



LEGAL EDUCATION

The Commonwealth discovers clinical legal education

The Federal budget handed down last month by Treasurer, Peter Costello included a funding increase for Australian community legal centres (CLCs). A news release dated 13 May 1998 from the Commonwealth Attorney-General, Daryl Williams, outlined a 19% increase in CLC funding.

One of the five components of this funding increase relates to an allocation of \$1.74 million over four years (1998–99 to 2002–2003) for '[d]eveloping more and better Clinical Legal Education to maximise service delivery to disadvantaged clients and cooperation with universities'. The development of more and better clinical programs is good news. The purpose of this short article is to offer some suggestions as to how that development might best be fostered.

What the Budget announced

The clinical funding initiative is contained in the section of the budget relating to CLCs and states:

New clinics will be established and both the new and existing clinics will be subject to benchmarking to maximise legal service delivery to disadvantaged clients and cooperation with universities.

A project will be undertaken to develop a performance model for all existing and new legal clinics to ensure best practice in service delivery and accountability. Upon finalisation of the model, tenders will be allocated.¹

What prompted this?

This clinical funding announcement surprised many people involved in the small number of clinical programs operating in Australia. In 1996, the Commonwealth provided significant funds towards the establishment of Murdoch University's clinical legal education program.² This program places students at the newly established Southern Communities Advocacy, Legal and Education Service (SCALES). Daryl Williams, a Western Australian, is understood to be a strong supporter of SCALES and the Murdoch clinical program.

The Commonwealth's interest in clinical legal education was without

doubt raised by the evidence given by various clinical teachers to the Senate Inquiry into the Australian Legal Aid System. In February 1997, the Inquiry heard evidence from five academics involved in the clinical programs run at La Trobe, Monash and Murdoch Universities. The message to the Inquiry was clear: universities and their law schools are subsidising the provision of legal services to the community, universities are under funding stress and they cannot be expected to fill the gap created by legal aid cuts. The Inquiry also heard from academics involved in the clinical programs at Griffith and Newcastle.

The state of Australian clinical legal education

Australia's clinical movement has grown substantially during the 1990s. Until the early 1990s, there were only three clinical programs in Australia.³ The *Guide to Clinical Legal Education Courses in Australian Universities 1998* produced by the University of New South Wales sets out clinical programs run by 12 Law Schools around Australia. While 11 of these programs are linked in some way to one or more CLCs, the programs are increasingly diverse.

Australia's early clinical programs involved students working on cases being run by CLCs. The students were supervised by solicitors/academics employed by the universities involved. The newer clinical programs tend to be smaller and involve links with a wider range of legal service deliverers. External placements, where students are directly supervised by a member of their host organisation rather than by a university academic, have become more common. Such programs involve significantly reduced start-up costs for the university but also raise significant issues about quality control and the value of the educational experience for the students.⁴

There has also been a move towards establishing clinical programs in specialist areas of law. Apart from placement arrangements which see students involved in a wide range of organisations, both Monash and Griffith Universities have established specialist

clinical programs. Monash operates a program for a small group of experienced students to provide legal advice to victims of sexual assault.⁵ Griffith has established an alternative dispute resolution clinic with students being placed with the Alternative Dispute Resolution Branch of the Queensland Department of Justice.

Another major development in Australian clinical programs has been the move by some New South Wales law schools to merge their undergraduate law degree with the post-degree Practical Legal Training (PLT) requirements which must be completed before a law graduate can practise as either a solicitor or barrister. The law program at Newcastle University enables students to enter a 'Professional Program' which involves them in a more intensive degree, with longer semesters and additional assessment tasks but which satisfies the PLT requirements without further post-degree study. University of Technology, Sydney and Wollongong University both offer a Practical Legal Training program within their law schools, in effect as an alternative PLT provider to the New South Wales College of Law.

Issues raised by the Commonwealth's announcement

Perhaps the most important issue raised by the funding announcement is simply what role the Commonwealth sees itself playing in relation to Australian clinical programs. The Attorney-General's news release refers to both 'the new and existing clinics' being 'subject to benchmarking to maximise legal service delivery to disadvantaged clients'.

It will be important for the benchmark process to take account of matters such as:

- the increasingly diverse nature of Australian clinical programs. Clinic students take on a wide range of responsibilities in quite different organisations. This will increase the difficulty of establishing a set of universally appropriate benchmarks;
- the range of objectives of the parties to clinical programs. While many

clinical programs seek to address unmet needs for legal services, the primary objective which university law schools seek to achieve through clinical programs is an educational one. Clinical legal education is clearly viewed by some Australian law schools as a valuable element of their law programs. The motivations of CLCs participating in clinical programs will vary.⁶ Apart from seeking to assist more clients, CLC motivations may include matters such as a commitment to improving the education of future lawyers, establishing a pool of volunteers who will maintain their links with the CLC after completing the clinical program and gaining access to university resources and expertise;

- what types of services will be considered most important for clinical programs to deliver? Clinical programs are not about 'bums [client or student] on seats'. The nature of clinical teaching, emphasising close critiquing of student performance, means clinical programs cannot be offered to the same number of students as lecture-based subjects. Australian clinical programs are also increasingly emphasising the value of working on broad-based community service initiatives. Such initiatives will present a real challenge to the benchmarkers.

The news release refers to existing clinical programs also being subject to benchmarking. This raises questions regarding the autonomy of such programs which do not receive any of this new Commonwealth funding. The Commonwealth may consider attaching conditions to the funding provided to CLCs involved in clinical programs. Any such move might discourage the ongoing involvement of CLCs in such programs.

Who will receive the funding?

It is not clear at this stage whether the new funding will be provided to CLCs or to universities. If the Commonwealth intends to allocate these funds to CLCs, this will be awkward given the nature of existing clinical programs, which are run by university law schools. This would also raise issues of what is defined to be a CLC. Some Australian clinical programs⁷ involve placement sites which are 'controlled' by the law school concerned while others follow more of a partnership ap-

proach between the law school and an independent CLC. If the money is given to universities, what role will CLCs be able to play in the development of each such program? It would appear that where possible, a 'partnership approach' is likely to be encouraged.

There is a further group of Australian clinical programs which are not situated in one CLC. Is a line to be drawn between those programs run in conjunction with CLCs and those which place students with legal aid authorities? Both La Trobe and QUT run programs with the legal aid authorities in their respective States. What of a law school which runs clinical programs involving several CLCs? For example, Griffith has students placed at Caxton Legal Centre for one clinical program and at Prisoners Legal Service and the Environmental Defenders Office as part of another program.

Supporting community legal education and law reform

Australian clinical programs have a proud heritage of being heavily involved in work using alternative forms of legal service delivery. The emphasis given to community legal education and law reform by Australian clinical programs is in part a product of the strong links between those programs and CLCs. It will be important for the benchmarking process to take account of this heritage.

The running of testcase litigation was a hallmark of the Monash and UNSW clinical programs during the 1980s.⁸ Kingsford Legal Centre, the site of the UNSW clinical program ran a series of anti-discrimination cases which were ultimately resolved in the High Court. Springvale Legal Service acted for members of the Squatters Union in a 1983 case which prompted the first ever sitting of the Australian High Court on a Saturday morning.⁹ In more recent times, Newcastle Legal Centre has developed a formidable reputation for such testcase work. A wide range of law reform projects have also been pursued by staff and students involved in clinics.

Community legal education has also been an integral part of some Australian clinical programs. At James Cook University, clinical students have worked closely with staff of the Townsville Community Legal Service on a range of community legal education initiatives. Students placed at Springvale Legal Service as part of the Monash clinical

program work on on-going community development files as well as providing more conventional forms of legal advice.

Conclusion

Clinical legal education has great scope for enriching the education of law students while at the same time providing a range of valuable services to members of the general community. Australian clinical programs have benefited from their links, whether formal or informal, with CLCs. Those links are likely to become more important with the budget announcement of funding for such clinical programs 'to further assist in the provision of legal assistance to those who most need it'.

Law schools are no different from the rest of the university sector in having had their funding reduced in recent years. Clinical legal education is resource-intensive and this has placed pressure on established clinical programs, in particular. The availability of new casework-driven funds from the Commonwealth designed to deliver legal services to those most in need may make it difficult for those involved in running clinical programs to ensure that their law schools remain focused on the educational value of clinical legal education.

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References

1. 'Expansion of Community Legal Services Fact Sheet', May 1998, accompanying 'Community Legal Service Expanded' News Release from Attorney-General, The Hon. Daryl Williams, 13 May 1998.
2. 'Clinical Legal Education at Murdoch', (1997) 22(2) *Alternative Law Journal* 158.
3. Monash (started 1975), La Trobe (1978) and University of New South Wales (1980). See M. A. Noone, 'Australian Community Legal Centres — The University Connection' in Cooper, J. and Trubek, L. (eds), *Educating for Justice: Social Values & Legal Education*, Dartmouth, 1997.
4. See Giddings, J., 'External Placements For Law Students: Out Of Sight, Out Of Mind Or Putting Students In The Picture', paper presented at the Australasian Professional Legal Education Council International Conference, *Skills Development for Tomorrow's Lawyers: Needs and Strategies*, Sydney, New South Wales, September 1996. Published in Conference Papers, Vol. 2, pp.575-99.

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litigation. As Deemster O'Rourke said in *General Products v Revenue Department of the Isle of Man* (1725) Manx Rep 12 ...

KIRBY J. 'Cause I'm the taxman, Yeah, Yeah I'm the taxman / And you're working for no-one but me': *Re: The Taxman* (1966) Revolver Side 2, per Harrison, G. When The Beatles sang these words, little did they realise they would be quoted in an Australian court in 1998. But they have been. By me. Surprisingly, during the course of argument, counsel for neither party referred the court to pop music. However in tape-recorded submissions exchanged following the hearing, both sides tendered some groovy examples of late 60s British Blues musicianship. Unfortunately the taxpayer here was not familiar with the warnings of the Fab Four. But to turn to the matters raised by the pleadings in this case ...

HAYNE J. This is an appeal from a decision of the Full Court of the Federal Court of Australia, reversing a decision of a single judge of the Federal Court upholding an order of the Administrative Appeals Tribunal (Taxation Division) in part affirming and in part denying an appeal from a ruling by the Commis-

sioner of Taxation rejecting an application by the taxpayer-appellant for a ruling under section so on and so forth &c ...

CALLINAN J. This is an impudent little tax avoidance scheme, whose main redeeming feature is that it succeeds. However whilst finding for the taxpayer, I have taken note of the lack of corporate good-citizenship evinced by the company concerned, and propose penalising it by basing my next play around its dealings ...

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References

1. The scripture is from Psalms 91:12.
2. This style of judging was more common in less hurried times, although the citation, in particular, of 'canonical texts' (typically from safe, dead, classical European authors such as Shakespeare or the gospel writers, but also, surprisingly, including Lewis Carroll) remained an occasional flourish, especially by South Australian judges: Meehan, M., 'The Good, the Bad and the Ugly: Judicial Literacy and the Australian Cultural Cringe' (1990) 12 *Adelaide Law Review* 431.

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For almost five hours, devotees of the Afros, Queen Latifah, Kid 'n Play, Digital Underground, Big Daddy Kane and headliners Public Enemy were jerked into spasmodic movement by what seemed little more than intermittent segments of a single rhythmic continuum. It was hypnotic in the way of sensory deprivation, a mind-and-body-numbing marathon of monotony whose deafening, pre-recorded drum and bass tracks and roving klieg lights frequently turned the audience of 6500 into a single-minded movable beast.³

Unable to negotiate the relationship between young people and musical beat, the critic interprets the relationship as dangerous and automatic.

The manner in which the media has interpreted young people's behaviour as mindless and dangerous conveys the message and image that young audiences are threatening to the public. Of course the media can shape the images by exacerbating the behaviour to make them 'newsworthy'.⁴ But in doing so, the media and the general public are prevented from understanding the appeal of popular music to young people.

Claiming psychological space through sound

The availability of walkmans has appeared as a godsend for some young people. The nature of these personal sound systems allows young people to withdraw totally into the musical beat and create psychological space. Engulfing themselves in the beat, young people can escape the pressures and

lack of power which characterise their lives.

Many adults, however, have not recognised that music can contribute to the creation and maintenance of an alternative psychological reality for young people. Music can create another world, which for many youth is essential in order to cope with their problems, to question their identity and sustain emotional wellbeing. In this sense many young people experience a feeling of empowerment because they have the apparent ability to question themselves and prevailing adult norms which affect their lives. Within this space, young people can control an environment and shape it to their needs.

Young people's use of music is more complex than many adults are inclined to accept. While it is easy for some to be fearful, those who choose to ignore the moral panic and take the time to analyse musical beat will inevitably understand how young people can use sound in a physical and psychological manner to create space for themselves to understand and cope with their social exclusion. Acknowledging musical phenomenon as a youth culture would also give policy makers the opportunity to implement policies which truly reflect the issues and needs of young people. But if adults continue to invoke such panics, young people's use of music will only become demonised.

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References

1. Cohen, S., *Folk Devils and Moral Panics — The Creation of the Mods and Rockers*, MacGibbon and Kee, 1972, p.9.
2. Wheeler, E.A., 'Most of My Heroes Don't Appear On No Stamps — The Dialogics of Rap Music', (1994) *BMR Journal* 207.
3. Rose, T., 'Fear of a Black Planet: Rap Music and Cultural Politics in the 1990's', (1991) 60(3) *The Journal of Negro Education* 285.
4. Cohen, S., *Folk Devils and Moral Panics — The Creation of the Mods and Rockers*, MacGibbon and Kee, 1972, p.44.

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5. Evans, A., 'Specialised Clinical Legal Education Begins in Australia', (1996) 21 *Alternative Law Journal* 79.
6. Noone, M. A., 'Planning a Clinical Legal Education Program: What are the Issues?' (1994) 19(6) *Alternative Law Journal* 285.
7. Such as Monash, Murdoch, Newcastle, UNSW and UTS.
8. Some of this work is discussed in Giddings, J., 'Casework, Bloody Casework', (1992) 17(6) *Alternative Law Journal* 261.
9. Noone, M. A., and others, 'Squatters' Victory — Bona Vista' (1983) 8(6) *Legal Service Bulletin* 252.