

3 November 2023

Dr Warren Mundy

By email: [submissions@nlapreview.com.au](mailto:submissions@nlapreview.com.au)

## **ADDRESSING CURRENT, AND FUTURE, LEGAL NEED: FUNDING CLINICAL LEGAL EDUCATION PROGRAMS THROUGH THE NATIONAL LEGAL ASSISTANCE PARTNERSHIP**

### **Monash Law Clinics' submission to the Independent Review of the National Legal Assistance Partnership**

#### **1. INTRODUCTION**

This submission has been prepared by clinical legal educators and legal practitioners at Monash Law Clinics (“**MLC**”) who are also all academics of the Monash University Faculty of Law (“**Monash Law**”). We welcome the Independent Review (“**Review**”) of the National Legal Assistance Partnership (“**NLAP**”) and provide this submission with a focus on the importance of clinical legal education as part of addressing legal need both now and in the future.

We bring to the attention of the Review the importance of clinical legal education, and law school clinics, in achieving the goals of the NLAP. In the short term, clinical legal education has a strong focus on expanding capacity to address unmet legal need and, in the long term, to the professional development and legal education of law students who will shape the future of the legal assistance sector.

We recommend that all recipients of funding under NLAP be required, so far as is possible, to encourage and permit law students to participate, through best practice

clinical legal education, in the provision of legal assistance<sup>1</sup> and that a specific pool of NLAP funding be directed to financially support the development and growth of clinical legal education clinics.

## **2. BACKGROUND OF MONASH LAW AND MONASH LAW CLINICS**

Monash Law is one of Australia's leading law schools, and the country's largest. It was founded in 1964, and from its earliest years has sought to align excellence in teaching and research with a strong emphasis on the practical impacts of the law on the community.

Monash Law established Australia's first Clinical Legal Education Program in 1975, operating from the Springvale Legal Service, now the South East Monash Legal Service. Monash Law Clinics was established in 1978 and is now the centrepiece of the Monash Clinical Program. These legal services owe their existence to the passion and innovation of Monash University law students and academics, who identified and sought to redress the imbalances in access to legal advice and assistance to members of the community.

Since its inception, the mission of MLC has been the provision of accessible and comprehensive legal information and assistance as well as community legal education to disadvantaged members of the community. MLC provides members of the community with the means, which may otherwise be unavailable to them, to become informed about their legal rights and how to enforce them.

MLC now operates from two sites – at Clayton and the Melbourne CBD – and provides a broad range of legal services with a strong focus in community law and family law. MLC also has an international focus, working on issues related to abolition of the death penalty, preventing modern slavery, fostering effective operation of the World Trade Organisation (as part of the Geneva-based group, TradeLab), climate justice and the Ham Diley Afghan Support Clinic. For more

---

<sup>1</sup> See s 7(1)(j) *Legal Aid Act 1978* (Vic).

information about Monash Law Clinics and the Monash Clinical Legal Education Program, please visit: <https://www.monash.edu/law/home/cle/clinics>.

MLC receives funding under the NLAP and from other government sources, as well as receiving support from Monash University, and from philanthropic donors.

### **3. 'BUILDING THE PROFESSION': PROMOTING BEST PRACTICE AND A SOCIAL JUSTICE FOCUS IN OUR FUTURE LEGAL PROFESSIONALS**

The history of Australian clinical legal education has shown “the service dimension of clinical legal education can generate substantial community benefits while promoting student awareness of social justice and commitment to pro bono values”<sup>2</sup>. Clinical graduates are “among the more ethically responsible in the community”<sup>3</sup> and NLAP could be used to incentivise, at a national level, the development and growth of clinical legal education clinics, or clinical units offered by law schools in partnership with community legal centres and other services/initiatives with a *pro bono* ethos.

Through the immersion of students into real legal and client work in community or pro bono settings, clinical legal education “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”<sup>4</sup>. Studying law in this context also means analysing the role of power in shaping the law and legal system, and the role of each individual practitioner in how they identify, challenge and reform structural or substantive inequalities and barriers to justice for all current NLAP priority cohorts.<sup>5</sup>

---

<sup>2</sup> Evans, A. et al. 'Australian clinical legal education', ANU Press (2016), p14.

<sup>3</sup> Evans. A. et al. 'Best Practices - Australian Legal Education' (2012), p6.  
[https://www.monash.edu/\\_\\_data/assets/pdf\\_file/0003/591042/Australian-CLE-Best-Practices-2012.pdf](https://www.monash.edu/__data/assets/pdf_file/0003/591042/Australian-CLE-Best-Practices-2012.pdf).

<sup>4</sup> Ibid, p8.

<sup>5</sup> See 4.4 Disadvantaged Groups, National Legal Assistance Partnership Review Issues Paper, p17.



Students who have undertaken placements at MLC have commented on the impact the clinical experience had on their understanding of community legal work:

*“Prior to this experience I had little knowledge of community legal work and therapeutic jurisprudence. The cases I worked on highlighted the human aspect of community legal work that made me question the justice and social protection systems - they are systems made for and designed by humans yet lack accessibility and flexibility needed because of human complexities. Following this, my mind turned to trauma informed practice as not just a set of skills but a means for me to try and improve these systems - whilst it is nowhere near the huge reforms that are necessary, it is nice to see that people can make little differences in their own practice. Subsequently, my perception of lawyers shifted from one of rigidity, professionalism and outcome focused to one where lawyers are not just applying law but shaping it, conscious of the realities of society and community.” - Monash Law Clinics’ student, 2023*

*“Completing a professional practice placement at Monash Law Clinics has been the highlight of my law degree, for so many reasons. Monash Law Clinics provides a unique opportunity for students to gain invaluable practical legal skills, whilst simultaneously addressing access to justice issues by providing free legal assistance to those in need.” - Monash Law Clinics’ student, 2023*

Funding clinical legal education programs through NLAP supports the development of a profession, nationally, whose education is grounded in social justice objectives and an awareness of the legal needs of the community. Monash Law Clinics, as an example, enables student involvement in volunteer programs that build the *pro bono* ethos of future lawyers, through the following (and many other) initiatives:

- The Monash Street Law Program was developed in partnership with the Monash Law Students Society in 2019, providing students with opportunities



to deliver interactive presentations on important human rights and legal issues. In 2023, there were 60 students involved in the Street Law Program.<sup>6</sup>

- The Open Justice Project<sup>7</sup> is another volunteer program that commenced in 2021 and is a collaboration between the Victorian Bar and Monash Faculty of Law. Students engage directly with Barristers to assist with pro bono matters referred from the Courts or other referral partners. The Project provides valuable experience for latter year students as well as providing resources to increase the efficacy and efficiency of the barristers' pro bono work.

At MLC we believe that “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”.<sup>8</sup> The Council of Law Deans Standards 2020 only requires Australian law schools to “endeavour to provide, so far as is practicable, experiential learning opportunities for its students, including, but not limited to, clinical programs, internships, workplace experience, and pro bono community service”<sup>9</sup>, but does not mandate experiential learning opportunities of community service.

As a result of there being no mandated requirements for law schools in Australia to provide experiential education in a community setting to students, and “*law schools and their clinical programs are.... shaped by the actions of regulators and by broader university agendas*”<sup>10</sup>, the legal profession and Government have important roles to play in supporting the work, and impact, of student clinics.

Clinical legal education offerings, including with a focus on community law, are not available to all law students in Australia, including (critically) in regional, rural, remote and very remote communities. Introducing a focus, at a Commonwealth level, on distributing NLAP funding towards best practice clinical legal education initiatives

---

<sup>6</sup> For more information: <https://www.monashlss.com/street-law-program>.

<sup>7</sup> For more information: <https://www.monash.edu/law/future-students/cle/archive/clinics/open-justice-project>.

<sup>8</sup> Ibid, p6.

<sup>9</sup> Standard 2.2, Council of Australian Law Deans Standards, 2020. <https://cald.asn.au/wp-content/uploads/2020/07/Australian-Law-School-Standards-v1.3-30-Jul-2020.pdf>.

<sup>10</sup> Above n2, p11.

(either within law schools, or in partnership with law schools) will help NLAP achieve its goals to help address current and future legal need.

#### 4. INCENTIVISING CAREERS IN COMMUNITY LEGAL CENTRES AND JUSTICE WORK

Only three percent of solicitors in Australia are employed in CLCs,<sup>11</sup> and there is no clear pathway for law graduates from law schools to CLCs. According to survey data on the experience of community legal centre lawyers, “the preparation in law school for community legal centre work appeared to happen more by chance than by design, and many were concerned that law schools could do more to overtly support community lawyering.”<sup>12</sup>

Government should work with universities and the profession to develop a model that incentivises law graduates to enter the community legal sector, or at least to enter practice with a strong sense of community and a commitment to the needs of disadvantaged members of the community. One of our recent placement students told us:

*“Previous to this placement (at MLC) I had no real exposure to the realities of the diverse nature of the law, especially what CLCs do. You’ve inspired me through your motivation and true care for the clients to hopefully work in CLCs in the future, which is something I had not previously considered.” - Monash Law Clinics’ student, 2023*

NLAP is an opportunity for the Government, on a national scale, to create such incentives and promote a life-long commitment to access to justice<sup>13</sup> on the part of all members of the legal profession, noting that most will not practice in community legal

---

<sup>11</sup> Kutin, J et al. ‘Working in community legal centres in Victoria. Results from the Community Legal Centres Workforce Project: The role of legal education’, Victoria Law Foundation (2022). <https://victorialawfoundation.org.au/research/research-reports/working-in-community-legal-centres-in-victoria-the-role-of-legal-education>.

<sup>12</sup> Ibid.

<sup>13</sup>

centres and that there is an important role for private practitioners to play in meeting the objectives of NLAP.<sup>14</sup>

In law clinics, students are given the opportunity, under the guidance and direction of supervising lawyers to engage with clients and access to justice issues, and learn the skills needed to provide these clients with access to legal services they would not otherwise have. Clinical supervisors also model community lawyering and provide insight into career options for students, helping mitigate the *“waning of student commitment to the public interest and students’ cynicism about practising law for justice”*.<sup>15</sup> As a recent MLC placement student told us:

*“My placement at Monash Law Clinics not only opened my eyes to the nuances of the law and community-based legal practice, but has also equipped me with highly transferrable and unique skills that I can carry with me as I embark on my legal career. Reflecting on my time at Monash Law Clinics, I am reminded of the importance of empathy and adaptability, and I am inspired to apply my skills in the pursuit of increased access to justice.”* - Monash Law Clinics’ student 2023

## 5. RECOMMENDATIONS

MLC considers that the Review should recommend:

1. That all recipients of funding under the NLAP should be required, so far as is possible, to encourage and permit law students to participate in the provision of legal assistance<sup>16</sup>; and
2. The financial support of clinical legal education clinics through NLAP.

Though it is strictly beyond the scope of the Review, MLC draws the attention of the Review to the report ‘Reimagining the Professional Regulation of Australian Legal Education’, by Professor Sally Kift and Ms Kana Nakano, commissioned by the

---

<sup>14</sup> See 4.13 Labour Market, Role of private practice, National Legal Assistance Partnership Review Issues Paper, p17.

<sup>15</sup> Above n 2, p113.

<sup>16</sup> Above n 1.

Council of Australian Law Deans. This report describes the static structure of Australian legal education and shows the need for a change in the design. All participants in the legal system, including Government and funders, have a stake in the reform of that system.

## **6. CONSENT AND ATTRIBUTION**

The authors, and MLC, consent to this submission:

- being published on the Review website
- being identified in the report of the Review as having made a submission
- being quoted with attribution in the report of the Review.

## **FURTHER INFORMATION**

Monash Law Clinics  
60 Beddow Avenue  
Clayton  
Victoria, Australia

And  
Level 11, 555 Lonsdale Street  
Melbourne  
Victoria, Australia

Joel Townsend, Director  
[joel.townsend@monash.edu](mailto:joel.townsend@monash.edu)

1800 860 333

CRICOS provider: Monash University 00008C



## **AUTHOR DETAILS**

This submission has been prepared by:

**Emily Singh** is Principal Lawyer/Practice Manager (acting) and a lecturer (practice) at Monash Law Clinics. She has practiced exclusively in the community legal sector in Australia, primarily in administrative law and generalist community law, since entering the legal profession in 2013. She was previously Principal Lawyer at Social Security Rights Victoria, a legal officer at the Helen Bamber Foundation in London and a solicitor specialising in gender-based refugee claims at the Asylum Seeker Resource Centre. She has also worked at Economic Justice Australia.

**Joel Townsend** is the Director of Monash Law Clinics. He has worked in the legal assistance sector – at community legal centres and Victoria Legal Aid – for nearly 20 years. He has extensive practice experience in public law, is an Accredited Specialist in Administrative Law, and is undertaking his PhD, focussing on merits review in Australia.

**Dr Jacqueline Weinberg** is the Director of Clinical Units and Academic Director of South East Monash Legal Service. Jacqueline has been committed to legal practice, education and academic pursuits for over 30 years and has attained graduate and post-graduate qualifications in the areas of legal education and clinical legal education. Her areas of research include dispute resolution, student wellbeing and the intersection between technology and the law in enhancing access to justice.

**Professor Jeff Giddings** is Associate Dean (Experiential Education) of the Monash University Law Faculty and President of the Management Committee of Monash Law Clinics. He is also a member of the board of the Global Alliance for Justice Education. He has worked in community legal centres as a salaried lawyer and as part of his work as a legal academic for more than 30 years. Jeff has also written extensively on clinical legal education. He received an Australia National Teaching Fellowship in 2013 for the Effective Law Student Supervision Project and the Australian Award for University Teaching in Law and Legal Studies in 1999.