and have physical studying and collaborative space as a cohort elsewhere in the same building. As part of other capital expenditure to improve and modernise physical amenities for staff and students, we designed and built a new multi-functional and state-of-the-art Moot Court with embedded technological capability, which also functions as a clinical space for face-to-face clinics, virtual clinics, and live teleconferencing between cohorts of students and clinicians at our various clinical locations.

### Clinical Criteria and Roll-Out

At the same time, the range of internships, externships, clinics, and other placements were all re-examined through the lens of core criteria for being part of the Clinical Guarantee. As a result, some were upgraded to meet those criteria, and some were treated as alternative or incubating experiences for students who might later undertake a genuine clinical experience of sufficient duration, commitment, supervision, and client-based focus to meet the criteria.

Some clinical opportunities are first tested for viability as pilots through a generic clinical externship unit, especially where external partners are involved for the first time. There are also some specialised clinics – sexual assault and family violence clinics, for example – that work best when they are staffed by students who have

already experienced a 'general practice' clinic and are assessed by clinical supervisors as being accomplished in a particular specialisation.

Other clinics that demonstrably meet the criteria for a high-quality clinical experience from the outset can be established and categorised as such. In addressing the inevitable demarcation issues and making the necessary judgment calls – eg is it a pilot clinic or is it a placement? – the leadership, dialogue, and collaboration amongst and between clinicians and academic managers such as the Associate Dean (Experiential Education) and the Director of Work-Integrated Learning and Placements, for example, are essential ingredients for success.

By the beginning of 2019 (ie the second year roll-out in implementing the Clinical Guarantee), as we headed towards increasing the number of clinical opportunities to deliver the Clinical Guarantee, the expanded clinical program began to take shape on three fronts simultaneously. First, the numbers of LLB and JD students collectively increased in the core and long-standing clinical programs conducted at Monash Law Clinics @ Clayton (ie near the main university campus), Monash Law Clinics @ Melbourne (i.e. our CBD clinic, on a new and dedicated clinical floor of the building where we conduct our JD, LLM, and professional seminar activities, in the heart of the judicial and legal precinct), and the Springvale Monash Legal Service.

Secondly, a large number of new clinics were established with external organisations, many of them as pilots in their initial year. As a result, a law school whose clinical experience and reputation was grounded firmly in family law practice, criminal law

practice, and general practice, and pursued conventionally through subjects entitled 'Professional Practice', 'Advanced Professional Practice', and the 'Family Law Assistance Program' (FLAP), found itself piloting clinics in an expanded range of subject areas, some in collaboration with clinical supervisors or co-supervisors from other organisations, and some with an international dimension as well.

Initially, those pilots included new areas as diverse as trade law, public inquiries and commissions (in conjunction with the Australian Law Reform Commission (ALRC)), and death penalty case-work and clemency appeals – the latter in collaboration with The Capital Punishment Justice Project, as one of the first steps in a broader partnership to develop a region-first Institute and southern hemisphere hub as part of a global network doing research, advocacy, and case-work aimed at universal abolition of the death penalty in our time. Others in development extend beyond the traditional and local focus of CLCs (eg a regionally focused modern slavery clinic), without diluting the core commitment to social justice and access to justice for a range of local community constituencies.

### Managing Drains on Resourcing

The final aspect of resourcing is one that often dare not speak its name, and which deans and associate deans can experience more acutely than others. Time, energy, and focus are all valuable and scarce commodities in university life, for individual academics as well as academic and professional staff managers. Regrettably, one aspect of resourcing is the adverse impact on available management capacity in terms

of those commodities, due to change-resistance and sometimes active undermining by those with other agendas and axes to grind, beyond reasonable disagreement and differences of views. Deans who do not bend easily to the demands, power plays, and timelines of others, even those who ostensibly support CLE, can spend time and other resources managing such things that are otherwise better spent on active development of clinical and non-clinical opportunities for a law school's various constituencies.

At the same time, it is always both necessary and desirable to spend some time and resourcing dealing with reasonable levels of understandable anxiety of non-clinicians about feared diversion of scarce resources away from their areas, consensus-building and bridge-building across a diverse faculty for something as ambitious as an expansion of a clinical program, and even steering clinicians who benefit from an expanded clinical focus towards new ways of thinking and working in the clinical space. In my experience, the matters outlined above can all be considerable and time-consuming challenges.

### *Third Step – Organisational and Individual Alignment and Culture Change*

The third big step is organisational (and cultural) realignment, normalisation, and prioritisation of CLE in the everyday policies, processes, and practices of a law school as an academic (and business) enterprise. Legal academics commonly relate to the everyday business of a law school through the individualised lens of what it means personally for them in terms of employment category, formal workload allocations (including allocated roles), promotion and developmental opportunities, recruitment

in their area of teaching and research interest, access to resources (including funding for research sabbaticals), and institutional and team recognition. Mindsets, attitudes, behaviours, and hence organisational cultures are set (and reset) accordingly.

### Ideal Position

The challenges here are familiar and long-standing ones for most law schools with a clinical program, but they are rendered more rather than less acute when the clinical program expands, gains traction, competes with others internally for resources, creates personal career development opportunities, requires significant time in upskilling (for clinicians in new clinics and new ways of working, and for non-clinicians in 'learning the trade' of clinical supervision and work), and achieves an elevated institutional priority, with all of that being seen through the individualised career-orientated lens of both clinicians and non-clinicians alike. The ideal position is one where all of the following hold true:

- (1) Institutional employment policies and categories, and their correlative functions and performance criteria, are sufficiently flexible or innovative to accommodate what is needed to build and enhance a clinical program, with a combination of bespoke ongoing positions (eg clinical positions that are differentiated in some way from teaching-research positions) and part-time positions (eg part-time professors of practice, to optimise recruitment and engagement of senior members of the legal profession);

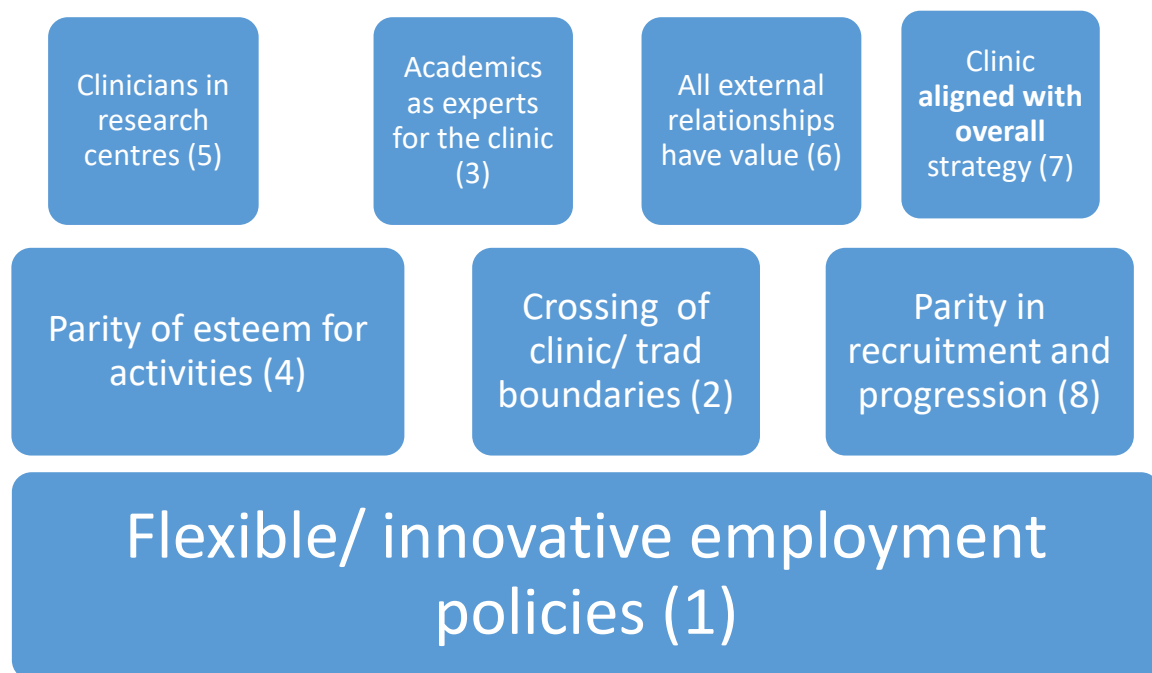
- (2) A significant number of non-clinicians become more involved in clinics, and a significant number of clinicians become more involved in non-clinical faculty work, with experiential, career developmental, and other benefits on all sides;
- (3) Academics with relevant subject matter expertise make that available where relevant to clinical supervisors and students whose client-based work relates to that subject matter;
- (4) Equal parity of esteem applies to clinical and non-clinical supervision, scholarship, and external engagement;
- (5) Academics working in the clinical space secure competitive research grants and fellowships, take research sabbaticals, and become involved in research centres and groups that complement (but are not limited to) their clinical work;
- (6) The external engagement links that most law academics foster in their fields of research and work become contacts to leverage for potential clinical partnering possibilities too;
- (7) Alignment is achieved between what happens in the clinical domain and a faculty's overall strategic directions, profile-raising, philanthropy, and relationship-building (as in the case of our pilot anti-death penalty clinics and progress towards the establishment of a region-first institute focused upon abolition of the death penalty in Asia); and
- (8) Faculty recruitment, sabbaticals, workload allocations (for teaching and service), education performance standards, and research performance standards are all sensitised to clinical and non-clinical academic work and career progression.



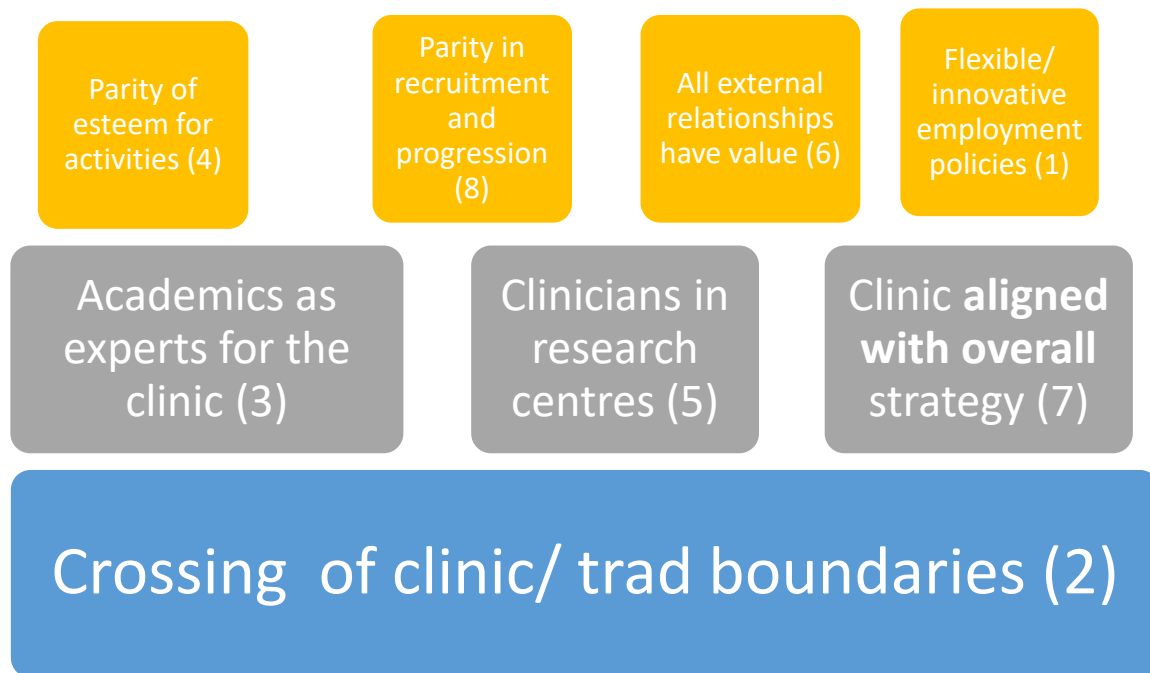
In the real world, of course, ideal conditions rarely occur. Prioritisation, platforms, planning, progression, and pathways – i.e. the five Ps – help in navigating real-life conditions. Institutionally, conditions that create strategic institutional alignment, flexible categories of employment and workload allocation, and parity of esteem and opportunity (including career progression, sabbaticals, and resourcing) become foundational platforms for pathways of education, research, and engagement involving clinicians. As a clinical program matures in its profile, scope, and outreach, translation of external networks and links into client-related public advocacy, research grant collaborations, institutional and centre-based networks, and organisational partnering become developmental opportunities for clinicians and their students.

Where conditions are not ideal, or clinicians face something less than a receptive institutional reaction to clinical plans, obviously choices need to be made. However, those choices are not necessarily limited to sacrificing pursuit of any of the eight ideal conditions outlined above. Nor are they limited to focusing upon internal links rather than developing external links, or pursuing educational initiatives at the expense of research-related ones. Phasing, pilot schemes, and scaling up or down as appropriate are all techniques that facilitate smart choices, whatever the resourcing and other institutional constraints. The risk in making choices, either individually or institutionally, that do not treat a clinical program and all of its dimensions holistically is that traction is lost in mainstreaming and integrating a clinical program within the core institutional endeavours of education, research, and engagement.

In making such choices, it can be helpful to step back and reflect upon the different angles from those choices can be approached. Different individual and institutional dimensions are each engaged. A mixture of 'top down' and 'bottom up' approaches are available, with different priorities and emphases for initial actions on planning, developing, and embedding clinics institutionally, as represented in the following diagrams:



This version of the diagram implies the power of the broader institution and the place of faculty, school, clinic and research centres nested within



This version implies more generative power on the ground between clinic and law school, creating the conditions in which arguments for parity in the institution can be made in a way that senior management will accept.

### Employment Categories

Consider employment categories, for example. At our institution, we recently achieved sufficient diversity in academic employment categories to attract and retain dedicated clinicians and associated staff, with appropriate career development paths, workload allocations, and performance expectations to match. The variety of employment categories now includes: teaching-research positions; research-intensive positions; education-focused positions; clinical positions; and practice positions (eg

'professors of practice' drawn part-time from the legal profession, including retired judges and practitioners).

Education-focused and clinical roles each retain an aspect of scholarship, but focus upon research that is appropriate to their role – scholarship about legal education pedagogy and research-informed public submissions and advocacy, respectively. Indeed, in an era of government-mandated institutional research quality and impact exercises, making clinicians write publications to meet indiscriminate research output targets can be counter-productive, while on the other hand clinically informed research and engagement can provide suitable material for case studies of research impact. In other words, the diversity of employment categories means that we do not try to force clinical 'squares' into clinically insensitive 'round holes'.

### Cognate Research Critical Mass and Scale

Diverse employment categories are not the only institutional infrastructure to be mined or leveraged in providing enhanced scaffolding for an expanded CLE program. 'Breaking down the silos' that can afflict a clinical program as much as any other part of a law school's endeavours means looking for alignment between clinical practice and scholarship, on one hand, and a law school's education, research, and engagement, on the other. For example, while law school clinics and associated CLCs might characteristically focus upon public advocacy and law reform aimed at access to justice, there is no reason why at least some of those involved in such endeavours cannot also be researching in related and other fields, pursuing high-quality

publications, competitive grant and contracted research opportunities, and even forming cognate research groups and centres. The Harvard Centre for the Legal Profession and equivalent centres and research groups around the globe, for example, undertake valuable evidence-based research about the future of the legal profession and the contemporary nature of lawyering.<sup>18</sup>

### **Interim Conclusion**

Three key dimensions of designing and implementing an enhanced clinical program are outlined in the first part of this article – strategic institutional alignment and competitive positioning in the legal education services market, institutional resourcing and implementation, and alignment and culture change from both organisational and individual perspectives. Conceptually, those three dimensions are treated as being analytically distinct here for explanatory purposes, and they interact and overlap significantly in operational terms. As in most law school endeavours, culture and mindsets underpin everything.

Other aspects of organisational cultural change as CLE evolves within a law school focus upon what counts as a worthy ‘access to justice’ constituency for clinical purposes, how clinical experience of legal practice matches or differs from other experience of legal practice (for both clinicians and students), how both CLE and ‘access to justice’ initiatives adapt and respond to disruptors such as globalisation and

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<sup>18</sup> E.g. B. Heineman et al, ‘Lawyers as Professionals and as Citizens: Key Roles and Responsibilities in the 21<sup>st</sup> Century’, Paper, November 2014.

digitalisation, and whether all lawyers – not just lawyers in CLCs or law school-associated clinics – have responsibilities towards the constituencies who are most in need of access to justice, regardless of their own particular client base. Such matters are already the subject of CLE scholarship<sup>19</sup> and professional commentary<sup>20</sup> as well as public reports<sup>21</sup> and professional/judicial commitments<sup>22</sup> in some jurisdictions. The second part of this article concentrates upon some key cultural challenges for clinical programs that derive from various contemporary sources of disruption.

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<sup>19</sup> E.g. M. Castles, 'Marriage of Convenience or a Match Made in Heaven: A Collaboration Between a Law School Clinic and a Commercial Law Firm' (2016) 23 *International Journal of Clinical Legal Education* 7; and A. Thanaraj and M. Sales, 'Lawyering in a Digital Age: A Practice Report Introducing the Virtual Law Clinic at Cumbria' (2015) 22 *International Journal of Clinical Legal Education* [ci].

<sup>20</sup> B. Horrigan 'The War Against Poverty is Not Optional for Lawyers', published in 2015 and accessible via the IBA website for the Poverty, Empowerment, and Rule of Law Working Group, available at this link: <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=f9ce20d3-15f9-417e-a9d8-59198ea304b2>.

<sup>21</sup> E.g. K. Miller, *Disruption, Innovation, and Change: The Future of the Legal Profession*, Law Institute of Victoria, 2015.

<sup>22</sup> E.g. see the forward-looking agenda pursued by the Utah Supreme Court and Utah Bar Association in 2018-2019, as recorded in a Statement from the Utah Bar Association, 2019, which included key priorities such as: '(1) loosening restrictions on lawyer advertising, solicitation, and fee arrangements, including referrals and fee sharing; (2) providing for broad-based investment and participation in business models that provide legal services to the public, including non-lawyer investment and ownership of these entities; and (3) creating a regulatory body under the auspices of the Utah Supreme Court that would develop and implement a risk-based, empirically-grounded regulatory process for legal services'. Such things have implications for CLCs, law schools, and their CLE programs too.