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## Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School by Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Peter Joy, Mary Anne Noone and Simon Rice

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**Cover Page Footnote**

Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School Authors: Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Peter Joy, Mary Anne Noone and Simon Rice ISBN (print): 9781760461034; ISBN (online): 9781760461041 Publication date: February 2017 Imprint: ANU Press DOI: <http://dx.doi.org/10.22459/ACLE.02.2017> Website: <https://press.anu.edu.au/publications/australian-clinical-legal-education>

## Book Review

Francina Cantatore\*

### **Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School**

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## 1. Introduction

The book provides a fresh look at Clinical Legal Education (CLE) in Australia in 2017, and examines the diverse factors which influence law clinics during a time when many disruptions are occurring in higher education. The authors argue that clinics make numerous contributions to Australian legal education, including fostering student awareness of concepts of justice and how the law and legal processes impact on people. They express the view that CLE can challenge a contemporary overemphasis on screen-based learning, particularly in cases where learning is purely technology-based without human interaction. They also argue persuasively that CLE is potentially the major disruptor of traditional law schools' core functions, by challenging some of the accepted norms in traditional learning in law, such as a reliance on case law and teaching by way of a formal lecture. As the book is the result of research report prepared by the authors with funding from the National Office of Learning and Teaching, it is based on extensive and thorough research in the area of CLE in Australia. The book also considers the complex issues associated with enhancing law students' public-interest professionalism in an Australian context, and offers practical guidance on how to construct and operate a 'best practice' CLE program for the benefit of various stakeholders, including regulators, law deans, associate deans, law teachers and students.

## 2. Content

The book is structured as follows:

Chapter 1 - *The reason for this book*: The first chapter starts with a discussion of the context and purpose of the book, emphasising the importance of robust clinical legal education practices in times of change, where student numbers are increasing and job opportunities decreasing. The foundation of the book is revealed as having been based on empirical research conducted by the authors, which led to the published report, *Best Practices: Australian Clinical Legal Education (2013)* ('the Report').<sup>1</sup> The Report was researched over an extended period of time with support from the National Office of

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<sup>1</sup> Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Mary Anne Noone, Simon Rice and Ebony Booth, *Best Practices: Australian Clinical Legal Education (2013)*, which can be downloaded from the OLT website: [www.olt.gov.au/resource-best-practices-Australian-clinical-legal-education;perma.cc/2J6E-ZMQX](http://www.olt.gov.au/resource-best-practices-Australian-clinical-legal-education;perma.cc/2J6E-ZMQX).

Learning and Teaching (OLT). Chapter 1 also sets out a useful description of the content of each chapter of the book, which were contributed by individual authors.

Chapter 2 - *Clinics and Australian law schools approaching 2020* (Jeff Giddings): In this chapter, Giddings places CLE within the context of legal education, drawing a distinction between CLE and practical legal training, service learning, *pro bono* programs, and work-integrated learning. He also explains the regulatory framework and canvasses the need for a functioning 'ethical infrastructure' to strengthen the professionalism of CLE. Finally, he includes a discussion of topical issues facing law schools today, such as wellness, depression and the high levels of stress being experienced by Australian law students.<sup>2</sup> He states that clinic-based experiences, with their developmental focus and emphasis on supervision and collaboration, make an important contribution to promote models of 'positive lawyering' and reduce students' levels of stress and anxiety.<sup>3</sup>

Chapter 3 - *Australian clinical legal education: Models and definitions* (Mary Anne Noone and Anna Cody): This chapter delves into the plethora of definitions and descriptions used in relation to CLE and clarifies the terminology used throughout the book, to ensure the reader knows what is meant by different descriptions of specific clinic situations, such as 'in-house live client clinic', 'in-house live client clinic (some external funding)', 'external live client clinic (agency clinic)', and 'externships (includes internships and placements)'. They also show how different models can be used to achieve various learning and teaching outcomes. Practical considerations such as funding constraints for especially law schools are acknowledged and discussed in the context of utilising less costly CLE models, such as externships and agency clinics.

Chapter 4 - *Course design for clinical teaching* (Simon Rice): Rice considers the importance of effective course design in CLE, emphasising the significance of structuring the course to achieve the desired learning outcomes for students, which should not be limited to practical skills development. Instead, it should strive to address a variety of issues, such as addressing legal doctrine, community issues and social justice, legal and professional skills, legal theory, and the provision of public service or the development of legal policy and law reform. Usefully, it also examines the options for student selection, a topic that will become increasingly important as student pressure for selection into clinical legal education programs increases.

Chapter 5 - *Teaching social justice in clinics* (Anna Cody and Simon Rice): The authors propose in this chapter that social justice should be the guiding principal in the establishment and development of law clinics. They explore the role of justice in contemporary CLE, and discuss whether community legal education, community development, strategic litigation or policy advocacy are pivotal in leading to law reform. In considering the relevance of service and student learning in CLE, they propose that the socially appropriate focus of an Australian clinical program should remain the promotion of justice for clients and clients' interests, and students' appreciation of this priority during their clinical experience. Overall, they convincingly argue that clinical education is significantly more than a 'mechanistic' educational methodology.

Chapter 6 - *The importance of effective supervision* (Jeff Giddings): An important consideration for law clinics is clinical supervision. Giddings argues this is central to clinical pedagogy, and that effective practices need to be developed in order to enable students to learn as much as possible from their clinic experience. He touches on the potentially problematic externship clinic, where the practice environment is less conducive for effective supervision and where clinicians may have less access to good supervision training; as well as particular challenges facing supervisors in other clinical settings. Importantly for new

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<sup>2</sup> Norm Kelk, Georgia Luscombe, Sharon Medlow and Ian Hickie, *Courting the Blues: Attitudes Towards Depression in Australian Law Students and Lawyers* (2009) Brain and Mind Institute.

<sup>3</sup> As discussed in Chapter 6 of the book.

clinics, the chapter addresses also the topic of supervision ratios, that is, the maximum number of students that a law school should require a clinician to simultaneously supervise; and offers useful advice for new clinic supervisors.

Chapter 7 - *Reflective practice: The essence of clinical legal education* (Anna Copeland): An issue which is often overlooked in discussing CLE is the power of reflective practice by students. Copeland explains that optimal CLE involves a circular sequence of experience, reflection, theory, practice, and then further reflection. The best reflective practice exposes students to the essentially positivist nature of law teaching and may encourage them to become involved in law reform and community development. She further argues that reflection allows students to learn through personal experience and their own interpretation of the knowledge they have acquired. The issue of whether reflection should be taught and assessed is addressed in this chapter, with the author questioning whether CLE should assess a student's capacity for reflection, or whether the essentially intimate nature of reflection should allow reflection to remain private and unassessed.

Chapter 8 - *Clinical assessment of students' work* (Adrian Evans): This chapter continues the discussion of clinical assessment, which is regarded as an important part of CLE. Evans highlights why assessment is pivotal in achieving course aims and objectives and argues that it can lead to student dissatisfaction if not considered carefully. He uses the following relevant example here: If, for example a law school operates a criminal defence or Innocence clinic (the latter aims to achieve post-conviction pardons in the light of new evidence), how will clinic performance be measured if there are few acquittals or releases of clients from custody? He argues that assessment should have a broader basis than merely successful client outcomes, and that the guidelines should be clear for students, whether assessment is rigorous, or whether it relies on a pass/fail grade.

Chapter 9 - *Resourcing live client clinics* (Adrian Evans): This chapter moves on to the practical considerations of staffing of clinics, and acknowledges the problems faced by many clinics with regard to funding and staffing. It makes a sound argument that the infrastructure of the clinic will be adversely affected if it is unable to secure people with adequate skills to supervise the students. He provides a useful table of minimum resources required for different clinic structures, and suggests that a creative approach is necessary to attract external organisations or partners to fulfil the purpose of the clinic.

Chapter 10 - *Australian best practices—a comparison with the United Kingdom and the United States* (Peter Joy): The author uses a comparative approach to look at how CLE compares in the United States of America, the United Kingdom and Australia, with regard to 'live client' clinics. The chapter includes an analysis of the strengths and attributes of each jurisdiction's approach, and suggests improvements for Australian CLE programmes (for example, the academic status of clinicians). The cross-referenced table also provides a useful overview of desirable clinical practices in the different countries.

Chapter 11 – *Conclusion* (Mary Anne Noone): The last chapter considers the changing face of legal education in Australia, focussing on Federal regulation, changes in legal practice and the challenges facing community legal centres and legal aid in general. Noone acknowledges that this changing environment poses a number of challenges for clinicians, who remain innovative in dealing with issues such as course restrictions caused by reductions in community legal aid funding. She also lauds clinical teachers for establishing cross-jurisdictional and multidisciplinary clinics and for their keen participation in global justice movements.

### 3. Analysis

*Australian Clinical Legal Education: Designing and operating a best practice clinical program in an Australian law school* is a collection of thought-provoking opinions and insights into CLE in Australia. The structure enables academics, practitioners, students and clinicians to easily identify and isolate specific topics in the book. Each author writes clearly

and distinctively with a persuasive, logical approach, and with clear and convincing evidence of research in their area of expertise.

The book aims to sets out in detail the issues associated with developing law students' public-interested professionalism in an Australian context and a practical manner, and succeeds in giving a cogent overview, as well as detailed discussion, of each area covered. It achieves its goal of providing step-by-step guidance on establishing and running a 'best practice' CLE program, for the benefit of all stakeholders. The Harvard library permalinks, (a reference system that ensures that the web links in the footnotes remain uncorrupted by the passage of time), adds to the relevance and usefulness of the book as a clinical practice guide.

The authors rely on a variety of sources to support their arguments, and the international perspective provided by Chapter 10 is a helpful comparison of the benchmarks and attributes to be considered when running a clinical programme. Chapters 2 and 3 provide insight into different types of CLE programmes, as well as pro bono clinics, and explains the different types of clinics and structures found in CLE. These chapters lay a good foundation for the following parts of the book, Chapters 4, 5, and 6, which deal with important foundational issues in CLE, namely course design, social justice, and supervision respectively. The authors argue persuasively that each of these aspects require careful consideration and implementation in order to structure a successful clinic, with desirable outcomes. Each issue is discussed in sufficient depth and with practical guidance for implementation of the authors' suggestions. Chapters 7 and 8 deal with the often overlooked aspect of assessment in clinics. Whilst Chapter 7 considers the issue of reflective practice, the benefits for students and the means of assessment, Chapter 8 takes a broader look at assessment in CLE programmes and considers the different forms of assessment that clinics implement. The real-world issue of staffing in law clinics is discussed in Chapter 9, with a frank acknowledgement of the issues that face many law clinics in securing qualified staff and building a successful infrastructure, such as a lack of funding and resources.

#### **4. Conclusion**

The book would be an advantageous and useful resource for practitioners, academics, students and clinicians, as well as government organisations, community law clinics and law schools in general. The early chapters in particular provide a comprehensive introduction to the landscape of CLE in Australia, and each chapter provides valuable information on different aspects of clinical education. The book has been written to incorporate recent developments in legal education which makes it a pertinent resource for all law schools with clinical programmes (and those in the process of implementing clinical education in any form). As it covers a wide variety of topics in the area of clinical education, it makes for varied and interesting reading, dealing with many well-known issues in clinical programmes, such as lack of funding, whilst providing positive solutions and useful information for clinicians.

Researchers and clinicians will benefit from reading this book and applying the knowledge of the authors in practice or in their research. The reasonable price and germane content of the book makes it a valuable resource to help anyone with an interest in clinical education navigate their way through the issues facing CLE in Australia today. The authors are all experts in the area of clinical education, eloquent and easy to understand, and for those reasons alone, it is a worthwhile addition to any library.