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Conclusion

Clinical legal education in Australia is dynamic. There are frequent new developments, regular improvements, changes in partnerships and, sometimes, curtailment of programs. As we discussed in Chapter 2, Australian clinical legal education is making multiple contributions to the study of law and the education of future legal practitioners. This book provides a critical foundation for future growth. It makes the case for empowering Australian legal education with the best clinical legal education practices available to contemporary law schools. It seeks to deepen the understanding of clinical pedagogy.

In the preceding chapters, we have not only provided a comprehensive and detailed account of the critical aspects of *Best Practices: Australian Clinical Legal Education*, but we have also expanded and illuminated these aspects. Chapter 2 clearly sets out the various factors affecting legal education (and consequently clinical legal education). For those new to clinical legal education and those wishing to review their own programs, Chapters 3 to 9 highlight the central role of social justice in Australian clinics, set out the merits of various models of clinical legal education, clarify the benefits of good course design and the role of assessment, detail critical aspects of effective supervision and discuss processes to foster reflective practice, and address infrastructure requirements. Chapter 10 concludes with an international perspective on approaches to best practice in clinical legal education.

In this final chapter, we provide illustrations of the links between some recent developments in Australian clinical legal education and emerging trends in legal education, legal practice and provision of legal aid services. The surveys of Australian clinical programs conducted as part of the Australian Learning and Teaching Council Priority Project, referred to regularly throughout this book, were completed in 2010–11.¹ At the time, the number of clinical legal education subjects/programs was increasing and different formats were developing. We have referred to examples of recent developments in the preceding chapters; however, the instances discussed in this concluding chapter are highlighted as they reinforce the potential and the challenges of advancing best practice in Australian clinical legal education.

As we discussed in Chapter 1, there is growing concern in Australia (and elsewhere) about the numbers of students currently studying law.² This increasing number presents both an opportunity and a challenge for clinical legal education. It is reported that students graduating with some form of undergraduate or postgraduate law qualification increased from 6,149 in 2001 to 12,742 in 2012.³ The Bachelor of Laws (LLB) or Juris Doctor (JD) are the Australian academic qualifications that enable law graduates to become lawyers. The LLB is increasingly being seen as an undergraduate generalist degree and LLB graduates are employed in a wide variety of industries and occupations, not only legal,⁴ whereas the JD is a postgraduate professionally oriented qualification.

1 See Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Mary Anne Noone, Simon Rice and Ebony Booth, *Best Practices: Australian Clinical Legal Education* (2013) Government of Australia, Office of Learning and Teaching, at perma.cc/2J6E-ZMQX. This website also includes summaries of the Regional Reports. For the full Regional Reports, see *Identifying Current Practices in Clinical Legal Education*, Regional Reports, cited in Chapter 1 at footnote 6.

2 For a critical assessment of this view, see Productivity Commission, *Access to Justice Arrangements* (2014) Inquiry Report No 72, Volume 1, 244–47.

3 Edmund Tadros, 'Law degree the new arts degree, students warned' (14 February 2014) *Australian Financial Review*, at perma.cc/48YC-PN7F.

4 Edmund Tadros, cited at footnote 3; Edmund Tadros, 'Misa Han University no "trade school" for lawyers' (24 October 2014) *Australian Financial Review*, at www.afr.com/p/national/legal_affairs/university_no_trade_school_for_lawyers_kkPYJ4zuhupDTxn4tTVpCK. Accessed 24 October 2014.

Growth in Juris Doctor degrees

The growth of the JD qualification in Australia has begun to positively influence the development of clinical legal education. This postgraduate professional degree is common in the United States but only in the last decade has the JD become a feature of law school offerings in Australia.⁵ In 2014, 13 (out of 36)⁶ Australian law schools offered this degree.⁷ Most of these law schools continue to offer an LLB, but three universities offered law studies only at the postgraduate level.⁸ The number of students completing JD courses increased 330 per cent from 1,635 in 2001 to 7,036 in 2012.⁹

Relevantly for those interested in clinical legal education, according to the Australian Qualifications Framework (AQF), the JD is categorised as level 9, Masters Degree (Extended).¹⁰ The AQF descriptor for the Masters Degree (Extended) is:

The [qualification] is designed so that graduates will have undertaken a program of structured learning with some independent research and *a significant proportion of practice related learning*. As this qualification is designed to prepare graduates to engage in a profession the practice related learning must be developed in collaboration with a relevant professional, statutory or regulatory body [emphasis added].¹¹

5 Donna Cooper, Sheryl Jackson, Rosalind Mason and Mary Toohey, 'The Emergence of the JD in the Australian Legal Education Marketplace and its Impact on Academic Standards' (2011) *Legal Education Review* 23.

6 The University of Sunshine Coast in South East Queensland offered a law degree for the first time in 2014. Neil Rees (formerly of UNSW and the University of Newcastle law schools) is one of the co-Deans and they have developed a first-year clinical experience with the Sunshine Coast Legal Centre. A new law school at Swinburne University in Victoria opened in 2015 with a commitment to providing 20 days external placement to each student per year.

7 The Australian National University, University of Canberra, Bond University, Macquarie University, RMIT, Monash University, University of Melbourne, University of New South Wales, University of Notre Dame Australia, RMIT University, University of Southern Queensland, University of Sydney, University of Newcastle, University of Technology, Sydney, University of Western Australia, University of Western Sydney and Murdoch University. At least two others, La Trobe University and Deakin University, are offering a JD from 2016.

8 University of Melbourne, RMIT University and University of Western Australia.

9 Edmund Tadros, cited at footnote 3.

10 Australian Qualifications Framework (January 2013), at perma.cc/A4ME-RQBM. Accessed 16 October 2014.

11 Australian Qualifications Framework (January 2013) 61, at www.aqf.edu.au.

As Cooper and others comment, ‘the requirement that a JD include “a significant proportion of practice-related learning” may potentially have resource and logistical implications for law schools’.¹² Obviously, having a range of clinical legal education subjects within the JD enables a law school to fulfil this requirement of the AQF. However, Cooper and others argue that ‘practice-related learning’ could be interpreted to include a range of experiential type learning opportunities, for instance: ‘problem-based learning, mooted and role-play activities related to legal interviewing, negotiation and mediation’.¹³ Recent developments suggest law schools see the added benefit of including some clinical legal education experience within the JD. Universities with established clinical legal education programs have expanded their offerings to include specific subjects for JD students.¹⁴

The most explicit illustration of the impact of the AQF (and United States’ influence) are developments at the University of Melbourne Law School. Despite its being one of the leading law schools in the country, there has, until recently, been no clinical legal education program at the University of Melbourne.¹⁵ However, since 2012, the law school has launched the Public Interest Law Initiative, which enables ‘students to contribute to the work of our community law partners and learn by working with real clients to solve real legal problems’.¹⁶ Currently Melbourne Law School offers its JD students clinical experiences in its Public Interest Law Clinic, an externship program where students work at Victoria Legal Aid or a community legal centre, a Street Law subject and a Sustainability Business Clinic based at Melbourne Law School supervised by lawyers from large commercial law firms. In 2015, a new subject, the Disability Human Rights Clinic, was offered. It has a multidisciplinary focus that brings together the fields of disability studies and international human rights law.¹⁷

12 Donna Cooper and others, cited at footnote 5, 45.

13 Donna Cooper and others, cited at footnote 5, 45.

14 Monash University – Professional Practice (JD) (LAW7423), based at Monash-Oakleigh Legal Service Inc; UNSW – A comprehensive and established social justice program of internships and clinical legal practice onsite at Kingsford Legal Centre (KLC) or at a range of other local and international organisations.

15 For detail of the attempt to establish a program in 1994, see Jeff Giddings, *Promoting Justice Through Clinical Legal Education* (2013) Justice Press, 145–46 (cited hereafter as Giddings (2013)).

16 See www.law.unimelb.edu.au/students/jd/enrichment/pili. Accessed 4 February 2017.

17 See perma.cc/6U32-DVCN. Accessed 6 January 2016.

Although these subjects are electives, these developments at Melbourne University suggest that the adoption of the JD within law schools can have a positive impact on the expansion of clinical legal education. This could be the result of a range of factors, including the impact of the AQF and the professional practice focus of the degree, student demand, additional revenue generated by the high fees charged for the JD or the need to be seen to be a ‘global’ (United States–style) university. It is also noteworthy that this high-status law school has continued the Australian clinical legal education focus of developing programs that aim to improve access to justice and provide services to disadvantaged clients.¹⁸

Globalisation of legal practice and legal education

Globalisation has had, and continues to have, a significant impact on legal practice¹⁹ and legal education.²⁰ Law schools are responding to the requirement to educate future lawyers to work in this globalised environment.²¹ One of the reasons for the adoption of the JD is the globalisation of legal practice. In a 2012 research project, Bentley and Squelch developed a framework for internationalising the Australian law curriculum. The purpose of this framework was ‘to better equip graduates to work in a global, international context and across multiple jurisdictions; and to enable graduates to contribute in an international setting to the articulation, nurturing and transmission of values’.²² The conclusions of that project included the need for law schools wishing to internationalise their law curriculum to develop a multifaceted approach and to focus on the knowledge, skills and attributes identified as essential for a global

18 See our discussion of social justice in Chapter 5 of this book.

19 In 1989–90, Australia’s export market for legal services was worth \$67m and by 2006–07 it had increased to \$675m, cited in John Corcoran, ‘The State of the Profession’, 36th Australian Legal Convention, Perth (2009); Steve Marks, ‘Harmonization or Homogenization? The Globalization of Law and Legal Ethics – An Australian Viewpoint’ (2007) 34 *Vanderbilt Journal of Transnational Law* 1173.

20 VI Lo, ‘Before competition and beyond complacency – The internationalisation of legal education in Australia’ (2012) 22(1) *Legal Education Review* 3–49.

21 Duncan Bentley and Joan Squelch, *Internationalising the Australian law curriculum for enhanced global legal practice* (2012) Office of Teaching and Learning.

22 Duncan Bentley and Joan Squelch, cited at footnote 21.

multijurisdictional environment.²³ It is not yet clear whether the values mentioned by Bentley and Squelch will include the historic Australian clinical focus on improving access to justice, but Australian law schools are well placed to influence this issue.

An example of how the pedagogy of clinical legal education can facilitate multiple learning outcomes, is the development of cross-jurisdictional clinics. In the International Social Justice Clinic at The Australian National University (ANU), law students engage in non-government organisational activity in developing countries. Students work in teams to carry out human rights policy research for a partner non-government organisation (NGO), under supervision by staff both at ANU and at the NGO. Students are supervised regularly by NGO staff through online communications technology.²⁴ Similar clinics have been run at other universities.²⁵

Another aspect of the internationalisation of legal practice has been the increasingly important role played by clinical legal education in legal education worldwide. The extent of this global reach is illustrated in the many examples detailed in Bloch's *The Global Clinical Movement*.²⁶ Many Australian clinicians are part of a global network and are members of the Global Alliance for Justice Education (GAJE). Membership of GAJE consists of not only law teachers but also law students, judges, lawyers and others interested in advancing and promoting justice education around the world.²⁷ One of the consequences of GAJE membership is collaboration in the development of international clinics. For example, clinical staff at a number of Australian universities have worked with Bridges Across Borders Southeast Asia Community Legal Education Initiative (BABSEA CLE). BABSEA CLE's aim is to help establish, strengthen and support university-based and community-based clinical legal education programs and it works collaboratively with universities, law students, law faculties, lawyers, members of the legal community,

23 There have been a number of innovations as a consequence of the internationalisation of legal education. See Ben Saul and Irene Baghoomians, 'An experiential international law field school in the sky: Learning human rights and development in the Himalayas [online]' (2012) 22(1/2) *Legal Education Review* 273–315.

24 See perma.cc/CK29-27CV. Accessed 8 January 2016.

25 For example, the International Social Justice Clinic at University of Sunshine Coast and programs at Monash University.

26 Frank Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (2011) Oxford University Press.

27 For further information, see perma.cc/TS7W-K55A. Accessed 22 January 2015.

and justice-related organisational partners throughout Southeast Asia.²⁸ Australian law schools have run ‘virtual’ clinics with BABSEA, hosted international law academics in Australian clinical legal education programs²⁹ and Australian clinical staff have participated and run courses in Thailand, Vietnam and Myanmar.³⁰ It is likely that, with an increasing focus on producing graduates who are global citizens, universities will encourage their law schools to pursue these types of collaborations.

Changes in legal service provision to the disadvantaged

As we have detailed in several chapters of this book, most Australian clinical legal education programs are based in, or rely on externship placements in, community legal centres or legal aid organisations. Our survey found that the current features of Australian clinical legal education are a strong focus on service to the community; of law-in-context discussions; involvement in a range of legal activities including individual case work, law reform, legal research and community legal education; location in not-for-profits, community legal centres and legal aid organisations; and growth in externships.³¹

Consequently, any changes and developments in the legal assistance sector will affect clinical programs. For instance, the federal government response to the recommendations of the 2014 report of the Productivity Commission into Access to Justice Arrangements³² and subsequent alterations to the infrastructure of legal assistance services across Australia will have significant repercussions for current clinical legal education programs. Reduction in funding to community legal centres or legal aid commissions threatens the viability of clinical programs and may lead to pressure on some programs. The strong focus on access to justice and social

28 See perma.cc/94R9-YH9N. Accessed 22 January 2015.

29 Griffith University, Monash University and UNSW clinical programs have all hosted Southeast Asian clinical teachers through BABSEA initiatives.

30 For example, Helen Yandell, a Monash University adjunct, volunteered with BABSEA CLE during 2014; see perma.cc/K2PN-H8AG. Accessed 8 January 2016.

31 Adrian Evans and others, cited at footnote 1.

32 Productivity Commission, *Access to Justice Arrangements Inquiry Report* (2014), at www.pc.gov.au/inquiries/completed/access-justice/report. Accessed 26 January 2015.

justice (discussed in Chapter 5) may also be challenged by changes to the priorities for how funding is to be allocated, the limitations placed on the scope of work and prohibitions on legal policy and law reform work.³³

Impact of funding crisis: Victoria Legal Aid example

Since 1994, La Trobe University's law school had worked in partnership with Victoria Legal Aid (VLA) in an 'external live client' clinic providing additional legal services to VLA clients. The educational focus of this clinic was legal ethics and completion of the subject satisfied the professional requirement of Ethics and Professional Responsibility.³⁴ In 2013, the program underwent modification as a consequence of changes at VLA.

The changes at VLA during 2013 were a response to a significant budget shortfall, caused by increased demand for legal aid services. This led to a dramatic reduction in legal aid services to the Victorian community. VLA curtailed services in a variety of ways; for example, limitations on types of legal matters and aspects of legal work eligible for assistance; and internal staff reductions.³⁵ The budgetary response included the closure of a metropolitan regional office (Preston).³⁶ The rationale given for the closure was the financial situation, changed demographics of the area (reduced need) and closure of a local court. The Preston VLA office closed on 28 June 2013.³⁷

Partly as a consequence of the closure of this office, La Trobe University's unique clinical legal education program, based at this VLA regional office and focused on teaching legal ethics, ceased.³⁸ However, it was not only the physical closure of the office that affected the clinical program; changes

33 Community legal centres claim the current National Partnership Agreement (NPA) contains a 30 per cent funding cut in 2017. Additionally the NPA restricts legal aid organisations using Commonwealth funds for lobbying or public campaigns. This is a specific concern for community legal centres as systemic advocacy and law reform work has been an integral aspect of their work since they began. See Federation of Community Legal Centres, *The Facts about Federal Cuts – Community Law Blog* (2015), at perma.cc/AAN7-NFW2. Accessed 30 November 2016.

34 *Legal Profession Admission Rules 2008* (Vic), Schedule 2.

35 For a summary of the changes, see Mary Anne Noone, 'Legal aid crisis: Lessons from Victoria's response' (2014) 39(1) *Alternative Law Journal* 40.

36 Victoria Legal Aid, 'Preston office closure' (5 March 2013), at perma.cc/JUV7-D9SG. Accessed 27 October 2014.

37 Victoria Legal Aid, *Annual Report 2012–13*, 77.

38 Victoria Legal Aid, cited at footnote 37; Mary Anne Noone and Judith Dickson, 'Teaching towards a new professionalism: Challenging law students to become ethical lawyers' (2001) 4(2) *Legal Ethics* 127.

to the VLA guidelines, the decision that the organisation would no longer conduct 'minor work' files and the increased pressure on availability of physical office space all contributed to the cessation of the program. The combination of these issues also put paid to any relocation of this clinical program to another section of VLA.³⁹

Nevertheless, the ethics-based clinical subject continues. The coherence of the course design and the adaptability and resourcefulness of the clinical staff involved meant that the program could be transposed to another location. This experience highlights the need for vigilance and awareness of features that ensure sustainability of clinical programs. Giddings provides a comprehensive account of factors impacting clinics' sustainability,⁴⁰ as summarised in Chapter 2 of this book. The development of resilience and a capacity to adapt to changing external factors is a crucial part of best practice. Clarity of the purpose and aims of a clinical program, as discussed in Chapter 4, can assist in sustainability. Importantly, the creativity, resilience and commitment of clinical staff (as discussed in Chapter 9) should never be underestimated.

New models: Multidisciplinary clinics

One area of innovation within the legal assistance sector offers exciting potential growth for clinical programs and enhancement of clinical pedagogy. Given the proven connection between clients' legal problems and health issues, there is increased activity in the delivery of integrated legal services within a health care setting.⁴¹ Additionally, the Law and Justice Foundation (NSW) research shows that legal professionals are consulted only in relation to 16 per cent of all legal problems, whereas people often turn to their trusted health and welfare professionals for advice and assistance with issues that have legal aspects.⁴²

39 Victoria Legal Aid continues to take a small number of La Trobe students as part of another clinical externship subject.

40 Giddings (2013).

41 Christine Coumarelos, Pascoe Pleasence and Zhigang Wei, *Law and disorders: illness/disability and the experience of everyday problems involving the law* (2013) Justice Issues Paper 17, Law and Justice Foundation of NSW.

42 Christine Coumarelos and others, *Legal Australia-Wide ('LAW') Survey: Legal need in Australia* (2012) Law and Justice Foundation of NSW.

This health care delivery model integrates legal assistance as an important element of the health care team. In the United States this approach is described as Medical Legal Partnerships and in Australia they are referred to as Advocacy-Health Alliances or Health Justice Partnerships.⁴³ The model is built on an understanding that the social, economic, and political contexts of an individual's circumstances impact upon their health, and that these social determinants of health often manifest in the form of legal needs or requirements. Research in the United States increasingly indicates positive benefits from an integrated service approach.⁴⁴

There are a number of longstanding examples of the provision of legal services in a health setting in Australia.⁴⁵ Recently, there has been a resurgence of interest in this delivery model and a number of innovations based in large public hospitals and community health organisations have emerged. Funders such as the Legal Services Board Victoria are actively supporting this approach⁴⁶ and this growth of health justice partnerships presents new opportunities for clinical legal education to work with other medical, allied health and welfare disciplines in developing multidisciplinary clinics. In the United States, 46 law schools have clinics working in medical-legal partnerships.⁴⁷

Although not an example of a Health Justice Partnership, a related recent innovation in the provision of multidisciplinary clinical legal practice in Australia is the Monash University multidisciplinary clinic. In this clinic, law, social work and finance students work together to provide services to clients. This approach also entails joint supervision from the three disciplines. The clinic provides a model of legal practice for future lawyers as well as a model for future clinical legal education innovations. The opportunity for legal clinicians to learn from working with supervisors from other disciplines enhances the quality of clinical legal education.

43 See National Centre for Medical Legal Partnership at perma.cc/V8JJ-5JY5. Accessed 8 January 2016. For recent Australian examples, see perma.cc/5DRE-RN4P; perma.cc/M9A4-JRQA. Accessed 8 January 2016.

44 See perma.cc/K4BV-98GP. Accessed 8 January 2016.

45 Mary Anne Noone, 'Towards an integrated service response to the link between legal and health issues' (2009) 15 *Australian Journal of Primary Health* 203; MA Noone, "'They all come in the one door": The transformative potential of an integrated service model: A study of the West Heidelberg Community Legal Service' in Pascoe Pleasence, Alexy Buck and Nigel Balmer (eds), *Transforming Lives: Law and Social Process* (2007) The Stationery Office.

46 Legal Services Board Major Grants at perma.cc/VB6F-4CCB. Accessed 25 January 2015.

47 See perma.cc/K4BV-98GP. Accessed 26 January 2015.

Additionally, the scholarship generated from this endeavour is furthering our understanding of clinical pedagogy, including those critical aspects, supervision and reflection (discussed in Chapters 6 and 7 of this book).⁴⁸

Australian clinical legal education is an evolving and exciting field where new, evidence-based initiatives are proliferating. Australian clinical teachers and their supporters continue to be innovative, adaptable, resilient, rigorous and scholarly. As the legal landscape alters, so will legal education. Clinical legal education in Australia is a powerful exemplar of good legal education and is responding to both local and global challenges with many new ideas and approaches. Reference to the contents of this book will enhance and enable these developments to be the best possible.

48 RL Hyams, GA Brown, R Foster, 'The benefits of multidisciplinary learning in clinical practice for law, finance, and social work students: an Australian experience' (2013) 33(2) *Journal of Teaching in Social Work* 159; RL Hyams, 'Multidisciplinary clinical legal education: the future of the profession' (2012) 37(2) *Alternative Law Journal* 103; RL Hyams, FE Gertner, 'Multidisciplinary clinics – broadening the outlook of clinical learning' (2012) 17 *International Journal of Clinical Legal Education* 23.

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