



**‘Access to Justice, Law
Schools, and Clinical Legal
Education – The VCAT Self-
Help Clinic’**

**Council of Australasian Tribunals
(COAT) National Conference
5 June 2015
(Concurrent Session 2: Access to
Justice and Tribunals)**



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- Author, *Corporate Social Responsibility in the 21st Century* (Edward Elgar Publishing, UK, 2010)
- Expert Panel Member, Australian Government’s *Strengthening Statutory Unconscionable Conduct and the Franchising Code of Conduct Inquiry* (2010-2011)
- Consultant, Allens & Linklaters (1994-2012)



Four Major Themes

- Law schools are an integral part of the system for delivering social justice
- Other arms of the legal profession benefit from knowing more about the environment affecting law schools supporting or partnering them on social justice initiatives
- Law schools are key players in the space occupied by CLE, CLCs, legal aid, and access to justice
- Lawyers have a special individual and collective responsibility to optimise the conditions for access to justice, in fulfilment of:
 - their obligation to the court and the system of justice
 - their fidelity to the rule of law
- All four themes are implicated in:
 - Monash Law’s engagement with CLE at our CLCs
 - Monash Law’s partnership with VCAT in the pilot VCAT Self-Help Clinic for self-represented litigants



Australian Law Schools' Regulatory Environment – What the Profession Needs to Know

- **Australian law schools receive approx \$12K p.a. per u/g law student in public funding:**
 - Lowest government contribution (\$2K) for any discipline
 - Highest student HECS contribution (\$10K) for any discipline
 - Funding is disproportionate to actual costs of delivery (staff salaries, student services, teaching rooms, library etc)
 - Excludes JD and LLM as fee-paying degrees (and cross-subsidising sources of funding)
 - Implications of Abbott Government's proposed deregulation of universities
- **Legal profession's accreditation of law courses:**
 - Based on so-called 'Priestley 11' (ie core substantive areas of law – eg torts, contract, criminal law)
 - Priestley 11 does not explicitly include statutory interpretation, competition/consumer law, ADR, or CLE
- **AQF accreditation of courses:**
 - Level 8 (Pass) v Level 9 (Hons) v Level 10 (Grad/JD) law degrees
 - 'Honours' has different meanings for different purposes now – research training v order of merit
 - Implications for employing law students as associates/clerks/graduates
- **ERA research ranking criteria and university promotions criteria mean:**
 - Some publications lawyers and judges use don't count at all (eg 2nd editions, loose-leaf alerts, professional journal articles) or as much (eg academic v industry journals, Australian v international sources of publication)
 - Income-generating research grants/contracts count more than research for the public goods of law-making, law-reform, social justice advocacy, and professional education
 - Implications for legal profession that uses academic publications in advice/judgments/policy, privatises the profits, and socialises the costs
- **Clinical legal education (CLE) is expensive and largely unfunded by government and the legal profession:**
 - >\$1M p.a. for Monash's two community legal centres (office, staff, CLE program etc)
 - More pressure on law schools to include work-situated experiences, including CLE



- **‘Is there a need for reform?’:**
 - ‘Are there too many law students?’:
 - ‘While it is clear that graduate numbers are increasing, the Commission does not see that this justifies any constraint on student numbers for law degrees ... The solution ... does not lie with capping entry [but with] improved information to prospective students.’ [247]
 - ‘Embedding alternative dispute resolution into the legal psyche’:
 - ‘There is no specific requirement for the study of alternative dispute resolution (ADR) [so] changes are needed to ensure that legal professionals can better match the most appropriate resolution to the dispute type and characteristics.’ [247]



- **‘Is there a need for reform?’:**

- ‘Clinical legal education can provide more practical training’:
 - ‘While the Commission generally supports an increased focus on skills in legal education, it is wary of simply requiring clinical legal education as an “add-on” to all existing law degrees (rather than integrated as part of the overall consideration of the best structure of a legal education) ... However, in postgraduate study (such as JDs or PLT), the use of clinical legal education ... may prove a valuable means to expedite courses while still maintaining quality’ [249]
- ‘More fundamental reforms – balancing between the stages of training’:
 - ‘The need for a greater focus on ADR and clinical legal education is indicative of a broader need to contemporise the way that legal education in Australia is structured and delivered ... Overall, the Commission remains of the view that a holistic review of the three stages of legal education is timely, and offers potential benefits in identifying opportunities to provide more streamlined and effective legal education and training.’ [249, 253]



‘The Law, Crime and Community Safety Council [aka SCAG successor], in consultation with universities and the professions, should conduct a systematic review of the current status of the three stages of legal education (university, practical legal training and continuing professional development). The review should commence in 2015 and consider the:

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

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



- ‘To assist litigants, including the self-represented, to clearly understand how to bring their case, courts and tribunals should take action to:
 - draft all court and tribunal forms in plain language
 - ensure that court and tribunal staff assist self-represented litigants to understand all time critical events in their case, and examine the potential benefits of technologies such as personalised computer generated timelines
 - assess whether their case management practices could be modified to make self-representation easier, and implement changes where cost effective to do so.’
(emphasis added)



‘The Australian, State and Territory Governments, courts, tribunals, and the legal profession [in all of its arms, including the legal academy] should:

- work together to develop clear guidelines for judges, court staff and lawyers on how to assist self-represented litigants within the courts and tribunals of each jurisdiction
- introduce mechanisms to enable sharing of lessons from each jurisdiction on an ongoing basis
- consider introducing qualified immunity for court staff so that they can assist self-represented litigants with greater confidence and certainty.

The guidelines should be explicit, applied consistently across courts and tribunals, updated whenever there are changes to civil procedures that affect self-represented litigants and form part of the professional training of court and judicial officers.’ (emphasis added)



Pilot VCAT Self-Help Clinic - Aims

- ‘The Clinic will provide selected Monash law students with the opportunity to provide unrepresented parties with information about VCAT’s practices and procedures that will help parties make or defend claims in diverse areas such as planning and environmental, tenancy, consumer, guardianship, mental health, equal opportunity, and building and property law.’
- ‘This externship program will include ... (a)ssisting VCAT staff in the Self-Help Centre to:
 - i. Assess the legal and other needs of the unrepresented parties (triage)
 - ii. Provide information about alternative dispute resolution options
 - iii. Provide legal information and information about VCAT’s practices and procedures to enable unrepresented parties to make or defend a claim at VCAT
 - iv. Assist unrepresented parties to complete forms and obtain relevant documents where necessary
 - v. Make referrals to appropriate community legal services, support services or other jurisdictions where necessary
 - vi. Collate and develop written and web-based materials to assist unrepresented parties.’



Pilot VCAT Self-Help Clinic – Preconditions and Establishment

- Pilot scheme, commencing mid-2015
- Partnership between VCAT and Monash University
- High-level organisational support and resourcing commitments (ie VCAT President and Dean)
- ‘Champions’ for the initiative from both organisations (ie Judge Pamela Jenkins, Member Julie Grainger, and Mr Ross Hyams)
- Detailed background research on practical options for self-help clinics (Member Julie Grainger’s 2012 Churchill Fellowship study and report)
- Solid background in setting up and supervising legal clinics
- Students working with VCAR staff – providing information/guidance not legal advice to self-represented litigants





- Positioned within Monash Law’s world-class suite of work-situated placements (ie clinics, internships, externships, and organisational projects)
- Technically, an externship for course credit, meeting academic assessment requirements
- Overall coordination by Monash Legal Practice Programs Convenor
- Academic pre-conditions and interviews to ‘screen’ acceptable student placements
- Identified learning outcomes, externship activities/responsibilities, and workload allocations
- 10 students per semester – 2 students on-site per day, 5 days per week, for 12-week period
- Assigned externship mentor
- Quality-controlled assessment – performance of externship responsibilities (with input from Court staff) plus a research paper
- Insurance coverage for students on practical placements

