

# TAX CLINICS IN AUSTRALIA – THE ROAD TO LEGITIMACY

ROBERT WHAIT\*, CONNIE VITALE\*\* AND DONOVAN CASTELYN\*\*\*

## ABSTRACT

Tax Clinics are a recent phenomenon in Australia although their heritage dates to the early 1960s in the United States of America. Notwithstanding the international reverence with which tax clinics have been associated, there has and remains a need for these initiatives to be legitimised domestically. To that end this article evaluates the process undertaken by participants in the National Tax Clinic Program ('NTCP') to achieve legitimacy in Australia during the first year of their operation in 2019 while the NTCP was being trialed. More specifically, the article responds to the research question: what legitimisation strategies were employed by Australian tax clinics during the trial phase? The article engages inductive analysis to respond to the research question and analyses disclosures made by each NTCP participant in manuscripts published in a special issue of the *Journal of Australian Taxation*. The article clearly demonstrates how tax clinics have adopted pragmatic, moral and cognitive strategies to attain legitimacy and provides a series supporting practical examples. These examples show that clinics relied predominantly on pragmatic legitimacy strategies with moral and cognitive legitimacy strategies being employed to a lesser extent.

## I INTRODUCTION

In 2018, Curtin University established Australia's first tax clinic.<sup>1</sup> This initiative was conceived with the dual purpose of (i) responding to the evolving demands placed on Australian tax and legal education, in recognition of the emerging needs of industry, and (ii) facilitating access to free and reliable tax advice for unrepresented taxpayers seeking to meet or comply with their tax-related affairs.<sup>2</sup> In response to the success of the Curtin initiative, the National Tax Clinic Program ('NTCP') trial was subsequently established in 2019 and enabled 10 (including Curtin University) academic institutions, State and Territory wide, to conduct a 12-month funded trial of the program.<sup>3</sup> The national trial was

---

\* Senior Lecturer, UniSA Business, University of South Australia (UniSA). UniSA Tax Clinic Founder and Co-Manager. Member of the Centre for Markets, Values and Inclusion.

\*\* Lecturer, Western Sydney University (WSU). WSU Tax Clinic Co-Founder and Manager.

\*\*\* Senior Industry Fellow – Taxation, University of Tasmania (UTas) and Director of UTas Tax Clinic.

The authors thank the anonymous referee for their comments and suggestions.

<sup>1</sup> Donovan Castelyn, Stephanie Bruce and Annette Morgan, '2019 National Tax Clinic Project: Curtin University – Curtin Tax Clinic' (2020) 22(2) *Journal of Australian Taxation* 1.

<sup>2</sup> Ibid 3.

<sup>3</sup> See, former Prime Minister, Scott Morrison, 'Keynote Address' (Speech, Australian Chamber of Commerce and Industry Annual Dinner, 28 November 2018). Relevantly, the Prime Minister announced the establishment of 'ten new tax clinics ... to provide free assistance to small businesses and individuals with disputes with the ATO. These tax clinics will ensure small businesses in need have

ultimately deemed a success and the original 10 participants were granted a further two year's funding.<sup>4</sup> More recently, in mid-2021, the Australian Government sought to expand the initiative more broadly. While still confined to academic institutions, grants are now awarded on an open and competitive basis.<sup>5</sup> Tax clinics are now a recognised fixture of Australia's tax landscape. However, for this position to first, be attained and second, to continue, clinics needed to achieve legitimacy among several key stakeholders. These include(ed) but are not limited to; the taxpayers, professional bodies, university students and the internal university community and the government and its department such as the Australian Taxation Office ('ATO') and Federal Treasury.

Accordingly, it is the purpose of this article to evaluate the processes undertaken by the NTCP trial participants to achieve legitimacy in Australia. More specifically, the article will seek to respond to the research question, namely: What legitimisation strategies were employed by Australian tax clinics during the trial phase? The article will engage with inductive analysis to respond to this question by analysing disclosures made by each NTCP trial participant in manuscripts published in a special issue of the *Journal of Australian Taxation*.<sup>6</sup>

The article will initially provide further background into the motivations for the NTCP and its comparative international initiatives. The article will then discuss the aspects of legitimacy theory pertinent to the paper and identify the initial and subsequent challenges participants in the NTCP needed to overcome. A discussion concerning the research methodology and critical observations will then follow prior to the article offering a series of concluding remarks.

## II BACKGROUND AND LITERATURE

### A *A Brief History of Tax Clinics*

Tax clinics globally are a recent phenomenon, though their origins date back to the late 1960s in the United States of America ('US').<sup>7</sup> Fogg recollects that the first test tax clinic was established at Harvard Law School in 1968 and supported by funding from the Internal Revenue Service ('IRS').<sup>8</sup> This initial program enabled law students from the Harvard Law School to assist taxpayers undergoing an office audit in the Boston District whereby students were permitted to accompany taxpayers as a 'witness,' but not as the

---

access to specialist advice from tax practitioners and students in the field on a pro bono basis.' See also, *Journal of Australian Taxation* (2020) 22(2) Special Edition on Tax Clinics for a comprehensive overview of clinics involved in the trial phase.

<sup>4</sup> See Treasury, *Mid-Year Economic and Fiscal Outlook* (Report, December 2019) 283 <[https://archive.budget.gov.au/2019-20/myefo/download/MYEFO\\_2019-20.pdf](https://archive.budget.gov.au/2019-20/myefo/download/MYEFO_2019-20.pdf)>.

<sup>5</sup> 'Archived Grant Opportunity View - G04847', *Australian Government* (Web Page) <<https://www.grants.gov.au/Go/Show?GoUuid=04bd4ff8-8251-4713-aafe-92ac41f55134>>.

<sup>6</sup> *Journal of Australian Taxation* (2020) 22(2) Special Edition on Tax Clinics.

<sup>7</sup> Keith Fogg, 'Taxation with Representation: The Creation and Development of Low-Income Taxpayer Clinics' (2013) 67 *Tax Law* 5.

<sup>8</sup> *Ibid.*

taxpayer's legal representative.<sup>9</sup> Throughout the 1970s and 1980s more universities opened tax clinics stipulating that the service was targeted at low-income taxpayers and supported by funds from the Department of Education.<sup>10</sup> In addition to the pedagogical motivations, a central theme of each clinic during this time, which admittedly persists to the present, is the provision of timely, accurate and reliable tax advice and/or representation to eligible low-income taxpayers.<sup>11</sup> Aptly, the tax clinical program in America is referred to as the Low-Income Tax Clinic ('LITC') program. By the late 1990s, tax clinics in the US were well established and benefited from matched national funding and a countrywide presence.<sup>12</sup>

LITCs have continued to operate in both the academic and non-academic domains with a particular focus on assisting low-income individuals who have a tax dispute with the IRS and providing education and outreach to individuals who speak English as a second language ('ESL').<sup>13</sup> Relevantly, the established aims of the program now include:

- providing pro bono representation on behalf of low-income taxpayers in tax disputes with the IRS, including audits, appeals, collection matters, and federal tax litigation;
- responding to IRS notices and correction of account problems;
- educating low income and ESL taxpayers about taxpayer rights and responsibilities; and,
- identifying and advocating for issues that impact low-income taxpayers.<sup>14</sup>

Australia is understood to be the first nation following the US to introduce a similar program. Moreover, as noted, Curtin University, under the leadership of Annette Morgan and Donovan Castelyn, is credited as the first tax clinic in Australia and subsequently the impetus for the NTCP trial. The NTCP parallels the LITCs in the US sharing similar philanthropic and pedagogical ideologies.<sup>15</sup> Notably, each participant in the Australian

---

<sup>9</sup> Despite the well-intentioned motivations for this program, it was discontinued a mere 18 months later based on a perceived lack of benefit to the school and the service. See *ibid* 5.

<sup>10</sup> *Ibid* 3. Each clinic based their models on the previously established clinics focused on low-income taxpayers and providing practical skills to their enrolled university students.

<sup>11</sup> Internal Revenue Service, Office of the Assistant Commissioner, *Report on Legal Assistance Test Program* (Final Report, November 1978).

<sup>12</sup> Fogg (n 7) 23. See also, Restructuring and Reform Act of 1998 (RRA 98) which authorised \$6.0 million in matching grants to the LITCs.

<sup>13</sup> The impact of the LITC program continues to expand. In the 2021 grant year, LITCs represented 19,413 taxpayers, educated 133,757 taxpayers and service providers, helped secure \$5.8 million in refunds and decrease or correct \$50 million in tax liabilities. Moreover, the LITC Program awarded over \$12 million in grants to 130 organizations in 47 states and the District of Columbia with similar funding and assistance levels expected in 2022 and beyond. See, 'Low-Income Taxpayer Clinics 2022 Program Report', *Inland Revenue Service* (Report, January 2022) <<https://www.irs.gov/pub/irs-pdf/p5066.pdf>>.

<sup>14</sup> *Ibid*.

<sup>15</sup> Castelyn (n 1) 2.

program is required to deliver on the following for taxpayers who cannot afford representation:

- provide pro-bono advice, guidance and assistance on tax matters;
- represent clients on a pro bono basis in dealings with the ATO;
- create education activities in each Tax Clinic to improve understanding of the tax system;
- provide advocacy facilities to enable wider involvement in highlighting and reducing issues and problems in the tax system; and
- staff Tax Clinics with students undertaking relevant studies including accounting, law or dispute resolution.<sup>16</sup>

### **B     *The Pathway to Legitimacy***

The discussion above demonstrates how tax clinics were established in Australian universities to fill a gap in the market by providing free services to those who cannot afford a tax agent. Students, under supervision, providing free tax services from within universities presents a new practice in Australia that must attain and maintain legitimacy for long term survival. Since their inception, the clinics have attracted attention from the tax profession who are concerned that clinics will be competing with their member firms by poaching clients. Therefore, it is important for clinics to demonstrate that they are achieving the objectives of the NTCP to attain and maintain legitimacy with the profession, as well as with several other stakeholders. Power discusses a range of stakeholders from which legitimacy for a new practice is sought such as clients, the non-client external world, and the internal world.<sup>17</sup> Following this, tax clinic client group stakeholders will comprise specific taxpayers seeking advice and services, members of the public receiving education, financial counsellors, and other referral sources. Non-client external groups stakeholders will comprise the Australian Taxation Office, Treasury, and the Tax Practitioners' Board, and the general community. Lastly, internal world stakeholders will comprise university students, other academics and the broader university community.

Suchman regards legitimacy as the 'generalized perception or assumption that the actions of an entity are desirable, proper or appropriate within a socially constructed system of norms, values, beliefs and definitions'.<sup>18</sup> Legitimacy is therefore a multifaceted concept.<sup>19</sup>

---

<sup>16</sup> ATO (n 5) 8.

<sup>17</sup> Michael Power, 'Auditing and the Production of Legitimacy' (2003) 28(4) *Accounting, Organizations and Society* 379 cited in Brendan O'Dwyer, David Owen and Jeffrey Unerman, 'Seeking Legitimacy for New Assurance Forms: The Case of Assurance on Sustainability Reporting' (2011) 36(1) *Accounting, Organizations and Society* 31.

<sup>18</sup> Mark Suchman 'Managing legitimacy: strategic and institutional approaches' (1995) 20(3) *Academy of Management Review* 571, 572.

<sup>19</sup> See eg, Alex Bitektine, 'Toward a Theory of Social Judgements: The Case of Legitimacy, Reputation, and Status' (2011) 36(1) *Academy of Management Review* 151; Alex Bitektine and Patrick Haack, 'The 'Macro' and the 'Micro' of Legitimacy: Toward a Multilevel Theory of the Legitimacy Process' (2015) 40(1) *Academy of Management Review* 49; Noel Brown and Craig Deegan, 'The Public Disclosure of Environmental Performance Information – A Dual Test of Media Agenda Setting Theory and Legitimacy Theory' (1998) 29(1) *Accounting and Business Research* 21; Mohamed Chelli, Jacques Richard and

It is beyond the scope of this article to conduct an extensive evaluation of the literature concerned with legitimacy theory. It is however prudent for this article to explore, as a foundation for further analysis, the literature broadly concerning legitimacy with a particular emphasis on strategic and institutional approaches to developing relationships with stakeholders.<sup>20</sup>

The framework established by Suchman and subsequently endorsed and expanded upon by Tilling and Tilt,<sup>21</sup> O'Dwyer<sup>22</sup> and Deephouse et al,<sup>23</sup> will inform much of the subsequent discussion in this article.<sup>24</sup> To that end, the strategic approach emphasizes legitimacy as an operational resource instrumentally managed by organisations.<sup>25</sup> Whereas, institutional legitimacy emphasises the power of external, cultural and contextual factors in constructing organisations and the standards by which they are judged.<sup>26</sup> Each strand is further divided into pragmatic, moral and cognitive terms.

### 1 *Pragmatic Legitimacy*

Pragmatic legitimacy concerns self-interested and instrumental evaluations of new practices by external stakeholders.<sup>27</sup> There are three sub-types of pragmatic legitimacy. One is exchange legitimacy where the expected value of an organisation's activities is what ultimately determines its legitimacy.<sup>28</sup> Expressed in the alternative, stakeholders will legitimise a new practice by assessing the instrumental value that it provides and whether it meets their needs. Another is influence legitimacy which occurs when external stakeholders believe that they can shape the organisation providing the practice or the

---

Sylvain Durocher, 'France's New Economic Regulations: Insights from Institutional Legitimacy Theory' (2014) 27(2) *Accounting, Auditing and Accountability Journal* 283; Craig Deegan, 'An Overview of Legitimacy Theory as Applied within the Social and Environmental Accounting Literature', in Jeffrey Unerman, Jan Bebbington and Brendan O'Dwyer (eds), *Sustainability Accounting and Accountability* (Routledge, 2008) 248; David Deephouse and Mark Suchman, 'Legitimacy in Organizational Institutionalism', in Royston Greenwood, Christine Oliver, Roy Suddaby and Kerstin Sahlin-Andersson (eds), *The SAGE Handbook of Organizational Institutionalism London* (Sage, 2008) 49.

<sup>20</sup> Suchman (n 18). For a comprehensive discussion surrounding the broader aspects of organisational legitimacy, see, Sanjaya Kuruppu, Markus Milne and Carol Tilt, 'Gaining, Maintaining and Repairing Organizational Legitimacy - When to Report and When not to Report' (2019) 32(7) *Accounting, Auditing & Accountability Journal* 2062.

<sup>21</sup> Matthew Tilling and Carol Tilt, 'The Edge of Legitimacy: Voluntary Social and Environmental Reporting in Rothmans' 1956 - 1999 Annual Reports' (2010) 23(1) *Accounting, Auditing and Accountability Journal* 55.

<sup>22</sup> O'Dwyer et al (n 17).

<sup>23</sup> David Deephouse, Jonathan Bundy, Leigh Plunkett Tost and Mark Suchman, 'Organizational Legitimacy: Six Key Questions' in Royston Greenwood, Christine Oliver, Thomas B Lawrence and Renate E Meyer (eds), *The SAGE Handbook of Organizational Institutionalism London* (Sage, 2017) 27.

<sup>24</sup> Suchman (n 18).

<sup>25</sup> Kuruppu, Milne and Tilt (n 20) 2065.

<sup>26</sup> Ibid.

<sup>27</sup> Suchman (n 18) 571.

<sup>28</sup> Kuruppu, Milne and Tilt (n 20) 2065.

practice itself.<sup>29</sup> Influence legitimacy may also be achieved where the new practice appeals to a stakeholder's broader set of interests beyond their own.<sup>30</sup> The final type of pragmatic legitimacy is dispositional legitimacy which is concerned with the character of organisations providing the practice and the belief that they are acting in stakeholders' best interests.<sup>31</sup> With respect to tax clinics, stakeholders may be looking for various needs to be satisfied or outcomes to be achieved with legitimacy being difficult to attain or maintain if these needs are not met or the outcomes are not achieved.

## 2 *Moral Legitimacy*

Moral legitimacy is concerned with approval based on whether the new practice is perceived as right or wrong according to whether it achieves certain social outcomes and increases social welfare.<sup>32</sup> As with pragmatic legitimacy, various sub types of moral legitimacy exist.<sup>33</sup> Consequential and procedural kinds of moral legitimacy are achieved by stakeholders' assessing what the new practice achieves and whether those achievements align with socially acceptable techniques and procedures.<sup>34</sup> These are objectively assessed from the external stakeholder's point of view. Personal legitimacy can be achieved through evaluation of the individuals involved in the new practice.<sup>35</sup> This determination concerns the individual's status, reputation or charisma. Similarly, structural legitimacy can be achieved by assessing the administrative and physical practices and whether those can be regarded as appropriate for that new practice.<sup>36</sup> With respect to tax clinics, helping vulnerable taxpayers who cannot afford tax services and who need it may be regarded as the right thing to do, but legitimacy may dissipate if this goal is not achieved. Selecting appropriate clients to serve and students to serve them using an appropriate clinic model and an appropriately experienced and qualified supervisor would also be relevant aspects to consider. A charismatic or well-regarded supervisor would also assist with attaining and maintaining moral legitimacy.

## 3 *Cognitive Legitimacy*

Pragmatic and moral legitimacy are congruent to the extent that they both concern discursive evaluations from external stakeholders which can be in the form of engagement through action or dialogue, whereas cognitive legitimacy moves beyond discursive evaluations and is established by the new practice objectively being the most appropriate way to achieve a desired outcome or meet a particular need.<sup>37</sup> This can be

---

<sup>29</sup> Ibid.

<sup>30</sup> Suchman (n 18) 578 - 579.

<sup>31</sup> Kuruppu, Milne and Tilt (n 20) 2065.

<sup>32</sup> Suchman (n 18) 585.

<sup>33</sup> Ibid; O'Dwyer et al (n 17) and Deephouse et al (n 23) 33.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Suchman (n 18) 571.

demonstrated by providing plausible arguments for the new practice's existence, referred to as comprehensible legitimacy,<sup>38</sup> or through the need for the new practice essentially being self-evident or as commonly espoused, 'taken for grantedness'.<sup>39</sup> The self-evident appropriateness or taken for grantedness of tax clinics to meet the needs to taxpayers who cannot comply with their tax affairs on their own and do not have the means to pay for appropriate help might be regarded as the ultimate form of legitimacy, but if this cannot be attained, continually arguing for their existence in a comprehensible and persuasive manner would be appropriate to attain and maintain this type of legitimacy.

#### 4 *Strategies and Practices to Attain and Maintain Legitimacy*

A new practice may seek to achieve or rely on many types of legitimacy. It is also recognised that the implementation of strategies and practices can achieve more than one type of legitimacy.<sup>40</sup> Ruef and Scott however acknowledge several conflicts when seeking to achieve multiple legitimacies.<sup>41</sup> For example, moral legitimacy's concern with outcomes is clearly related to the pragmatic legitimacy's focus in instrumental exchange such that a practice that is judged poorly with respect to its outcomes are also likely to be assessed poorly with respect to the value of any exchanges with stakeholders.<sup>42</sup> In contrast, a new practice that is assessed positively with respect to doing the right thing and achieving social welfare may be assessed poorly with respect to pragmatic legitimacy due to some stakeholders observing poor or even reduced value from it.<sup>43</sup>

Some types of legitimacy are easier to attain but are harder to maintain while others are harder to attain but are more durable once they have been attained.<sup>44</sup> For example, pragmatic legitimacy is regarded as the easiest to attain but the least durable due to its emphasis on short term material incentives and its greater exposure to changes in perceptions of external audiences.<sup>45</sup> In contrast, cognitive legitimacy is the hardest to

---

<sup>38</sup> O'Dwyer et al (n 17) and Deephouse et al (n 23) 33.

<sup>39</sup> Ibid.

<sup>40</sup> Derick Brinkerhoff, 'Organisational Legitimacy, Capacity and Capacity Development' (Discussion Paper No 58A) (June 2005) 1.

<sup>41</sup> Martin Ruef and Richard Scott, 'A Multidimensional Model of Organizational Legitimacy: Hospital Survival in Changing Institutional Environments' (1998) 43(4) *Administrative Science Quarterly* 877.

<sup>42</sup> See further, Adriana Burlea-Schiopoiu and Ion Popa, 'Legitimacy Theory' in Samuel O Idowu, Nicholas Capaldi, Liangrong Zu and Ananda das Gupta (eds), *Encyclopedia of Corporate Social Responsibility* (Springer, 2013) 1579. See also, Pablo Archel, Javier Husillos, Carlos Larrinaga and Crawford Bradford Spence, 'Social Disclosure, Legitimacy Theory and the Role of the State' (2009) 22(8) *Accounting, Auditing & Accountability Journal* 1284.

<sup>43</sup> Brinkerhoff (n 40) 5.

<sup>44</sup> Ruef and Scott (n 41) 880.

<sup>45</sup> O'Dwyer et al (n 17) 35 and Deephouse et al (n 23) 33. See also, Matthew Tilling, 'Some Thoughts on Legitimacy Theory in Social and Environmental Accounting' (2004) 24(2) *Social and Environmental Accountability Journal* 1.

attain but has longer-term orientation and is easier to maintain.<sup>46</sup> Moreover, failure to obtain and maintain moral legitimacy can undermine the preservation of any pragmatic or cognitive legitimacy.<sup>47</sup> Cognitive legitimacy evolves slowly as it is often the product of constituents' cumulative experiences.<sup>48</sup> With respect to tax clinics, legitimacy would have had to have been achieved quickly – especially since the trial period was initially for one year and a competitive grant process was to follow a couple of years after. Therefore, a heavy reliance on pragmatic and moral legitimacy instead of cognitive legitimacy is expected during the NTCP trial period. If that is the case, gaining cognitive legitimacy in the long term would be beneficial and recommended.

Three broad strategies have emerged from the literature which may assist in achieving one or more types of the legitimacies discussed above. These include, *conform, selection or manipulation strategies*.<sup>49</sup> *Conform strategies* are adopted by a new practice to comply with and acquiesce to institutional pressures.<sup>50</sup> Ordinarily, legitimacy would be achieved through reference to how a new practice has relied on or incorporated established and respected models, practices and standards.<sup>51</sup> *Selection strategies* reduce the extent to which conformity is necessary, either by selecting partial or symbolic compliance or selecting an industry that has matching institutional pressures.<sup>52</sup> Karlsson and Middleton note that: '[s]election strategies often involve adhering to institutional pressures but exerting influence regarding which to adapt to – for example, selecting the customer segment to target or in which industry to act, or choosing to please the owners at the expense of conforming to tax laws'.<sup>53</sup> *Selection strategies* can also involve suppressing non-conformity, either by using symbolic conformity or simply by not informing others about the real aim and actions of the organisation. *Manipulation strategies* involve active engagement in trying to change an institution or alter the surrounding environment.<sup>54</sup> These strategies seek to persuade stakeholders about the value of the practice, the merit

---

<sup>46</sup> See further, Markus Milne and Dennis Pattern, 'Securing Organizational Legitimacy - An Experimental Decision Case Examining the Impact of Environmental Disclosures' (2002) 15(3) *Accounting, Auditing & Accountability Journal* 372.

<sup>47</sup> Dare John Olateju, Olakunle Abraham Olateju, Seyi Vincent Adeoye and Idris Suleiman Ilyas, 'A Critical Review of the Application of the Legitimacy Theory to Corporate Social Responsibility' (2021) 9(3) *International Journal of Managerial Studies and Research* 1.

<sup>48</sup> Rajesh Kumar and TK Das, 'Interpreter Legitimacy in the Alliance Development Process' (2007) 44(8) *Journal of Management Studies* 1425.

<sup>49</sup> Tomas Karlsson and Karen Williams Middleton, 'Strategies for Creating New Venture Legitimacy' (2015) 29(6) *Industry and Higher Education Journal* 469.

<sup>50</sup> *Ibid* 471.

<sup>51</sup> *Ibid*. See also, Howard Aldrich and Marlene Fiol, 'Fools Rush In? The Institutional Context of Industry Creation' (1994) 19(4) *Academy of Management Review* 645; Arthur Stinchcombe, 'Social Structure and Social Organization' in James March (ed), *Handbook of Organizations* (Rand McNally, 1965) 142.

<sup>52</sup> Karlsson and Middleton (n 49) 472.

<sup>53</sup> *Ibid*.

<sup>54</sup> *Ibid*.



of the morals that it will achieve and by constructing a narrative about the practice that enhances understanding about it.<sup>55</sup>

Against this background the article will now discuss how tax clinics have achieved legitimacy and through what means. First by reviewing the research undertaken and then by exploring and commenting on the results.

### III METHOD

This section discusses the research methodology and analysis undertaken by the authors with respect to the data collection and its analysis.

#### A Data Collection

As noted, this study chiefly considers the manuscripts published in the 2020 special edition of the *Journal of Australian Taxation*.<sup>56</sup> Accordingly, data collection was reasonably linear and consisted of one article from each of the ten clinics participating in the NTCP trial as follows (alphabetical order) (collectively, 'the Articles'):

- Australian National University ('ANU')<sup>57</sup>
- Curtin University ('Curtin')<sup>58</sup>
- Charles Darwin University ('CDU')<sup>59</sup>
- Griffith University ('Griffith')<sup>60</sup>
- James Cook University ('JCU')<sup>61</sup>
- Melbourne University ('MLB')<sup>62</sup>
- University of New South Wales ('UNSW')<sup>63</sup>
- University of South Australia ('UniSA')<sup>64</sup>

---

<sup>55</sup> O'Dwyer et al (n 17) 36 and Deephouse et al (n 23) 33.

<sup>56</sup> 2020 *Journal of Australian Taxation* Volume 22, Issue 2. See <<https://www.jausttax.com.au/volume-22-issue-2>>.

<sup>57</sup> Ben Raines and Sonali Walpola, '2019 National Tax Clinic Project: The ANU Tax Clinic' (2020) 22(2) *Journal of Australian Taxation* 193.

<sup>58</sup> Castelyn (n 1).

<sup>59</sup> Indra Abeysekera, 'National Tax Clinic Program in the Northern Territory, Australia: A Project Model Innovation' (2020) 22(2) *Journal of Australian Taxation* 174.

<sup>60</sup> Brett Freudenberg, Colin Perryman, Kristin Thomas and Melissa Belle Isle, 'The Griffith Tax Clinic' (2020) 22(2) *Journal of Australian Taxation* 64.

<sup>61</sup> Van Le and Tina Hoyer, '2019 National Tax Clinic Project: James Cook University Tax Clinic' (2020) 22(2) *Journal of Australian Taxation* 162.

<sup>62</sup> Sunita Jogarajan, Kate Fischer-Doherty and Julian Panetta, '2019 National Tax Clinic Project: Melbourne Law School Tax Clinic' (2020) 22(2) *Journal of Australian Taxation* 27.

<sup>63</sup> Ann Kayis-Kumar, Gordon Mackenzie and Michael Walpole, 'Interprofessional Collaborative Practice in Pro Bono Tax Clinics: A Case Study Approach' (2020) 22(2) *Journal of Australian Taxation* 49.

<sup>64</sup> Robert B Whit, '2019 National Tax Clinic Project: UniSA Tax Clinic' 2020 22(2) *Journal of Australian Taxation* 137.

- University of Tasmania ('UTas')<sup>65</sup>
- Western Sydney University ('WSU').<sup>66</sup>

These articles comprise a complete and representative data set since each clinic participating in the NTCP trial contributed an article to the special issue, the articles were written to achieve a common objective using a similar method and were based on a template provided by one of the clinic academics. The common objective is evidenced by the special issue guest editor who wrote:<sup>67</sup>

Each article in this special edition is written by the tax academics and tax clinic staff engaged in each of their tax clinics, with each article discussing the unique operating structures used in order to comply with the requirements of the Australian Government.

Each contribution in this issue portrays how each Tax Clinic has put into practical operation these guidelines and provides insight into how this initiative has greatly enhanced access to our tax system for Australian taxpayers.

The template provided on which all articles were based recommended that each article should contain an introduction followed by a discussion of the clinic design including details of the clinic model, the level and type of student involvement, and the level and type of client involvement. The template also recommended that a discussion regarding the research methodology follow and suggested that a reflective case study approach be used based on reflections from the academic authors involved in establishing their clinic, as well as comments from student and client interviews and questionnaires that were conducted. In a manner consistent with the method, the template recommended discussion of the academic author's reflections and observations on the key challenges, key learning experiences for themselves and students and key client experiences. Recommendations and conclusions based on the academic's reflections were suggested as the final section in the template. Critically, the template specified that the purpose of each article was to provide key observations from the 2019 experience of conducting a tax clinic. The articles covered the same time period having focused on each clinic's establishment during 2019, except for UniSA Tax Clinic's article since UniSA joined the program late resulting in its trial period being offset from the other clinics by 6 months.

Even though the articles were written with a common objective, method, and based on a suggested template structure, limitations may result from authors deviating from the structure and objective at various points. For example, some authors chose to include a literature review in their article. Authors may also have been reluctant to discuss some aspects lest they offend their employers, colleagues and/or the Australian Tax Office ('ATO'). Notwithstanding these limitations, these articles currently represent the best available data to study the formation of tax clinics in Australia. Indeed, how the fledgling

---

<sup>65</sup> John McLaren, '2019 National Tax Clinic Project: The University of Tasmania Tax Clinic' (2020) 22(2) *Journal of Australian Taxation* 96.

<sup>66</sup> Connie Vitale and Michelle Cull, '2019 National Tax Clinic Pilot Project: Western Sydney University' (2020) 22(2) *Journal of Australian Taxation* 116.

<sup>67</sup> Michael Blissenden, 'Foreword' (2020) 22(2) *Journal of Australian Taxation* i.

NTCP attained and maintained legitimacy can help current and future clinics attain and maintain legitimacy by informing them through the analysis herein reported. The analysis reported herein can also inform stakeholders about the objectives of the NTCP and how each clinic aims to meet those objectives. The special issue presents a unique opportunity to study all the 10 clinics in the trial phase of the program while they were being established and seeking support from the various stakeholders. The limitations in the data are also mitigated to a certain extent by the theoretical lens used to inform the analysis since it focuses the analysis onto specific aspects.

### **B Data Analysis**

The analytical method employed in this study may be referred to as inductive analysis.<sup>68</sup> Inductive analysis is a broad term used to denote methods that involve one or more detailed readings of data to 'derive concepts, themes or a model through interpretations'.<sup>69</sup> The process is inductive since it allows the research findings to emerge from the data in contrast to deductive methods which might constrain the data due to their focus on testing a hypothesis or due to the need to adhere to a strict method.<sup>70</sup> Inductive analysis also allows for voluminous data to be reduced, managed and displayed to facilitate the drawing of conclusions that are relevant to the research question or objective.<sup>71</sup> In this study, text-based data in the form of the Articles was analysed to allow themes, trends and patterns to emerge. Since this study's objective is concerned with legitimacy of tax clinics, the data was subsequently analysed via that lens by categorising the data into the types of legitimacy and the strategy relevant to achieving it.

Thomas provides a five-step process for coding data in an inductive manner.<sup>72</sup> In summary, this process involves preparing and formatting the raw data, closely reading the data, creating categories in upper and lower levels, reducing overlap and redundancy, and revising and refining the categories until the researchers are satisfied. This process was followed during this study. The Articles used in this study are freely available and can be downloaded from the journal's website. The authors obtained a Microsoft Word version of the edition in a single document and separated each article into its own document. Each article was then imported into *NVivo* and given a title based on the university clinic being discussed in each paper. Various nodes were developed based on the contents of each article. The highest level of nodes (parent nodes) were titled 'challenges', 'models', 'successes', 'university setting', and 'who benefits'. After developing the first nodes, one author coded themes to them. Initial coding was undertaken on the paper produced by JCU. Data regarding each clinic's marketing strategies (Table 1 below)

---

<sup>68</sup> David Thomas, 'A General Inductive Approach for Analyzing Qualitative Evaluation Data' (2006) 27(2) *American Journal of Evaluation* 237.

<sup>69</sup> *Ibid* 238.

<sup>70</sup> *Ibid*.

<sup>71</sup> Matthew Miles and Michael Huberman, *Qualitative Data Analysis* (Sage, 2<sup>nd</sup> ed, 1994).

<sup>72</sup> *Ibid* 73.

and student recruitment characteristics (Table 2 below) was also drawn from the Articles and collated in *NVivo* as described above.

Qualitative research ought to be conducted in a trustworthy manner that is credible, transferable, dependable, and confirmable.<sup>73</sup> Trustworthiness in this study was achieved by independent parallel coding<sup>74</sup> where a second author undertook identical analysis on JCU's article to gain a mutual understanding and reflection regarding coding to nodes and developing new nodes. The nodes developed from parallel coding of the JCU article were compared and discussed by two of the authors leading to an agreed upon set of nodes for further analysis. The remainder of the papers were then divided among the same two authors and were coded independently; however, one author checked all the coding for appropriateness to the relevant node. After the coding was completed, nodes were categorised into legitimacy types based on the text allocated to each node. Further, a legitimacy strategy was identified for each type. The data within each node was then mined to identify relevant legitimacy types and the strategies to attain that type. Challenges to attaining and maintaining legitimacy were also identified.

Coding in *NVivo* generally requires the researchers to agree on a coding unit, either a word, sentence or paragraph, which enables analysis based on the amount of text devoted to that theme. Since this research is concerned with broad themes that emerge from each of the Articles, it was not necessary to settle on a coding unit. Instead, the authors coded text in sentences or paragraphs based on convenience, however ultimately whole paragraphs irrespective of their size were coded so that the coded parts could be seen in context. The results of the analysis described herein are discussed below. Where relevant and necessary, the manuscript supporting the results will be identified.

#### IV RESULTS AND DISCUSSION

The commentary in this section is segmented into three components which parallel the *NVivo* coding and separation into legitimacy types and strategies. Accordingly pragmatic legitimacy will be discussed first followed by moral legitimacy and then cognitive legitimacy. Within each component, the authors will address the identified research question by discussing the legitimisation strategies used by clinics separately for each stakeholder.

---

<sup>73</sup> Yvonna Lincoln and Egon Guba, *Naturalistic Inquiry* (Sage, 1985).

<sup>74</sup> *Ibid.*

## A *Pragmatic Legitimacy*

As discussed above, pragmatic legitimacy is concerned with self-interested and instrumental evaluations of new practices by external stakeholders. This can be achieved via *conform strategies* that show how the new practice meets stakeholders' needs and provides instrumental value, or *selection strategies* that identify and attract stakeholders who value the types of exchanges that the new practice provides, or via *manipulation strategies* that attempt to persuade stakeholders that the new practice has value for them.<sup>75</sup> This section will discuss how the clinics achieved this type of legitimacy in view of all stakeholders as well as the following identified stakeholders: The ATO, Treasury and the Federal Government, the profession, clients, students, and universities.

### 1 *All Stakeholders*

Securing client demand, to be discussed further below, is also an important *conform strategy* for all other stakeholders since it demonstrates the practical need for tax clinic services. Two clinics specifically noted that it was difficult to anticipate or predict client demand (Curtin, UniSA), one clinic mentioned the difficulty of attracting clients at the beginning of their clinic's operation (Griffith) and two clinics noted the difficulty in predicting client demand for outreach services (UniSA, JCU). A particularly difficult period mentioned by two clinics is the first half of the year where tax is not foremost in peoples' minds (UTas, UniSA).

### 2 *The ATO, Treasury and the Federal Government*

The principal concern for these stakeholders and indeed the pathway to legitimacy is ensuring that tax clinics deliver on providing the services expected of them as specified in the NTCP guidelines.<sup>76</sup> One *conform strategy* used by each clinic to attain pragmatic legitimacy with policy stakeholders was to report various statistics to their stakeholders. Although this reporting was required by the NTCP, it demonstrates to the stakeholders that the clinics are operating successfully, are providing value and are meeting the program's objectives, although this remains contingent on whether clinics are selecting appropriate clients as discussed below. Other key performance indicators were developed for feedback to those managing clinics and for reporting to various stakeholders as the need arose.

### 3 *Clients*

Vulnerable clients are perhaps the group that most directly benefits from each clinic's activities. Clients in theory can be viewed on an individual level or as a collective. One *conform strategy* used by each clinic to attain pragmatic legitimacy with clients was to demonstrate an understanding of the taxation laws to clients. This was primarily achieved through engaging clients in seminars or direct compliance or advisory work and students through immersive learning. Forty percent of clinics stated that members of the community that attended seminars hosted by clinics increased their tax literacy by

---

<sup>75</sup> Suchman (n 18).

<sup>76</sup> This notion is concurrent with the financial concept of ROI (return on investment). Notably, as the federal government invested \$100,000 into each clinic, it was prudent to demonstrate a return.

obtaining general tax information on a variety of small business and individual tax matters (UniSA, UTas, WSU, ANU). Twenty percent of the clinics highlighted a high level of attendance at the seminars; with over 100 (UniSA) and 123 (UTas). One clinic noted that clients who came to the clinic for services had their tax affairs dealt with which may not otherwise have occurred since time and money were barriers to fulfilling their obligations (UniSA). Fifty percent of the clinics highlighted that numerous clients took advantage of the opportunity to be brought up to date with their tax affairs or have some tax matter dealt with (UTas, CDU, JCU, WSU, UniSA). Thirty percent of clinics mentioned that the advice and assistance they received whilst having their tax affairs dealt with increased their tax literacy and empowered them to try completing their tax on their own in future (JCU, Griffith, MLB). Additionally, 30% of clinics stated that clients were grateful for the assistance provided to them (Griffith, MLB, WSU) and 40% of clinics mentioned that clients provided positive feedback about the services provided (UniSA, JCU, MLB, WSU). Twenty percent of clinics serviced regional and remote areas (Curtin, JCU), and one clinic took their outreach to the suburbs (UniSA).

Specific examples of instrumental value (consistent with a *conform strategy*) received by clients' participation was provided by two clinics (20%) which included the following:

- a reduction in a taxpayer's debt and the implementation of a payment plan for the remainder of the debt (Curtin);
- \$10,000 in debt waived for a refugee (MLB);
- approximate value of work performed for clients totalling \$318,150 (Curtin);
- approximately \$1,400,000 in debt was corrected or written off (Curtin);
- the value of pro-bono contributions by industry partners totalling more than \$100,000 for the preparation of 585 income tax returns and/or business activity statements (Curtin).

Since clinics provide free services, vulnerable clients only need to invest their time to come away from the clinics with a positive exchange. Evidence of the positive exchange is also provided by specific feedback comments. For example, one clinic, WSU, asked clients, '[w]hat were your original expectations of the Tax Clinic and how did your visit to the Tax Clinic compare?' Clients reported that their expectations were met and, in some cases, exceeded. Overall, the client experience was positive and each client who has visited the clinic had their tax issues satisfactorily resolved.

Vulnerable taxpayers support for clinics was recognised through customer surveys, emails and open expressions of relief. The ATO recognised the work of the clinics through more tax awareness evident in the community and contributions made to change systemic issues in the current tax system. Universities support the program for the positive impact to their reputation, the student experience resulting in improved graduate employability, and a successful work integrated learning (WIL) program. While this is a great result, challenges concerning managing client expectations around the responsiveness of government departments can erode pragmatic legitimacy gains. Outreach to the suburbs or remote and regional areas carries risks that there may not be much client demand when going there leading to perceptions of tax clinics being a solution without a problem.

#### 4 *Students*

Students are another group that received substantial direct benefits from participation in the clinic. One clinic reported that their students believed that their involvement was

rewarding (Griffith), another clinic reported that students' feedback was immensely positive (ANU), a third clinic mentioned that students were grateful to be part of the clinic with feedback on a 5-point Likert scale demonstrating that students agreed or strongly agreed that participation was a valuable learning experience that provided insight into the profession (WSU). Students at Melbourne University 'appreciated the opportunity to present their research to ATO staff and felt like they were making a difference with their work'. Overall, 80% of clinics reported positive student experiences, evidenced in many ways. Twenty percent of clinics reported student feedback from 2019 was universally positive (ANU, JCU), 20% reported that students were unanimously positive regarding their clinic experience (MLB, WSU). One clinic stated that students' pro bono work ethic had been awoken (UniSA).

Thirty percent of the tax clinics referred to more specific benefits which included the knowledge, skills and experience gained of both a technical and soft skill nature leading to enhanced employability (WSU, MLB, Curtin). Forty percent of clinics positively highlighted technical skills developed including the improvement of tax technical knowledge, legal skills and research skills (Griffith, MLB, UniSA, WSU) and one tax clinic mentioned the linking of those skills with practice (Curtin). Some clinics stated how skills were developed, for example 20% mentioned soft skill development through written and oral communication skills (ANU, WSU), 10% mentioned empathic skills (WSU), 20% mentioned interviewing skills and approaches (WSU, MLB) and one clinic mentioned working with clients (Griffith). Another clinic highlighted leadership skills for students returning as mentors (UTas), 20% highlighted pro bono ethic (WSU, UniSA) and 30% highlighted the students' development as professionals (ANU, Griffith, WSU).

One clinic stated other miscellaneous benefits included forming relationships with tax professionals volunteering in the clinic (ANU) which directly led to employment opportunities with the mentors and beyond (ANU). Twenty percent of the clinics stated that on a practical level, the time students spend in the clinic [under the supervision of registered tax agents] contributes towards the Tax Practitioners Board ('TPB') education requirements for students to become a registered Tax Agent (WSU, UTas).

One clinic used a reflective journal as an assessment task which demonstrated to the academic staff that the students are enjoying the experience whilst developing their transferable and employability skills. Receiving this type of feedback from students makes for a rewarding experience for an academic (WSU). In addition, all students felt supported by their academic supervisor and would recommend participating at the Tax Clinic to fellow students (WSU). The *conform strategies* are also evidenced by students' support of the program expressed in various social media posts and feedback to supervisors thanking the clinics for work experience and their opportunity to help the vulnerable clients in their community. These positive exchanges contribute to narratives about the clinic that can be broadcast to students more broadly thereby creating legitimacy within the student body which encourages further participation.

In a similar manner to clients, there are challenges in attaining pragmatic legitimacy with students as evidenced by the difficulty in obtaining student participants in non-teaching weeks and getting volunteer students to commit for a whole semester.

Pragmatic legitimacy is also achieved by *selection strategies* geared toward identifying and attracting constituents who value the types of exchanges the new practice can

provide. Marketing is central to attaining this type of legitimacy and it dominates the discussion below. Marketing can also be viewed in the context of a *manipulation strategy* as well through it attempting to persuade stakeholders regarding the value of clinics. The primary means to attract clients to clinics was via numerous forms of marketing. Twenty percent of clinics regarded marketing as a way of raising awareness of the clinics generally among the public (ANU, Griffith) while 30% of clinics focused on targeting specific client types (ANU, WSU, JCU). One clinic mentioned that the community needed to be aware of how to apply for assistance (Griffith). Clinics tried many ways of marketing with some being more successful than others as discussed below. The marketing strategies adopted by each university are summarised in Table 1. The data for this table was collated in *NVivo* from the Articles as discussed in the method above.

**Table 1: Marketing strategies**

	Social Media	Print Media	Radio / TV	Media Releases	Clinic Website	Staff / Student Notices	Flyers / brochures	Banners / signs / posters	Seminars	Extant Relationships	Letterbox drops and visits	Special event (launch day)
ANU	x	x	x		x		x	x		x		
CDU	x	x	x	x	x		x	x			x	
Curtin	x	x	x		x							
Griffith	x	x	x	x	x					x	x	
JCU					x							
MLB	x				x	x		x			x	
UNSW					x							
UniSA	x	x	x	x	x	x	x	x	x		x	x
UTas					x							
WSU		x	x	x	x	x	x	x	x			x

Additionally, the ATO promoted the clinics via its own website and through the small business news bulletin that it emails to those that subscribe to it. This has not been included in the above table since this was an ATO initiative. The NTCP also partnered with Financial Counselling Australia which increased the number of taxpayers assisted by the clinics.

One clinic stated that social media was effective partly because it started several months prior to a clinic opening (ANU). Social media has broad reach, is inexpensive and it is possible to get statistics on hits but is potentially reliant on an algorithm and can be cancelled at the whim of the platform (Facebook). Another clinic mentioned that mentors and community partners recommended better targeting of the intended clientele (ANU), but did not mention how to do that and what that involves. One clinic stated that although not listed above, word of mouth was regarded as the most 'relevant' way to promote their clinic (Curtin). One clinic shared that seminars doubled as a marketing tool to increase the awareness of clinics in the community as well as educating the public about tax matters (UniSA). They were often poorly attended leading to few clients arising from them, but took significant time and effort to develop, market and operate meaning that their value as a marketing strategy was limited (UniSA).



Another example of a *selection strategy* was to attract clients within the respective university communities. Most clinics (70%) are centred around one or more university campuses with a few providing outreach to additional locations which created challenges with securing client demand as discussed above. For example, Charles Darwin University which provided services at shopping centres in the Northern Territory in addition to its university campus, Curtin University serviced the entire state of Western Australia with the clinic travelling to Broome in August and Albany in October, and James Cooke University serviced North Queensland and conducted mobile 'pop-up' clinics in the North Queensland towns of Ayr, Ingham and Cairns at special times unspecified. While UniSA's clinic was mainly centred in the Adelaide CBD, it operated at Hackham West Community Centre (about 1 hour by car south of Adelaide) every Wednesday from August to October 2019.

Challenges with marketing and not attracting as many of the right type of clients will create problems for legitimacy. Seventy percent of clinics mentioned that marketing was challenging, although some clinics expanded on the issue in their articles more than others and experienced different specific issues. These generally centred on attempts to direct the marketing toward clients who meet the clinics' criteria. In addition to this, the discussion indicates that marketing could have been improved overall, for example, one clinic said that marketing could have been more effectively targeted toward intended clients (ANU) rather than simply raising awareness.

Factors that impeded marketing varied. Apart from the general lack of community awareness of the clinic project mentioned by two clinics as being a general hurdle to overcome (ANU, Curtin), these two clinics also experienced skepticism from stakeholders which exacerbated the problem. Another challenge, which directly impacts on legitimacy, is that clinics' marketing efforts inevitably draws attention from the tax profession raising concerns about poaching clients. One clinic, WSU, was asked directly by *Accountants Daily* whether clinics were taking work away from accountants. The response, which is consistent with a *selection strategy* for attaining and maintaining legitimacy, follows:

I think there is some stigma that this was set up to take work away from accountants and this is definitely not about that ... It needs to be clear that we are not trying to take work away from other accountants, where this is clearly designed to providing services for unrepresented, low-income taxpayers that are individuals, sole traders or partnerships.

One clinic acknowledged that hampering efforts to overcome marketing challenges was marketing that was poorly coordinated due to it being ad-hoc involving disparate groups from different internal divisions (Griffith). Another clinic (UniSA) found it difficult to communicate a clear message, for example: stakeholders interpreting 'individuals' to not include small businesses. Also creating challenges is the need for clinics to comply with their institutional marketing protocols and guidelines when undergoing any marketing practices. This meant that clinics were not necessarily free to market their services in the manner they wished. University marketing practices are geared toward attracting students for education, not clients to receive free professional services. Two clinics mentioned that deficient marketing meant that the group that clinics were supposed to help, i.e., those in the community who could not afford a tax agent, was not sufficiently reached (JCU, UniSA).

One clinic stated that the marketing challenges were mitigated by having more time for marketing prior to the operation of a university's second clinic (ANU). Another suggested allowing networks to grow and developing lists of contacts that are updated regularly assisted with marketing (Griffith) whilst UniSA suggested leveraging off existing partnerships (UniSA). Three clinics mitigated marketing challenges by having academics act through their own initiative by distributing leaflets (Griffith, UniSA) drafting media releases and using social media etc (Griffith) and directly approaching community groups (Griffith; UniSA; CDU).

One clinic highlighted that a further marketing challenge was the inability or unwillingness of marketing departments to adapt marketing strategies when it was clear that they were not effective (UniSA). The quick establishment time imposed on all participating universities meant that systems to track the effectiveness of marketing strategies were not in place when clinics first opened (such as the case with UniSA) but were developed during the first semester. These systems remain rudimentary and require further work. It might be appropriate for clinics to collectively adopt a more global marketing strategy, although clinics that rely solely on referrals from external organisations and/or are in highly populated areas may not regard that as a priority.

One clinic implied that traditional advertising tends to not be successful. For example, UniSA conducted over 10 radio interviews, although it is difficult to evaluate as indicated above. Marketers advised that the clinic is not 'sexy' enough to advertise on its own. Instead, there needs to be a carrier message in the form of a current, topic tax issue that affects many people to grab their attention, then tack on a message about the clinics at the end. The same clinic (UniSA) recommended more systematic evaluation of marketing strategy effectiveness and amending the strategy accordingly.

Thirty percent of clinics sought to service a more remote area away from their main office, but in some cases, securing client demand was problematic. For CDU, operating beyond Darwin was an imperative since the Northern Territory has low population density over a wide geographic area. To service this population, CDU opened up mobile clinics at various shopping centres in the Northern Territory. Other clinics also sought to service broader geographical areas. JCU established pop-up clinics in Northern Queensland and UniSA established a secondary clinic in Hackham West, a southern suburb of Adelaide. Curtin also travelled to remoter locations in Western Australia. CDU paid for advertisements in local newspapers to foreshadow their arrival in these areas in the hope of securing demand. UniSA no longer operates in Hackham West, instead, it offers a remote service via telephone or video conferencing which enables it to service the entire state in a flexible manner. One clinic (JCU) stated that the marketing that was undertaken was generally ineffective in some way or less effective than it could have been for operating their pop-up (mobile) clinics. Clinic operations in more populated areas fared better and were more likely to have stable demand. The issue for clinics in less densely populated areas is the extent to which they rely on the university community for clients versus attempting to grow more community awareness and clients from that.

The above discussion highlights the challenges faced but also the importance of marketing strategies to clinics in securing clients. These strategies also inform potential students who are interested in becoming a tax professional after graduation. Strategies to increase awareness of clinics in the community is another objective that requires a means of

evaluation with respect to how much has awareness spread and what are the most effective means to increase it?

## 5 *The Profession*

Discussion about the profession can be divided into discussion about the specific firms and practitioners within them that provide pro bono assistance to clinics and discussion about the profession more broadly. Firms that provide pro bono assistance are the easiest to attain pragmatic legitimacy since they exchange directly with the clinics that they support whereas the broader profession exchanges with clinics in a more distance, indirect manner.

### (a) *Firms Providing Pro Bono Support*

Due to firms providing pro bono support being directly involved and exchanging with clinics, the main legitimation strategies are *conform strategies*. Thirty percent of clinics refer to pro bono practitioners' direct interaction within their clinics and the value they obtain via these exchanges. Some pro bono practitioners saw value in participating and helping clinics due to development opportunities for staff, especially those who were new to the profession, marketing opportunities for their firm due to the publicity that participation and being associated with the clinic provides and through observing and assessing student volunteers for recruitment (JCU). Pro bono practitioners appreciated being included as part of the clinic (ANU) and provided positive feedback about it (JCU).

Various skills among the staff providing pro bono assistance were enhanced and developed including leadership skills through mentoring students, listening, communication and empathy skills due to the challenging situations the clinic's clients present that staff of the pro bono firms are not generally exposed to (MLB). Staff from pro bono firms that assisted clinics viewed their employers in a more favourable light (MLB). Pro bono practitioners do not need to be the direct beneficiaries of the exchange to see instrumental value that the clinics provide. Instead, they can see value for the profession more generally by observing how clinics provide students with the 'opportunity to advance their practical skills in applying the law and improve them as prospective legal practitioners and employees' (MLB).

### (b) *The Broader Profession*

The profession more broadly cannot obtain such direct exchanges and cannot see the benefits to them unless they are directly involved. This is reflected in the difficulty in getting pro bono help at times (JCU) and comments from one clinic that they would like to see engagement with industry (ie the profession) improve (Griffith).

## 6 *Universities*

Positive exchanges from students' participation also creates pragmatic legitimacy for tax clinics in the eyes of the university since universities are interested in student welfare, satisfaction and learning outcomes.

## **B *Moral Legitimacy***

Moral legitimacy is attained by the practice being perceived as the right thing to achieve certain social outcomes and increase societal welfare. As discussed above, moral legitimacy can be attained via *conform strategies* that show how the new practice has achieved the socially desirable outcomes, or *selection strategies* that involve selecting

social welfare criteria and objectives that appeal to stakeholders, or *manipulation strategies* that persuade stakeholders regarding the merit of the social welfare objectives that the new practice will achieve.<sup>77</sup> There were several challenges that needed to be addressed to ensure that socially desirable outcomes were attained. Clinics needed to attract appropriate clients and serve them with an open, non-judgmental client mindset. Students also needed to be recruited and provided with a true work experience setting, a challenge that arises since we cannot control the level of client demand or the issues they will present. This section discusses the strategies clinics used to obtain moral legitimacy with all stakeholders, firms providing pro bono support, clients and students. Some *selection strategies* regarding clients and students will also influence legitimacy for other stakeholders who assess whether clients and students are selected using morally appropriate criteria.

### 1 *All Stakeholders*

A clear *conform strategy* for all stakeholders was for clinics to produce reports that collate and summarise data regarding how each clinic has achieved its social objectives. *Selection strategies* are evident in appeals and references to the NTCP goals and objectives. The criteria set by the NTCP specifically mentioned assisting vulnerable taxpayers. It was assumed that stakeholders for whom the moral criteria would be appealing existed. Vulnerability was not specifically defined leaving this to the discretion of the individual clinics. Therefore, clinics were required to develop criteria for client recruitment as will be discussed further below.

### 2 *Firms Providing Pro Bono Support*

Practitioners who engage in pro bono work can directly see the social good that the clinic that they are involved with creates. Such a *conform strategy* led to those firms supporting clinics partly because of it and two clinics (20%) shared examples of this. At James Cook University, a firm regarded its involvement as an opportunity to engage in a 'social justice project in the North Queensland community'. At Melbourne University, another firm participated out of 'a desire to assist vulnerable taxpayers and teach and mentor students'. It was reported by 20% of clinics that practitioners found providing pro bono services 'rewarding' (JCU, MLB), but the nature of the reward was often not specified. One clinic reported that clinics gave firms an opportunity to 'do meaningful work' (MLB). Pro bono practitioners in one clinic (JCU) were somewhat reluctant to do some of the base level work required to help vulnerable taxpayers comply with their tax obligations since they felt their time was better spent on complex cases and on student learning and support.

### 3 *Clients*

Moral *conform strategies* for clients would focus on social outcomes that they receive. Thirty per cent of clinics highlighted that clients reported that their mental wellbeing improved from knowledge gained and being assisted with their tax affairs (UniSA, WSU, MLB) with one clinic further adding that having their debts reduced and other disputes

---

<sup>77</sup> Suchman (n 18).

resolved also aided this improvement (MLB). This clinic also advised that clients expressly stated that they were less stressed about tax after their visit to the Clinic (MLB).

Moral *selection strategies* for clients (and other stakeholders such as the profession) would focus on appropriate criteria for their selection. There were no specific client eligibility criteria mandated by the ATO, only that services were to be for clients who were deemed to need the program to address a perceived gap in the market.<sup>78</sup> This broad criterion was foundational to the clinics' formation since they were not intended to compete with the profession, but it led to some variety in the target client market with lack of representation due to taxpayers being unable to afford it as the common denominator across all clinics. Twenty percent of clinics (Curtin, UniSA) also stated that a condition be that the taxpayer be an Australian resident (or permanent or temporary resident), but some latitude may have been given depending on circumstances. Twenty percent of clinics clarified that in practical terms, each client was assessed on its own merits with some (UniSA, Curtin) having a clause in the client service agreement to stop providing services if it became clear that the client was not eligible. Only ANU restricted services to individuals without business item schedules, but that was later lifted. MLB only serviced small business if they were in a dispute with the ATO or requiring establishment information. UniSA could not restrict help to individuals since a tax help centre had already been established on campus and a point of differentiation was required to ensure sufficient work for students to gain experience with.

Some clinics imposed income based limits, but others based vulnerability on more qualitative or situational factors. For example, ANU limited clients' pre-tax family income to \$60,000 later increasing that to \$80,000 assessed on an individual basis. MLB used the tax help criteria for individuals with annual income of less than \$60,000 or with low financial literacy or with a non-English speaking background. WSU imposed a limit of \$2 million in turnover for small businesses in line with the 2016 small business tax concessions threshold.<sup>79</sup> Even though that threshold was later increased to \$10 million in the 2017 financial year WSU kept the limit at \$2 million.

Attaining and retaining moral legitimacy requires *selection strategy* to identify which areas to serve based on appropriate moral criteria which were generally based on a reasonable density of vulnerable clients who required free tax services. Clinics achieved mixed success in providing outreach services due to the lack of client demand and challenges in scheduling clients for the time that clinics were present in these locations.

In practical terms, from a geographical standpoint, each clinic served clients in its own state since it was clear from the NTCP that each state was to have a clinic to serve it. Nevertheless, it was theoretically possible for clinics to serve clients outside their state, although this was not commonly done. To avoid confusion, some clinics clarified their geographical limits, particularly in states that had more than one clinic. Only 20% of clinics (ANU, JCU) imposed territory-based criteria by limiting services to the ACT and North Queensland residents respectively with ANU removing that limitation later. The

---

<sup>78</sup> ATO, 'National Tax Clinic Trial' (Grant Guidelines, 2019).

<sup>79</sup> *Income Tax Assessment Act 1997* (Cth) s 328-110.

only clinics that are in close geographic proximity are UNSW and WSU, but UNSW obtains clients solely from financial counsellors while WSU obtains clients from financial counsellors and other more general sources. Evidently, all clinics ensured that their services were provided to the target market thereby re-enforcing the *conform strategy* of moral legitimacy.

#### 4 *Students*

*Conform strategies* for attaining moral legitimacy are evidenced by students from one tax clinic stating that they experienced an improved sense of community, belonging and inclusivity, and a sense of pride and purpose through their service to the clinic (Curtin). All but one student from a second tax clinic also agreed that being part of the Tax Clinic helped to develop their interest in doing pro bono work in the future (WSU). *Selection strategies* for attaining legitimacy include the criteria and method to recruit students with the characteristics of eligible students, as determined by each clinic, shown in Table 2. The data for this table was collated in *NVivo* from the Articles as discussed in the method above.

**Table 2: Student recruitment characteristics**

	Post Graduate	Under Graduate	Business Student	Law Student	GPA	Internship/WIL Enrolled Unit	Volunteers	Completed or enrolled in a Taxation Law Unit	Second to third year of study	EOI, CV and Interview required
ANU	x	x				x		x	x	x
CDU	x		x				x	x		
Curtin		x	x	x			x	x	x	x
Griffith		x	x	x	x	x	x	x	x	x
JCU		x	x	x		x		x		x
MLB	x			x		x		x		x
UNSW	x	x	x	x		x	x	x		
UniSA	x	x			x	x	x	x		x
UTas	x	x				x	x	x	x	
WSU		x	x		x	x		x	x	x

Overall, the clinics allowed both postgraduate and undergraduate students to assist in the clinic with eight of the 10 clinics stipulating that the students must have completed or be currently enrolled in an introductory taxation law unit. These eligibility criteria support the statement made by Andrew Mills<sup>80</sup> that the tax clinics ‘will also give tax law and accounting students practical experience of dealing with clients in a real-life setting’. Supporting this notion, most of the tax clinics required students to apply for their positions via the submission of an Expression of Interest and Curriculum Vitae which was followed up by an interview with the Tax Clinic Manager/Director. Curtin University and Charles Darwin University did not require the students to be enrolled in a unit whilst volunteering at the clinic. CDU had six students undertaking a Master of Professional Accounting course who had completed the taxation course unit volunteering in the teaching clinic. Whereas Curtin insisted on an appropriate course of study with volunteers ‘which demonstrated an ability to work both autonomously, collaboratively, and in a customer or other client-focused environment’ more relevant than prior tax-related experience. Most students participated in the clinic for the duration of their enrolment in the relevant unit.

### **C Cognitive Legitimacy**

Cognitive legitimacy is concerned with the practice being regarded as the most appropriate and acceptable way to achieve an outcome. As with the other types of legitimacy, *conform*, *selection* and *manipulation strategies* can be used to attain this type of legitimacy. *Conform strategies* involve showing how the new practice has adopted or been influenced by existing respected practices, models or standards while *selection strategies* involve selecting an appropriate certification, model or standard for the new

<sup>80</sup> Andrew Mills, the then Second Commissioner, ATO, ‘Tax in a Changing World’ (Speech, Australasian Tax Teachers’ Association 31st Annual Conference, Perth, 17 January 2019).

practice and *manipulation strategies* involve enhancing understanding or comprehensibility by constructing narratives about the practice or having other organisations copy identical or similar methods of conducting the new practice.<sup>81</sup> Having the appropriateness of the new practice being regarded as self-evident and its existence taken for granted are other *manipulation strategies*.<sup>82</sup> There were far fewer cognitive legitimacy strategies employed by clinics, therefore this section does not discuss them with reference to any specific stakeholder. Rather, it is likely that the few cognitive strategies would be relevant to all stakeholders.

A cognitive *conform strategy* can involve showing how the new practice has copied established and respected models and standards. Individual clinics attained legitimacy by following the successfully tested 'Curtin' model. Choosing this option not only provided the implementation of already established policies and procedures it also assisted to encourage the support of the university legal team and allowed the clinic to open up on very short notice. Other clinics chose not to follow the same model as this was not a stipulation of the grant guidelines, opting to utilise some of the 'Curtin' resources, for example the client agreement and the student participation deed. The clinics choosing not to utilise the same model in essence did not use the *conform strategy* of legitimacy.

A cognitive *selection strategy* may involve selecting a 'certification or standard that can be applied to the practice'. The NTCP specified that the clinics should at a minimum include the supervision of a tax professional however did not mandate how that supervision was to be performed and what type of tax professional was to provide it. Twenty percent of clinics chose to identify tax professionals as full-time academics who were also registered tax agents (Curtin, WSU), where three tax clinics employed tax academics that were not registered tax agents (CDU, UTas, MLB). Another option adapted by two clinics was to hire external tax agents (Griffith, UNSW) and two other tax clinics hired external tax professionals who were not registered tax agents (ANU, UniSA). Pro bono services were also provided to 40% of clinics by tax agents or legal professionals (Curtin, JCU, MLB, UNSW) to supplement current expertise in the clinic. Maintaining the minimum standard of having a tax professional available highlights a cognitive *selection strategy*.

Cognitive legitimacy can also be attained by it being *taken for granted* that it is an acceptable or natural approach to effect collective action, i.e. the need for the practice is essentially self-evident. This was most observed by the willingness of each of the clinic universities to establish a clinic and the success of each university in doing so.

## V CONCLUSION AND CONTINUATION

This study has considered the fledgling NTCP program through the lens of legitimacy theory. Since the NTCP's provision of free tax advice, education, and representation and additionally is a new type of service, it needs to attain and maintain legitimacy in the eyes of stakeholders to survive in the long term. This study inductively analysed articles submitted and published by each participating clinic in the *Journal of Australian Taxation*

---

<sup>81</sup> Suchman (n 18)

<sup>82</sup> Ibid.



special issue<sup>83</sup> to determine what legitimisation strategies were adopted by the 10 clinics that participated in the NTCP trial.

Pragmatic legitimacy was the predominant form of legitimacy that clinics attained by demonstrating the value that clinics provide to stakeholders. Policy stakeholders such as the ATO, Federal Treasury and the Federal Government received value through the success of the program in meeting its objectives as demonstrated via reports provided to them. Clients received value in getting their taxes done and the associated relief while students received value through skills developed and the relationships formed with the profession. Significant effort was expended on marketing strategies to convey the value that clinics provide. Tax firms providing pro bono support saw these benefits directly while assisting clinics.

Attaining moral legitimacy involved ensuring that stakeholders were aware that the clinics were achieving its social objectives as well as having morally appropriate criteria to select and recruit clients and students and select the geographical location to provide outreach services. Attaining cognitive legitimacy involved conforming to a well-regarded and successful model of practice such as the Curtin model (as the first Australian tax clinic) as well as its policies and procedures and selecting appropriate people with qualifications and experience to supervise students and serve clients.

The study shows a reliance on pragmatic legitimacy which is easier to attain, but it is not as durable as moral or cognitive types of legitimacy. It may be wise for clinics to shift focus toward attaining moral and cognitive legitimacy by adopting relevant and appropriate strategies. In this way, clinics' legitimacy to provide free tax services will be 'taken for granted' and regarded as the 'self-evident' solution to assist taxpayers who cannot afford to get help from the profession. Further research could be undertaken with stakeholders to determine what strategies would be most effective in achieving legitimacy from their perspective. Further research could also determine how legitimacy strategies of clinics participating in the NTCP evolve over time.

---

<sup>83</sup> *Journal of Australian Taxation* (n 6).

## BIBLIOGRAPHY

### A *Articles/Books/Reports*

- Abeysekera, Indra 'National Tax Clinic Program in the Northern Territory, Australia: A Project Model Innovation' (2020) 22(2) *Journal of Australian Taxation* 174
- Aldrich, Howard and Marlene Fiol, 'Fools Rush In? The Institutional Context of Industry Creation' (1994) 19(4) *Academy of Management Review* 645
- Archel, Pablo, Javier Husillos, Carlos Larrinaga and Crawford Bradford Spence, 'Social Disclosure, Legitimacy Theory and the Role of the State' (2009) 22(8) *Accounting, Auditing & Accountability Journal* 1284
- Bitektine, Alex, 'Toward a Theory of Social Judgements: The Case of Legitimacy, Reputation, and Status' (2011) 36(1) *Academy of Management Review* 151
- Bitektine, Alex, and Patrick Haack, 'The 'Macro' and the 'Micro' of Legitimacy: Toward a Multilevel Theory of the Legitimacy Process' (2015) 40(1) *Academy of Management Review* 49
- Brown, Noel and Craig Deegan, 'The Public Disclosure of Environmental Performance Information – A Dual Test of Media Agenda Setting Theory and Legitimacy Theory' (1998) 29(1) *Accounting and Business Research* 21
- Burlea-Schiopoiu, Adriana and Ion Popa, 'Legitimacy Theory' in Samuel O Idowu, Nicholas Capaldi, Liangrong Zu and Ananda das Gupta (eds), *Encyclopedia of Corporate Social Responsibility* (Springer, 2013) 1579
- Castelyn, Donovan, Stephanie Bruce and Annette Morgan, '2019 National Tax Clinic Project: Curtin University – Curtin Tax Clinic' (2020) 22(2) *Journal of Australian Taxation* 1
- Chelli, Mohamed, Jacques Richard and Sylvain Durocher, 'France's New Economic Regulations: Insights from Institutional Legitimacy Theory' (2014) 27(2) *Accounting, Auditing and Accountability Journal* 283
- Deegan, Craig, 'An Overview of Legitimacy Theory as Applied within the Social and Environmental Accounting Literature', in Jeffrey Unerman, Jan Bebbington and Brendan O'Dwyer (eds), *Sustainability Accounting and Accountability* (Routledge, 2008) 248
- Deephouse, David and Mark Suchman, 'Legitimacy in Organizational Institutionalism', in Royston Greenwood, Christine Oliver, Roy Suddaby and Kerstin Sahlin-Andersson (eds), *The SAGE Handbook of Organizational Institutionalism London* (Sage, 2008) 49
- Deephouse, David, Jonathan Bundy, Leigh Plunkett Tost and Mark Suchman, 'Organizational Legitimacy: Six Key Questions', in Royston Greenwood, Christine Oliver, Thomas B Lawrence and Renate E Meyer (eds), *The SAGE Handbook of Organizational Institutionalism London* (Sage, 2017) 27
- Fogg, Keith, 'Taxation with representation: The Creation and Development of Low-Income Taxpayer Clinics' (2013) 67 *Tax Law* 5
- Freudenberg, Brett, Colin Perryman, Kristin Thomas and Melissa Belle Isle, 'The Griffith Tax Clinic' (2020) 22(2) *Journal of Australian Taxation* 64

Internal Revenue Service, Office of the Assistant Commissioner, Report on Legal Assistance Test Program, Final Report, January 2022

Jogarajan, Sunita, Kate Fischer-Doherty and Julian Panetta, '2019 National Tax Clinic Project: Melbourne Law School Tax Clinic' (2020) 22(2) *Journal of Australian Taxation* 27

Karlsson, Tomas and Karen Williams Middleton, 'Strategies for Creating New Venture Legitimacy' (2015) 29(6) *Industry and Higher Education Journal* 469

Kayis-Kumar, Ann, Gordon Mackenzie and Michael Walpole, 'Interprofessional Collaborative Practice in Pro Bono Tax Clinics: A Case Study Approach' (2020) 22(2) *Journal of Australian Taxation* 49

Kumar, Rajesh, and T. K. Das. 'Interpartner legitimacy in the alliance development process' (2007) 44(8) *Journal of Management Studies* 1425

Kuruppu, Sanjaya, Markus Milne and Carol Tilt, 'Gaining, Maintaining and Repairing Organizational Legitimacy – When to Report and When not to Report' (2019) 32(7) *Accounting, Auditing & Accountability Journal* 2062

Le, Van and Tina Hoyer, '2019 National Tax Clinic Project: James Cook University Tax Clinic' (2020) 22(2) *Journal of Australian Taxation* 162

Lincoln, Yvonna and Egon Guba, *Naturalistic Inquiry* (Sage, 1985)

Martin Ruef and Richard Scott, 'A Multidimensional Model of Organizational Legitimacy: Hospital Survival in Changing Institutional Environments' (1998) 43(4) *Administrative Science Quarterly* 877

McLaren, John, '2019 National Tax Clinic Project: The University of Tasmania Tax Clinic' (2020) 22(2) *Journal of Australian Taxation* 96

McPhail, Ken, 'Care in the Community: Professional Ethics and the Paradox of Pro Bono' (2005) 14(2) *Accounting Education* 213

Miles, Matthew and Michael Huberman, *Qualitative Data Analysis* (Sage, 2<sup>nd</sup> ed, 1994)

Mills, Andrew Tax in a Changing World (Speech, Australasian Tax Teachers' Association 31st Annual Conference, Perth, 17 January 2019)

Milne, Markus and Dennis Pattern, 'Securing Organizational Legitimacy - An Experimental Decision Case Examining the Impact of Environmental Disclosures' (2002) 15(3) *Accounting, Auditing & Accountability Journal* 372

O'Dwyer, Brendan, David Owen and Jeffrey Unerman, 'Seeking Legitimacy for New Assurance Forms: The Case of Assurance on Sustainability Reporting' (2011) 36(1) *Accounting, Organizations and Society* 31

Olateju, Dare John, Olakunle Abraham Olateju, Seyi Vincent Adeoye, Idris Suleiman Ilyas, 'A Critical Review of the Application of the Legitimacy Theory to Corporate Social Responsibility' (2021) 9(3) *International Journal of Managerial Studies and Research* 1

Power, Michael, 'Auditing and the Production of Legitimacy' (2003) 28(4) *Accounting, Organizations and Society* 379

Raines, Ben and Sonali Walpola, '2019 National Tax Clinic Project: The ANU Tax Clinic' (2020) 22(2) *Journal of Australian Taxation* 193

Stinchcombe, Arthur, 'Social Structure and Social Organization' in James March (ed), *Handbook of Organizations* (Rand McNally, 1965)

Suchman, Mark, 'Managing legitimacy: strategic and institutional approaches' (1995) 20(3) *Academy of Management Review* 571

Thomas, David, 'A General Inductive Approach for Analyzing Qualitative Evaluation Data' (2006) 27(2) *American Journal of Evaluation* 237

Tilling, Matthew and Carol Tilt, 'The Edge of Legitimacy: Voluntary Social and Environmental Reporting in Rothmans' 1956 - 1999 Annual Reports' (2010) 23(1) *Accounting, Auditing and Accountability Journal* 55

Tilling, Matthew, 'Some Thoughts on Legitimacy Theory in Social and Environmental Accounting' (2004) 24(2) *Social and Environmental Accountability Journal* 1

Treasury, Mid-Year Economic and Fiscal Outlook, Interim Report, December 2019

Vitale, Connie and Michelle Cull, '2019 National Tax Clinic Pilot Project: Western Sydney University' (2020) 22(2) *Journal of Australian Taxation* 116

## **B Legislation**

*Income Tax Assessment Act 1997* (Cth)

## **C Other**

Australian Taxation Office, National Tax Clinics Grant Program, Archived Grant, 21 June 2021

Brinkerhoff, Derick 'Organisational Legitimacy, Capacity and Capacity Development' (Discussion Paper No 58A) (June 2005)

Morrison, Scott, 'Keynote Address' (Speech, Australian Chamber of Commerce and Industry Annual Dinner, 28 November 2018)

'North West Tax Clinic', TaxAid (Web Page)  
<<https://taxaid.org.uk/guides/taxpayers/northwest>>

'NUI Galway Tax Clinic' J.E. Cairnes School of Business and Economics (Web Page)  
<<https://www.nuigalway.ie/taxclinic/>>

Pflugraph, Gary, CPA Australia Submission to National Tax Clinic Open Competitive Grant Program Consultation Paper (18 January 2021)