

Best Practices Australian Clinical Legal Education

September 2012

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Acknowledgments

Support for the production of this report/publication has been provided by the Australian Government Office for Learning and Teaching. The views expressed in this report/publication/activity do not necessarily reflect the views of the Australian Government Office for Learning and Teaching.

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2012

ISBN [Office for Learning and Teaching WILL ADD]
ISBN [Office for Learning and Teaching WILL ADD]
ISBN [Office for Learning and Teaching WILL ADD]

Table of Contents

Table of Contents.....	3
Introduction	4
The distinguishing features of clinical legal education in Australia	4
The theoretical framework of CLE and its implications for wider legal education	5
Developing our approach to best practices	7
Themes for best practices	8
Clinic types, definitions and examples	9
Course Design	11
Principles	11
Best Practices.....	12
Law in Context in a Clinical Setting.....	15
Principle.....	15
Best Practices.....	15
Supervision.....	17
Principles	17
Best Practices.....	17
Reflective Student Learning.....	20
Principles	20
Best Practices.....	20
Assessment	22
Principles	22
Best Practices.....	22
Staff.....	26
Principles	26
Best Practices.....	26
Infrastructure	28
Principle.....	28
Best Practices.....	28
Bibliography	30

Introduction

The distinguishing features of clinical legal education in Australia

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

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

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

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

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

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

But there are some subtle differences between CLE and PLT or WIL. CLE is an approach to integrating and strengthening the academic phase of legal education in the interests of students and clients. Its emphasis on meeting the diverse and complex needs (legal,

emotional, systemic and therapeutic) of real clients, either individuals or organisations, places it well beyond the vocational focus of PLT and WIL, which can limit themselves to a 'how to' approach to practising law. CLE avoids any default concentration on apparently value-neutral practical skills and is intended to develop a critical and analytical consciousness of law.

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

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

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

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

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

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

CLE has a fundamental role in integrating students' learning of the core academic learning areas prescribed by the Priestly 11ⁱⁱⁱ and fully supports the objectives of the national

Threshold Learning Outcomes (TLOs).^{iv} These best practices strengthen CLE and legal education more generally, a quality recognised by the *Council of Australian Law Deans (CALD)* in its standards for law schools.^v CALD has supported this project from its beginning through its representation on the project reference group and, in so doing, seeks to provide to all Australian legal education regulators a critical illustration of CALD's efforts to demonstrate rigour in the advancement of Australian legal education.

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

Apart from Johnstone and Vignaendra's 2003 *Learning Outcomes and Curriculum Development in Law*^{vi} 'stocktake' there has been no thorough inquiry into legal education in Australia since the *Pearce Report* in 1987^{vii} and its 1994 postscript^{viii} and no Australian book on clinical legal pedagogy since 1996.^{ix} There is a biennial list of 20 asserted clinical courses put out by the University of New South Wales – and that publication was used as the starting point for selection of programs for study in this project – but at no stage has clinical legal education *per se* been examined by an academic consortium from Australian law schools.

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

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

Developing our approach to best practices

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

Methodology

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

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

Significantly, this project responds in part to Chief Justice French’s call for an Australian Academy of Law project to better understand and integrate the academic and legal practice sectors of the one legal profession.^{xiii} We think CLE, taken to its logical extension of appropriate integration with so-called mainstream legal education, can strongly promote a unity between the academic and practitioner domains of legal education and legal practice. Ultimately, therefore, our objective is to reform and renew law school curricula sufficiently to put clinical methods in a ‘normalised’ position (just as in other professional education), because only in that context will the clinical integration benefits for students, teachers, researchers, practitioners and clients be cemented.

Themes for best practices

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

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

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

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

The project team consists of:

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

Members of the consultant international reference group are:

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

Members of the national reference group are:

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

Clinic types, definitions and examples

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

Client

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

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

Semester

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

Resources

There are five main areas of academic and professional literature that are relevant to CLE:

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

Course Design

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

Learning Outcomes

The following is a set of potential Learning Outcomes for CLE courses and programs. The chosen Learning Outcomes impact on course content, practical experience and assessment. Upon the completion of a clinical course, the clinical student will demonstrate:

- critical analyses of legal concepts through reflective practice;
- an ability to work collaboratively;
- an ability to practice 'lawyering' skills;
- developed interpersonal skills, emotional intelligence and self-awareness of their own cognitive abilities and values;
- a developing ability to 'learn from experience';
- an understanding of continuing professional development and a desire for life-long self learning;
- an understanding, and appropriate use, of the dispute resolution continuum (negotiation, mediation, collaboration, arbitration and litigation);
- an awareness of lawyering as a professional role in the context of wider society (including the imperatives of corporate social responsibility, social justice and the provision of legal services to those unable to afford them) and of the importance of professional relationships;
- a developing personal sense of responsibility, resilience, confidence, self-esteem and, particularly, judgment;
- a consciousness of multi-disciplinary approaches to clients' dilemmas – including recognition of the non-legal aspects of clients' problems;
- a developing preference for an ethical approach and an understanding of the impact of that preference in exercising professional judgment;
- a consolidated body of substantive legal knowledge, and knowledge of professional conduct rules and ethical practice; and
- an awareness of the social issues of justice, power and disadvantage and an ability to critically analyse entrenched issues of justice in the legal system.

Principles

1. A clinical course is designed:

1.1. to promote specified student Learning Outcomes suited to clinical legal education;

1.2. to engage students in the operation of law, to ensure they are supervised in that engagement and to enable them to critically analyse the law and reflect

on their experience;

1.3. with academic and practical content to support the Learning Outcomes and with assessment tasks that align with the Learning Outcomes.

2. The clinical experience should recognise the importance of finding the correct balance between high quality services to clients while providing the best educational experience for students.

Best Practices

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

Example:

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

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

Example:

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

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

4. Students develop and engage in reflective practice. See Reflective Student Learning at page 20.
5. Every clinic shall have a classroom component that regularly provides students with opportunities to place their experience in context of academic materials, to engage in guided reflection of their experiences and to share reflections on their clinical experience. Academic staff are responsible for designing, teaching and assessing a classroom component. A classroom component regularly provides students with opportunities to:
 - 5.1. understand their experience by reference to academic materials;

- 5.2. engage in guided reflection on their experiences; and
- 5.3. share reflections on their clinical experience with other students.

Example:

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

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

Example:

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

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

Example:

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

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

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

Example:

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

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

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

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

11. Selection of client casework is at the discretion of the supervisor consistent with the Learning Outcomes. Clear criteria are used for the selection of client casework.

Externship: Subject to the agency's right to choose cases and projects, preference should be given to matters that best address the learning objectives.

12. Clinical courses require a student to be on site and engaging with the clinical experience over a sustained period of time.

Example:

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

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

13. Clinical courses run over a semester, rather than a shorter block period, to give students the necessary time to reflect on their experience and consolidate their learning.
14. Clinical course design has regard to Best Practices in regard to Law in Context in a Clinical Setting (page 15), Supervision (page 17), Reflective Student Learning (page 20), Assessment (page 22), Staff (page 26) and Infrastructure (page 28).
15. Each periodic review of the law school curriculum should include a review of all clinical courses.

Example:

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

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

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

Law in Context in a Clinical Setting

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

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

Principle

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

Best Practices

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

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

Example:

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

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

Example:

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

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

Example:

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

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

Supervision

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

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

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

Principles

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

Best Practices

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

- communicate effectively; and
 - self-evaluate and accept evaluation by supervisees and peers.
2. The clinic ensures that its processes are designed to advance the interests of clients at the same time as supporting and extending students.

Example:

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

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

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

Example:

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

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

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

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

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

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

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

Training includes a clear understanding of:

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

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

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

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

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

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

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

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

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

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

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

Students are trained to constructively receive feedback.

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

Reflective Student Learning

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

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

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

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

Principles

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

Best Practices

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

Example:

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

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

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

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

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

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

Assessment

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

Principles

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

Best Practices

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

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

3. Summative and formative assessment are used:
 - 1.1. summative assessment is informed by formative assessment; and
 - 1.2. formative and summative assessment are designed to foster and reward collaboration between students and their supervisor.

2. Assessment is graded, or assessed on a pass/fail basis. Both approaches provide detailed summative and written feedback.

There are legitimate differences of opinion as to whether clinical casework can be fairly graded or is best left to a pass/fail assessment. A hybrid approach is to allocate students to 'unsatisfactory', 'satisfactory' and 'highly satisfactory' categories.

Example: A pass/fail assessment method

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

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

Example: A graded assessment method

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

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

Example: A hybrid assessment method

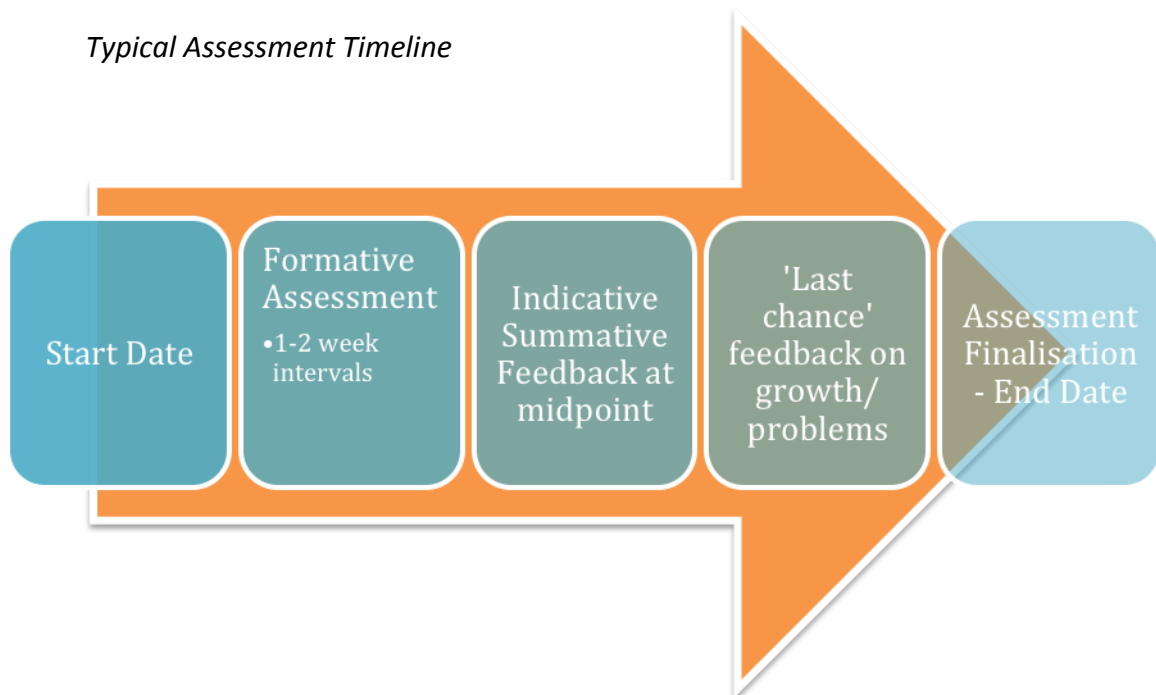
The Alternative Dispute Resolution Clinic at Griffith Law School involves students in a placement at the Dispute Resolution Branch of the Queensland Department of Justice and Attorney-General. Placement performance accounts for 50% of the assessment for the course and students are supervised by a designated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

staff member.

Student performance is provisionally assessed by the supervisors as either 'Highly Satisfactory' (mid-point of the Distinction grade), 'Satisfactory' (mid-point of the Credit grade) or 'Unsatisfactory' (mid-point of the Fail grade). The supervisor and Course Convenor then liaise regarding the provisional assessment before finalisation by the Course Convenor.

3. In externships, 'Learning Contracts' or some other mechanism are used to ensure shared understandings of the Learning Outcomes and assessment among the agency, the student and the law school.
4. Clinical assessment practices are criteria-referenced and accord with law school and university assessment policies. Recognising that student assessment will be contributed to by staff at the clinical site (non-academics, supervisors and administrative staff), assessment is carried out by, and signed off or approved by, an academic.
In-house live-client clinics: Assessment of students is often conducted collaboratively by all clinic staff, with ultimate responsibility for any grading held by the academic.
5. Clinics incorporate a mid-semester review of the whole of student performance, with the student given the opportunity for structured self - reflection to identify how they can complete their clinic as constructively as possible.

Typical Assessment Timeline



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

Example:

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

Staff

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

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

Principles

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

Best Practices

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

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

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

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

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

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

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

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

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

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

Example:

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

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

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

Preferred criteria: clinical supervisors have:

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

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

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

Infrastructure

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

Principle

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

Best Practices

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

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

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

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

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

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

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

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

4. Staff and students have access to the university's library facilities, including access to appropriate printed and on-line research resources.

5. Clinical staff and students have access to university IT networks on site in the law clinic. The university is to supply adequate hardware and support to enable the clinical supervisors and students with computer access while working in the clinic.

6. Legal practice casework support for in-house live client clinics:

The university employs sufficient administrative support (no less than 0.5 to three

supervisors) to allow client cases to be handled expeditiously in accordance with professional standards.

All clinical models require administrative support.

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

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

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

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

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

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

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

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

^v See Council of Australian Law Deans, Standards for Australian Law Schools, 17 November 2009, Standard 9.6.2; at <http://www.cald.asn.au/education>.

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

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

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

^x See Office of Learning and Teaching – <http://www.olt.gov.au/>

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

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

^{xiii} Chief Justice Robert French explored this issue in detail in his 1 December 2008 speech at the Australian Academy of Law 2008 Symposium. Chief Justice French referred to an article written by M Keyes and R Johnstone for the *Sydney Law Review* in which they outlined the 'key characteristics of the traditional model of legal education' dominating many Australian law schools until the 1980s which had been to the detriment of the law students and the legal profession. See M Keyes and R Johnstone, 'Changing Legal Education: Rhetoric, Reality, and Prospects for the Future' (2004) 26 *Sydney Law Review* 537 in Chief Justice Robert French, 'Swapping Ideas: The Academy, the Judiciary and the Profession', Australian Academy of Law 2008 Symposium Series, 1 December 2008, 16-17, available at <http://www.hcourt.gov.au/speeches/frenchcj/frenchcj1Dec08.pdf> at 8 March 2010.