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A Circle Game: Issues in Australian Clinical Legal Education

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Introduction

The 1998 Federal budget included 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". This is a significant development for Australia's small clinical legal education (CLE) movement which, with only one exception, had not previously received direct Federal funding.[1] While this provision of funding is obviously welcomed, the Commonwealth government's objectives for this funding appear to focus on community service rather than educational outcomes. The Commonwealth is clearly of the view that CLE has potential as a vehicle for the provision of inexpensive legal advice.

The Commonwealth government has now selected four CLE projects to be funded under this program. Funds will be provided to Griffith University, Monash University, Murdoch University and the University of New South Wales (UNSW). Both Griffith and Monash will be establishing specialist family law CLE projects while Murdoch and UNSW will be using their funding to maintain existing programs. All four successful projects strongly emphasise the importance of community service objectives, something which has been a hallmark of Australian CLE programs since the Monash, La Trobe and UNSW programs were established in the 1970s. The early Australian CLE programs benefited from the increasing availability of legal aid funding during the 1980s and this has now occurred once again with these new Commonwealth funds.

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1 In 1996, the Federal Government committed itself to contributing $190,000 for a 3 year (1 July, 1996 to 30 June 1999) pilot project for the establishment by Murdoch University of the Southern Communities Advocacy, Legal and Education Service (SCALES). Murdoch University contributed $210,000 for the project.

While CLE has gained greatest prominence in the United States of America (USA),[2] interest in clinical law has increased in a range of countries. 1998 saw the publication of books on CLE from both England[3] and India.[4] It appears that many of the challenges with clinical teaching (the resource intensive nature of clinic, limited opportunities for scholarship, supervision of students by non-academics, marginalisation within law schools, limited prospects for promotion and tenure) are fairly universal in nature.

The announcement of the CLE funding provides a useful opportunity to review the development and current state of Australian CLE. This article considers what types of legal education can be described as clinical and then outlines the history of Australia's CLE movement. The article then considers the scope for integration of clinical teaching before raising issues for the future.

Clinical Legal Education in the Australian Context

The term clinical legal education has been used quite loosely in Australia. The definition of CLE may well become a contested one in the near future as law schools position themselves to obtain a share of Commonwealth funds earmarked for this area. Students and practising lawyers tend to relate CLE to work with real clients or to "skills". This is also the model which has been adopted by the Commonwealth government for its funding of CLE programs. Other law teachers usually give CLE a broader meaning, focussing on the use of teaching methods other than traditional lectures and seminars.

To clinical law teachers, the key to CLE is usually the central role played by reflection and critique of student performance and students taking greater responsibility for their work.[5] CLE can make use of a range of different models, from simulations through integration of experiential aspects

2 For recent examples of clinical scholarship from the USA, see Symposium: Fifty Years of Clinical Legal Education (1997) 64 (4) *Tennessee Law Review*.

3 H Brayne, N Duncan & R Grimes, *Clinical Legal Education: Active Learning in Your Law School* (London: Blackstone Press, 1998).

4 M Menon ed, *Clinical Legal Education* (Lucknow, India: Eastern Book Company, 1998).

5 See S Rice, *A Guide to Implementing Clinical Teaching Method in the Law School Curriculum* (Centre for Legal Education, 1996) at 12-15; Brayne *supra* note. 3, at 11-12.

into traditionally taught subjects to live-client experiences. Australian CLE programs have tended to involve the live-client model. This involves students working directly with people in relation to actual legal issues under the direct supervision of academic staff. Law schools have either established vehicles for such education themselves or have grafted CLE programs onto existing community organisations.

There is clearly scope for other models and combinations of models to be used as and where they are appropriate. I suggest that sites for clinical teaching can be usefully characterised by way of a clinical continuum which relates to the degree of control exercised over the teaching setting. The emphasis on critique and reflection is a constant while control over the environment varies. Simulation exercises need to be very closely planned and controlled, live-client clinics and external placements see students responding to relatively unstructured situations.

It is important to recognise that these various clinical models are complementary rather than being in competition, often working best in combination. A wide range of variations and hybrids can be used to tailor the clinical experience to suit the teaching objectives and available resources. The integration of clinical teaching into the law curriculum is covered later in this article.

Increasing Australian Interest in Clinical Legal Education

The 1990s have seen increasing interest in CLE in Australia.[6] The Australian Clinical Legal Education Association (ACLEA) was established in 1996 at a conference attended by academics from 17 law schools. The *Guide to Clinical Legal Education Courses in Australian Universities 1998* contains descriptions of 13 CLE programs. Eight of these programs use a live-client model and none of these involve more than 100 students per year.

Most of these live-client clinics are of a generalist nature although specialist clinics have been established by Monash

6 S Campbell, Blueprint for a Clinical Program (1991) 9 *Journal of Professional Legal Education* 121, JA Dickson & MA Noone, The Challenge of Teaching Professional Ethics, *Skills Development for Tomorrow's Lawyers: Needs and Strategies*, conference papers (Sydney: Australasian Professional Legal Education Review Council 1996) Vol 2, at 845-860 Rice, *supra* note 5.

and Griffith Universities. Monash commenced a pilot sexual assault clinic with the South Eastern Centre Against Sexual Assault in 1996.[7] Griffith commenced an alternative dispute resolution clinic with the Alternative Dispute Resolution Branch of the Queensland Department of Justice and Attorney-General in 1998. Griffith and Monash have now been funded by the Commonwealth to run specialist family law clinics. Externship arrangements (where students are placed in external sites and supervised by someone other than a legal academic) are run by five law schools.[8] Some externships involve graded assessment while for others only attendance is monitored.

Rice has referred to a "crisis of sorts in the manner and sufficiency of articles or post-degree skills training" as the reason for the growing interest in CLE.[9] While this crisis has prompted greater consideration of skills training and Practical Legal Training (PLT) courses, it has not focussed on the elements of reflection and critique central to CLE. It may be that the increasing interest in undergraduate CLE is related to the very rapid increase in the number of both law schools and law students. The more competitive law school environment has ironically promoted a teaching method which emphasises, amongst other things, the value of working cooperatively.[10]

Still a Small Movement

Despite this increased interest, the Australian clinical movement is currently quite small. The funding announced by the Commonwealth may assist the Australian CLE movement to reach "critical mass". There are only a limited number of

7 A Evans, Specialised Clinical Legal Education Begins in Australia (1996) 21 *Alt LJ* 79.

8 A Lamb & J Goldring, Professional Placement Programs in Undergraduate Law Courses (1996) 14 (1) *Journal of Professional Legal Education* 109; J Giddings, External Placements for Law Students: Out of Sight, Out of Mind or Putting Students in the Picture? *Skills Development for Tomorrow's Lawyers: Needs and Strategies* conference paper (Sydney: Australasian Professional Legal Education Council, 1996) Vol 1, at 575-598.

9 Rice, *supra* note 5.

10 See D Chavkin, Matchmaker, Matchmaker: Student Collaboration in Clinical Programs (1994) 1 *Clinical Law Review*, 199; C O'Grady, Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer (1998) 4(2) *Clinical Law Review* 485. Interestingly, O'Grady suggests that the collaborative opportunities presented in clinical legal education generally contrast sharply with the working collaborations commonly experienced by new lawyers.

senior academics currently working in Australian CLE programs. No Professors teach in such programs in Australia. At Monash, the CLE program is coordinated by an Associate Professor. The PLT programs run at Queensland University of Technology and Wollongong are coordinated by Associate Professors. At Newcastle, La Trobe, Griffith, and Murdoch, the clinical programs are coordinated by Senior Lecturers. The University of New South Wales clinical program (three semesters per year, 25 students per semester along with a new program involving brief placements for all 400 students involved in a compulsory year-long subject) is coordinated by a Lecturer. There are also limited opportunities for Australian clinicians to get together which can lead to clinic teachers feeling isolated.

A History of Australian Clinical Legal Education

CLE in Australia began in the early 1970s at Monash University in Melbourne with the establishment of an in-house clinic in 1975. La Trobe University, also in Melbourne, established a clinic in 1978 which provided clinical experience for legal studies students rather than law students.[11] UNSW in Sydney established an external placement program in 1977 followed by an in-house clinic in 1981. It was not until the early 1990s that further clinical programs were established, generally making use of the live-client model.[12]

Community Service Focus

Each of the early Australian CLE programs developed a strong focus on the provision of community service. The law teachers involved had strong links to the developing community legal centre (CLC) movement. The first Australian CLCs developed in the early 1970s with Victoria taking the lead.[13] It is interesting that even in the late 1990s, a majority of the academics involved in Australian clinical programs have a

11 La Trobe organised a second clinic site in 1994, having commenced a law degree program in 1991. Law students can now undertake a placement at the Preston office of Victoria Legal Aid. See Dickson & Noone, *supra* at note 6.

12 Much of this historical material comes from a "roundtable" discussion conducted on November 20, 1996 with Sue Campbell, Adrian Evans, Ross Hyams, Guy Powles, Neil Rees and Simon Smith, each of whom has played a key role in the development of clinical legal education in Australia. Thanks to them all.

13 J Chesterman, *Poverty Law and Social Change: The Story of the Fitzroy Legal Service*, (Melbourne: Melbourne Press, 1996).

background working extensively in CLCs. In 1995, Sherr referred to conference meetings of old and new clinicians in the USA often showing a clear contest of style between the anti-authoritarian pioneers and the next generation of "analytically strong but often politically absent" skills technicians.[14] This observation does not fit the Australian context.

While some Law Schools developed formal links with CLCs through clinical programs, others forged close informal links. Many of the legal aid developments of the time received major input from various legal academics.[15] Close contacts had been developed in the late 1970s between academics from the law school at UNSW and Redfern Legal Centre but these did not result in the establishment of a formal CLE link between UNSW and that centre. The major reason for the unwillingness of the Redfern Legal Centre to become involved in CLE with UNSW was fear of takeover by the University. Those UNSW academics who strongly influenced the direction of Redfern Legal Centre in its early years greatly prized the independence of the centre. These people supported the establishment of a CLE program at UNSW but wished to see the establishment of a new in-house legal centre rather than a merger with Redfern Legal Centre. There were also other UNSW academics who criticised clinical work for not focussing on systemic issues and for fulfilling an apologist function involving "keeping a lid on the legal system garbage can". This contributed to UNSW establishing its own independent placement site, Kingsford Legal Centre, rather than grafting the clinical program onto the Redfern Legal Centre.

Student Involvement

Students played a key role in getting the early Australian CLE programs started. Students identified and worked with sympathetic academics in establishing services which

14 A Sherr, Clinical Legal Education at Warwick and the Skills Movement: Was Clinic a Creature of its Time? in G Wilson, (ed) *Frontiers of Legal Scholarship* (John Wiley & Sons, 1995) at 119.

15 For example, Professor Ron Sackville from Melbourne University (and Dean of the UNSW Law School at the time of the establishment of the UNSW clinical program) was responsible for the Law and Poverty reports produced as part of the Henderson Inquiry into Poverty in Australia conducted in the mid-1970s. Peter Hanks from Monash University (who was heavily involved in the establishment of the Monash clinical program) conducted research for the Commonwealth Government in relation to legal aid issues. See P Hanks, *Social Indicators and the Delivery of Legal Aid Services* (Canberra: AGPS, 1987).

endeavoured to put into practice what they were hearing from such teachers. The Monash clinical program can be traced to a Legal Referral Service which opened in 1971 and was run from a Citizens Advice Bureau in central Melbourne, some 20 kilometres from Monash.[16] People could phone to seek information in relation to their legal problem and, where appropriate, would be referred to a lawyer or some other person or organisation. Monash law students worked with local community workers to have a branch of the Legal Referral Service open at Springvale, a low income area close to the university. This Service moved beyond being a referral service with the establishment of Springvale Legal Service in 1973. Monash also developed two further clinic sites in nearby suburbs, Monash Legal Service (now known as Monash-Oakleigh Legal Service) and Doveton Legal Service.[17]

Staff members of the Legal Studies Department at La Trobe had established the La Trobe Legal Service in 1974.[18] In 1978, the Department also employed a lecturer to establish the West Heidelberg Community Legal Service at the local community centre.[19] These legal services became the sites for the La Trobe CLE program. Students also played a key role in the development both of these services and the clinical program. There was strong student demand both for the provision of legal services to the student population and for involvement in the delivery of those services. In 1976, the La Trobe Legal Service employed a lawyer with Students' Representative Council funds and by 1977 "it was clear that the time was ripe to begin training "para-legal" personnel for work in the service."[20] The La Trobe Legal Service maintained an involvement in the clinical program until 1992 and the West Heidelberg Community Legal Service remains a major placement site.

The age of the universities involved appears to have been significant in the development of Australian CLE programs. Monash, La Trobe and UNSW were all "second wave" universities, established in the 1960s. The law schools of these universities were "new kids on the block", needing

16 S Smith, "Clinical Legal Education: the Case of Springvale Legal Service" in Neal ed On Tap, Not on Top (1984) Legal Service Bulletin Co-operative, 49.

17 The Doveton Legal Service is no longer a CLE site but continues to operate as an independent CLC.

18 A Evans, Para-legal Training at La Trobe University (1978) 3 (2) *Legal Service Bulletin* 65.

19 D Neal, The New Lawyer Bloke (1978) 3 (4) *Legal Service Bulletin* 148.

20 Evans, *supra* note 18.

to find their niche. These universities attracted academics interested in developing new teaching methods. Clinical teaching was able to establish itself in the early years of the Monash law program and this has no doubt contributed to the Law School's continued support. Several Monash law deans leant strong support to the establishment and operation of the CLE program. It has apparently been more difficult to develop clinics within long established law schools. Of the older "sandstone universities", none have established live-client clinics. Adelaide and Sydney have established externship arrangements.

Funding Through Legal Aid

The community service focus and CLC links of these early clinics were reinforced with the increasing availability of legal aid funding. The Monash, La Trobe and UNSW placement sites attracted such funding in the early 1980s and this support continues. Springvale Legal Service has four positions funded by Victoria Legal Aid (VLA), due in no small part to the fact that it has the largest casework load of any Victorian CLC. Monash-Oakleigh Legal Service receives VLA funding equivalent to 50% of the cost of the Co-ordinator's position. The West Heidelberg Community Legal Service has three VLA-funded positions. The Kingsford Legal Centre operated by UNSW retains two legal aid-funded positions.

It would without question be difficult for these programs to retain such funding if they were to reduce their caseload for educational reasons. My experience of CLE in Australia suggests that these programs remain strongly committed to community service as a key clinical objective such that they would be unlikely to entertain significant caseload reductions.

The Third Wave of Law Schools

The number of law schools in Australia expanded dramatically following a range of reforms to the university sector in 1987. Interest in CLE was reactivated with a number of these "third wave" law schools setting up clinical programs in recent years. While a number of these new programs make use of a live-client clinic,[21] simulation-based

21 For example, University of Newcastle, Griffith University and Murdoch University.

and placement activities have also been characterised as clinical. Clinic appears to have been viewed by some of these new schools as a means of differentiating themselves from other new law programs in an increasingly competitive environment.[22]

The clinic-oriented law degree at the University of Newcastle is the largest and most ambitious of these new programs. The incorporation of the pre-admission practical legal training (PLT) requirements into the undergraduate degree is discussed below. A substantial amount of limited-term "soft money" was used to develop the Newcastle Legal Centre which is the program's centrepiece. The external funds used to fund the development of the Newcastle clinical program were provided by the solicitors Trust Account Fund.[23] Since 1995, the law school at Newcastle has also received a clinical loading of approximately $250,000 per year from central university funds. This payment is made in recognition of the fact that the Relative Funding Model used by the Commonwealth Department of Education, Training and Youth Affairs renders it almost impossible for law schools to maintain substantial clinical programs. The five Law School staff members employed at Newcastle Legal Centre are now all funded from the Law School's recurrent grant.

The Newcastle Law School is currently considering a range of options aimed at reducing the resource-intensive nature of its current "Professional Program".[24] Increasing student numbers in the Professional Program (from 17 in 1995 to 90 in 1999) will result in increased reliance on Newcastle Legal Centre as a placement site as well as requiring additional use of external placements. Relationships will be fostered with a range of legal service providers. The number of compulsory subjects will be increased while elective offerings will be reduced. In line with new guidelines for practical training adopted by the NSW Legal Practitioners Admission Board, the 20 week "clinical semesters" will be reduced to the more conventional 14 weeks. Four new subjects will be introduced which are designed to coordinate

22 See R Handley & D Considine, Introducing a Client-Centred Focus into the Law School Curriculum (1996) 7 *Legal Education Review* 193 at 208 for a discussion of the increasingly competitive law school environment in Australia.

23 This fund comprises interest payments on funds held in solicitors' trust accounts which are not centrally deposited. The fund was established in the 1980s following agreement between the major banks and the Law Society of NSW.

24 This information regarding the Newcastle clinical program comes from Newcastle Legal Centre Director, John Boersig.

the clinical hours which students must complete as part of the Newcastle Professional Program.

Links between CLE, Skills and Practical Legal Training Courses

This is an area in which we can expect substantial movement with a number of law schools either introducing or exploring the possibility of offering a pre-admission Practical Legal Training (PLT) course themselves or incorporating teaching which satisfies PLT requirements into their LLB program. PLT courses were first offered in Australia in the 1970s as an alternative, adjunct to or replacement for articles of clerkship.[25] These courses are offered by various approved institutions, most of which are not attached to universities.[26] While students have participated in short term placements as part of such PLT programs, these placements have not been assessed other than on an attendance basis. These PLT programs are now moving to include more extensive placements but have been criticised as doing no more than teach students how to fill out forms, being over-packed with transaction-based activities and not emphasising the teaching of generic skills essential to a broad range of legal activities.[27]

The dividing line between undergraduate CLE and PLT courses is becoming increasingly difficult to define. This lack of clarity arises from changing perceptions of the place of legal skills teaching in undergraduate law programs. Rice states that "In those jurisdictions such as Australia where articles or post-degree, pre-admission practical education courses are compulsory, the need for undergraduate skills training is less pressing. Consequently the teaching of legal skills [at undergraduate level] need be necessary only to a degree that enables students to work effectively in the

25 J Disney, P Redmond, J Basten, S Ross *Lawyers* 2nd ed (Sydney: Law Book Company, 1986) at 261.

26 The following universities are currently involved in delivering PLT courses: Queensland University of Technology, Australian National University, University of Technology Sydney, Wollongong University, University of Western Sydney (Macarthur), Bond University, University of South Australia, and University of Tasmania. The College of Law (New South Wales) and Leo Cussen Institute (Victoria), Australia's 2 largest PLT providers, are non-university based.

27 J Boersig, Clinical Legal Education: The Newcastle Model *Skills Development for Tomorrow's Lawyers: Needs and Strategies* conference paper (Sydney: Australasian Professional Legal Education Council, 1996) Vol 1, at 463, 466.

clinical program while pursuing other aims."[28] This view of the limited role of skills training in CLE programs is likely to be undermined due to extra pressure being placed on the PLT system with the increase in law graduates seeking entry to the profession. As Campbell anticipated in 1995, PLT providers are now granting some students credit for skills learning contained in their LLB studies, including involvement in a CLE program.[29]

Legal skills development can play an important part in clinical teaching but this relates to the value of these skills as more general learning tools rather than their value simply as skills. While I would advocate that CLE programs should not focus strongly on legal skills training, it is important to acknowledge the central role which the prospect of skills development plays in attracting students to clinical programs. Students are understandably concerned to maximise their future employability. They will be interested in acquiring skills which they see as directly relevant to their prospective work.

The prospect of intensive training in skills such as interviewing, negotiation and advocacy will often be the thing which prompts student interest in an undergraduate clinical experience. Of course, once they are participating, many students come to appreciate the diversity of issues which clinic exposes them to. They recognise the other, more interesting aspects of experiential learning and begin to appreciate the value of the intensive nature of the student-supervisor relationship. This initial underestimation of the value of CLE is not confined to students. Lawyers and academics who have developed an interest in CLE often indicate that they initially underestimated the educational value of the clinic environment.

In the early 90s, the University of Newcastle Law School, under the stewardship of Neil Rees (who played a key role in the establishment of both the Monash and UNSW clinical programs), moved to introduce a different system whereby students could satisfy their PLT requirements through their undergraduate program by way of involvement in a range of clinical activities.[30] The University established the Newcastle Legal Centre which has been the key clinic site and has been involved in an impressive range of major litigation, particularly in relation to police accountability. For

28 Rice, *supra* note 6, 25.
29 S Campbell, *Clinical Legal Education Newsletter*, No 8, November 1995, 2.
30 Boersig, *supra* note 27.

example, the Legal Centre has been acting for the family of Leigh Leigh, a Newcastle teenager who was murdered in 1989[31] and the family of Roni Levi who was shot dead by police on Bondi Beach in July, 1997.

Ninety students are able to participate in what is described as the Newcastle "Professional Program". This program requires students to complete a range of subjects during the final four semesters of their law degree. These semesters have been of 20 weeks duration although this has changed in 1999 with reversion to the standard 14-week semester. Students have also been required to complete at least 80 hours of clinical work in each of the eight subjects which form part of the program.[32] This clinical component is integrated in a range of forms, including simulations and work placements with an emphasis on bringing these experiences back into the classroom for reflection. It may be that elements of clinical integration will not survive the restructure of the "Professional Program".

The Resource-intensive Nature of CLE

Concerns in relation to CLE tend to be raised particularly in the context of the resource commitment required. To a large extent, the resourcing of clinics is an issue because of the mechanism used to allocate public funding to Australian universities. The Commonwealth Department of Education, Training and Youth Affairs (DETYA) funds Universities on the basis of agreed profiles of student intakes, with different disciplines allocated places in a Relative Funding Model. Law forms part of the lowest of the five funding clusters, with a weighting of one. In the top funding cluster is medicine with a weighting of 2.7. As law is in cluster 1, the choice of a law school to offer a substantial CLE program must be made at the expense of other activities, many of which (such as a reasonable choice of elective subjects) are seen as being an essential part of legal education. While additional (albeit limited) government funding is provided for the conduct of work placements for education and social work students, no such funding is available for law placements.

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31 J Fife-Yeomans, What Really Happened to Leigh Leigh? *The Australian* 30 September 1996, at 10.

32 Three of the 8 subjects are taught over a full academic year with a requirement that students complete at least 80 clinical hours each semester. This means students are required to complete at least 1246 clinical hours during the professional program.

Universities are not bound to apply the DETYA relative funding model and use their own internal formula, the characterisation of law as a "low cost" degree places additional pressure on proposals or programs which involve more intensive teaching. Ironically, students starting law studies in 1998 and subsequent years must contribute to the Federal Government's Higher Education Contribution Scheme at the highest of the three differential rates set despite law being funded at the lowest rate.

In 1994, the Centre for Legal Education published the results of a joint project with the Committee of Australian Law Deans relating to the cost of legal education in Australia. The project report noted that "only a few law schools, for various reasons but mainly cost, will have clinical programs, and their costs should be treated separately."[33] The report also stated that "Probably the best way to obtain more money for the discipline of law would be for law deans to be prepared to make a commitment to clinical legal education. There is little doubt that where it can be shown that the money would be spent on things which are tangible and visual the money is more likely to be forthcoming."[34]

The staff-student ratio for clinics are very different to those for lecture-based teaching. CLE programs should be promoted on the basis that their benefits extend well beyond the students who participate directly in the program. Some of these benefits are pedagogical while others are pragmatic. The clinic can be viewed as enriching other aspects of a law program in terms of giving students the opportunity to benefit from the use of a further and very powerful teaching method.

The clinician can provide other academic staff with support on how to diversify their teaching. This support can of course take many forms including:

- providing avenues for working together on planning of simulation problems or materials for classroom use, particularly in areas of the law related to the practice of the clinic.[35] Feinman identifies planning, particularly in the area of identifying goals, as crucial to the success of simulations.[36]

33 Centre for Legal Education & Committee of Australian Law Deans, *The Cost of Legal Education in Australia*, (Centre for Legal Education, 1994) at 73.

34 *Id*.

35 K Mack, Bringing Clinical Learning Into A Conventional Classroom, (1993) 4 *Legal Ed Rev* 89.

36 J Feinman, Simulations: An Introduction, (1995) 45 (4) *Journal Of Legal Education*, 469.

- making suggestions as to how to enliven the treatment of issues in traditionally taught subjects. The teaching of legal ethics continues to be identified as an area which can benefit from the infusion of issues generated by the clinic.[37]
- exploring possibilities for the establishment of specialist legal clinics or external placement components within courses. For example, Griffith University has established both an externship program with students placed with a diverse range of organisations as well as a specialist alternative dispute resolution clinic. It will now be establishing a family law clinic.
- the nature of CLE lends itself to clinicians developing expertise in the teaching of various generic skills, particularly interviewing, drafting, negotiation and advocacy. Given the interest of students in skills-based learning, the clinician's expertise can usefully be harnessed by those academics who do not have a practice background.

The clinic can also form part of the bridge between the academy and various elements of the profession, a priority in particular for newer law schools needing to establish their credibility with prospective employers of their graduates. The clinic provides law schools with an opportunity to publicise the practical aspects of their activities. The law school can be seen to be making an impact in a very tangible way. University administrators tend to be understandably interested in making use of clinics to bolster the community service profile of the university. This has seen Commonwealth government funds awarded to universities for "community service quality" directed towards capital works expenditure on a number of clinical programs.[38]

Linking Clinic with the Rest of the Curriculum

This is without doubt an area set to receive increasing attention from Law School decision makers. To date, Australian clinical teaching has been focussed on live-client clinics

37 E Burg, Clinic in the Classroom: A Step Toward Cooperation (1987) 37 *J Legal Educ* 232.

38 For example Griffith (computer facilities for the placement site, Caxton Legal Centre), La Trobe (extensions to the premises of West Heidelberg Community Legal Service), Monash (substantial renovations of both Springvale Legal Service and Monash-Oakleigh Legal Service), Murdoch (establishing premises for the Southern Communities Advocacy Legal and Education Service) and Newcastle (substantial renovations to Newcastle Legal Centre premises).

although some such programs have remained small and could be viewed as "showpiece" arrangements which are inaccessible to most students. Integration of clinical elements into more traditionally taught subjects may be seen as enabling the benefits of clinic to be achieved at a lesser price. This view fails to recognise that the real benefits of a clinical approach relate to students receiving detailed feedback from their clinic supervisor on their performance. Clinicians should be wary of law school attempts to dilute the student:supervisor ratio by increasing the number of students participating.

In 1998, UNSW has trialed a new program with all 420 students undertaking the compulsory subject, *Law, Lawyers and Society* spending up to 10 hours at Kingsford Legal Centre. This program has been more effective than was anticipated by Kingsford Legal Centre staff. The evaluations completed by students indicate that the experience has significantly changed some of their views and is likely to result in an increased demand to participate in the *Clinical Legal Experience* subject.[39]

Obviously, the definition of CLE is central to any discussion regarding clinical integration. For integration to be clinical, it is necessary to consider both what elements are being incorporated and how they are incorporated. Without provision being made for detailed and intensive review of the performance of participating students, the incorporation of a series of simulations into a course cannot be said to amount to clinical integration. Similarly, unless students are required to actively respond in role to unstructured legal problems, the incorporation of site visits does not involve clinical integration. This is not to say that programs which do not come within the definition of clinical are not valuable. It simply indicates that they are not clinical legal education.

Clinical Integration at Griffith – A Case Study

I teach at Griffith University in Brisbane, Queensland and have been responsible in part for the integration of a range of clinical and skills elements across the law program.[40] I have included this case study of clinical integration because not a great deal has been written about Australian CLE programs.

39 Interview with Fran Gibson, 3 September, 1998.

40 The contributions of my colleagues Geoff Airo-Farulla and Marlene Le Brun, and former colleagues Sally Kift, Stephen Parker and Charles Sampford to this process deserve special mention.

The Griffith law program was founded in 1992 with an understanding of the need to ensure that skills learning was not relegated to the periphery.[41] As with most things, this understanding has been subsequently tempered by the reality of limited funding and increasing student numbers. Griffith Law School pioneered the use in Australia of teacherless, leaderless groups known as offices as a central aspect of the law program.[42] These offices provide a site for reinforcing the skills and clinic elements introduced elsewhere, principally in small groups.

While those who established the Griffith law program were committed to students being given opportunities to develop their generic lawyering skills, the use of live-client clinical models was not part of that commitment. The original Griffith approach involved clinical elements only in the sense of using detailed simulation exercises and encouraging students to develop the ability to reflect on their own work. A live-client clinical program commenced in 1995 in conjunction with Caxton Legal Centre and has operated three semesters a year since then. Two further clinical programs commenced in 1998:

1 an externship program with 12 students placed in law firms, barristers offices, community legal centres and industrial relations consultancies; and

2 a specialist Alternative Dispute Resolution Clinic (ADR Clinic) with 12 students on placement with the Alternative Dispute Resolution branch of the Queensland Department of Justice and Attorney-General.

Each of the Griffith clinical programs emphasises the importance of students developing their ability to analyse information and situations and reflect on the performance of themselves and others. CLE students learn how to respond effectively to unstructured situations and to take responsibility for their own learning and development. Given the limited resources available for the establishment and running of CLE programs, Griffith law school has concentrated on developing partnership arrangements with existing legal service providers rather than establishing an independent CLE site.

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41 M Le Brun, Law at Griffith University - The First Year of Study (1992) 1 *Griffith Law Review* 15.

42 S Kift & G Airo-Farulla, Throwing Students in the Deep End or Teaching Them How to Swim: Developing Offices as a Technique of Law Teaching (1995) 6 (1) *Legal Education Review* 53; B Dick *et al*, The Use of Action Research in Developing Curricula in Law: Convergent Interviews and the "Offices" Project (1996) 30 (1) *The Law Teacher*.

One of the clinics is supervised by a law school academic while both the externship and ADR Clinic programs involve students being supervised by staff in the host organisation. Several mechanisms have been used to address quality control concerns in relation to such external supervision. Detailed manuals tailored to each individual CLE subject were developed for both supervisors and students.[43] Academic staff have discussed each students progress with the relevant supervisor at least four times during the 14 week semester. Considerable importance has been attached to discussion and agreement between all interested parties and in particular the student and host organisation supervisor as to the tasks to be performed by the student. In a study in the United States of America (where externship arrangements are used very extensively) Givelber *et al*[44] refer to students who shared expectations with their supervisor being far more likely to rate externship placements highly than those who did not.

In 1996, Griffith Law School adopted a "Lead Skill" structure to support the teaching of skills and legal practices. Lead skills were specified and attached to each year of the degree program as follows:

Year 1	Legal Research and Writing
Year 2	Communications, both written (letters, notes for file) and oral
Year 3	Negotiation, incorporating drafting
Year 4	Interviewing and Advising
Year 5	Workplace Management.

Each year's "lead skill" is attached to a core subject in that year. This is then buttressed by other on-going clinical and skills elements being offered in each of the years. The lead skill approach is designed to provide a focus for skills development in each year with a view to avoiding situations where law teachers assume that skills are being developed elsewhere in the law program. This approach also aims to encourage an ongoing commitment to skills development with students being given opportunities to further refine skills initially discussed in earlier years. Legal research development is incorporated into the assessment of core subjects in each year of the program. Cross-cultural issues are

43 Copies are available from Jeff Giddings, Law School, Griffith University, Nathan, 4111.

44 DJ Givelber, BK Baker, J McDevitt & R Miliano Learning Through Work: An Empirical Study Of Legal Internship (1995) 45 (1) *Journal Of Legal Education* 1, at 34.

specifically dealt with in Years 2, 3 and 4. Advocacy exercises are incorporated in most years.[45]

The incorporation of opportunities for critical reflection on these activities is central to the "lead skill" approach as it is for other elements of the Griffith law program. Such opportunities are incorporated into small group classes and offices. It is also recognised as valuable for students to receive written feedback on their performance. In the 1997 Course Experience Questionnaire for Australian Law Schools, Griffith achieved the second highest ranking out of 21 schools for the teaching of generic skills.[46]

Teachers considering integration should assess the range of models across the clinical continuum. Contact with real clients, whether through externships or in-house clinics, should be considered along with simulations. The choice of clinical aspects to be incorporated will vary from course to course on the basis of teaching objectives, subject matter and availability of time and other resources. Too often, the objectives receive insufficient attention during planning or are set without input from those responsible for the supervision and teaching. The purpose of the integration will be significant in determining the type and intensity of clinical elements to be incorporated. The utilisation of brief simulations or short field placements may be a useful primer for subsequent more intense clinical experiences. This appears to have been the experience with the pilot offering of the *Law, Lawyers and Society* placements at Kingsford Legal Centre.

Australian clinicians have encountered concerns from academics (both established and new) uneasy with these different teaching methods and their impact across the teaching staff. The line is "That's fine so long as you don't expect me to teach that way". In other instances, there has been some resistance to these different teaching methods, with the notion of academic freedom sometimes invoked to justify such a stance. In my experience, only a patient and supportive approach has any real likelihood of persuading such colleagues as to the merits of clinical teaching.

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45 A Lynch, Why Do We Moot?: Exploring the Role of Mooting in Legal Education (1996) 7 *Legal Education Review* 67; M Keyes & M Whincop, The Moot Reconceived: Some Theory and Evidence on Legal Skills (1997) 8 (1) *Legal Education Review* 1.

46 Figures taken from T Johnson, *The 1997 Course Experience Questionnaire: A Report Prepared for the Graduate Careers Council of Australia* (Australian Council for Educational Research, 1998).

Assessment

The assessment of student performance in clinical programs continues to generate considerable discussion amongst clinicians.[47] Assessment is often viewed as an area of difficulty. Whether all or part of a clinical subject should be assessed will depend on the objectives of the subject. It will also depend on whether the law school can be flexible enough to allow its CLE program to be "different" both as to the teaching methods used and as to nature of assessment. If graded assessment is used, it should be stressed to students that this is non-competitive, being based on personal achievement rather than relative merit.

In my view, the more intensive contact between the clinical supervisor/assessor and the student brought about by the much smaller class sizes enables the supervisor to more accurately gauge whether the student did what was expected of them and, if so, how well. The assessment process should be linked very closely to the provision of useful feedback to students, something of central importance in any clinical program. The provision of such feedback, along with the assessment process, can be enhanced by:

- the development of detailed performance criteria which are provided to students before they commence the program. Students need to know what will be expected of them.[48]
- the feedback being provided regularly. This enables the provision of more detailed feedback on a timely basis, something many students value.
- the incorporation of a formal "mid-semester review" which identifies both strengths and weaknesses and which gives the student the opportunity to address issues which have been identified. Several Australian CLE programs already make use of such a review process.[49] While useful, this process can also be very time-consuming.

I have referred earlier to difficulties in ensuring that the integration of non-traditional teaching methods into traditionally taught subjects involving large groups of students is clinical in the sense of incorporating opportunities for critique, reflection and discussion. Similar concerns arise in relation to assessing such integrated clinical elements. The clinical nature of such large group work may well be

47 For an Australian example of such discussion, see *Clinical Legal Education Australia Newsletter*, No. 10, December 1996, 8-13.
48 For example, see Campbell, *supra* note 6, at 134-135.
49 For example, Griffith, Monash & Newcastle.

enhanced by the development of peer and self assessment mechanisms.[50]

Accreditation

Accreditation issues related to Australian CLE may become significant in several respects. At this stage, Australia's clinical movement remains small such that those interested to "belong" are welcomed. However, this openness may be strained by the prospect of CLE funding from the Commonwealth government. Teachers in existing CLE programs will want to ensure that current or proposed programs seeking Commonwealth funds in fact incorporate opportunities for comprehensive critique and reflection.

Australian legal education is not as heavily influenced by requirements specified by external organisations as is the case in England with the Law Society and Bar Council and in the USA with the American Bar Association (ABA).[51] It is interesting that the trend in England appears to be towards a less prescriptive approach, similar to that used in Australia. It is of course possible that the relevant Australian legal professional associations will take the ABA's lead and embark on a MacCrate-style review of the adequacy of skills teaching.[52] The Law Admissions Consultative Committee is currently conducting an examination of the development, content and delivery of Practical Legal Training courses.

Commonwealth Funding for Clinical Legal Education

The relatively small nature of the Australian CLE movement increases the significance of the funding initiative announced in the 1998 Federal budget. The importance of the initiative also needs to be gauged in the context of a university sector in yet another period of transition. The Howard Federal Government elected in March 1996 reduced university funding in the 1996/97 budget, increased the partial fees charged to students, and appointed a Committee of Review of Higher Education. The Howard government also

50 N Tarr, The Skill of Evaluation as an Explicit Goal of Clinical Teaching (1990) 21 *Pacific Law Journal* 967.

51 R Handley & D Considine, *supra* note 22.

52 American Bar Association, Section of Legal Education and Admissions to the Bar (ABA), *Legal Education and Professional Development - An Educational Continuum, Report of The Task Force on Law Schools and the Profession: Narrowing the Gap*, (American Bar Association, 1992).

moved to allow universities to charge full fees on additional places made available to Australian students who had not gained entry through the existing tertiary entry system.

Such changes appear to have prompted Law Schools with substantial CLE programs to question the level of their financial commitment. The ongoing viability of UNSW's CLE program was called into serious question while the Monash clinical program faced a series of budget reductions. Funding restrictions are also threatening the comprehensive nature of the Newcastle CLE program. As outlined above, the sites of some CLE programs have been reliant on funding provided by the Commonwealth Community Legal Centre Funding Program administered by the Federal Office of Legal Aid and Family Services. With increases in community legal centre funding in recent Federal budgets, law schools with established CLE programs expressed understandable concerns that they were funding services which should be provided from legal aid resources.

The prospect of direct Federal government funding of CLE programs had been raised in 1996 when significant federal funds were provided for the establishment of Murdoch University's CLE program.[53] This program places students at the newly established Southern Communities Advocacy, Legal and Education Service (SCALES) of which Federal Attorney-General, Daryl Williams, is a strong supporter. This was followed 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 CLE programs at La Trobe, Monash and Murdoch. 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 universities cannot be expected to fill the gap created by legal aid cuts. The Inquiry also heard from academics involved in the CLE programs at Griffith, Newcastle and UNSW. The Senate Inquiry's Third Report refers to community legal centres as a principal element of the legal aid community and notes that some CLCs receive indirect funding or subsidies from sources including universities.[54]

53 Clinical Legal Education at Murdoch (1997) 22 (2) *Alternative Law Journal* 158.

54 Senate Legal and Constitutional References Committee, Inquiry into Australia's Legal Aid System, *Third Report*, (Canberra: AGPS, 1998) Ch 8 at 1.

Papers released in connection with the 1998 Federal Budget indicate that the Commonwealth was initially focussed on the establishment of new CLE programs. It appears this approach was re-thought prior to funding being allocated. Had it been implemented in its initial form, the emphasis on developing new programs may have exacerbated existing funding difficulties facing established CLE programs. Why would a law school continue to use its own resources to support a CLE program if this prevented such a program attracting specific Commonwealth funds? Of course, those law schools with existing CLE programs which did not attract Commonwealth funding may well continue to face such pressure.

The Commonwealth also initially referred to the establishment of "a service delivery model" which would form the basis for Commonwealth-funded CLE programs. This model was to be determined following a benchmarking process and would seek to ensure best practice in service delivery and accountability. The conduct of a benchmarking process and the establishment of a "service delivery model" did not eventuate.

What the Commonwealth has Funded

After shortlisting eight expressions of interest from Australian law schools late in 1998, the Commonwealth announced in early March 1999 that Clinical Legal Education Project funding would be provided to Griffith, Monash, Murdoch and UNSW.[55] Each program will receive $100,000 per year for four years. Both Griffith and Monash will be operating specialist family law CLE programs while Murdoch and UNSW will be using the funding to continue existing programs.

The Commonwealth has focussed heavily on community service outcomes. The family law focus indicates clearly the concern to provide services in areas of Commonwealth legal responsibility. It is unclear what significance the Commonwealth attached to the educational merit and objectives of CLE programs when it was making funding decisions. The funded programs will be required to meet similar reporting requirements to those placed on Commonwealth-funded CLCs.

The Commonwealth has also allocated $100,000 towards the CLE National Quality Project (NQP). The NQP involves

55 G Healy, Law students to staff justice clinics *The Australian*, 10 March 1999, at 41.

one-off project grants for activities designed to "maximise legal service delivery to disadvantaged clients through the Commonwealth Community Legal Services Program and promote cooperation with universities."[56] The Commonwealth has identified priority areas which include mediation and primary dispute resolution, servicing regional, rural and remote Australia, the cost of CLE programs, student supervision, proposals for a Student Practice Rule, integrating CLE across the curriculum and developing external placements.[57] As well as benefiting Australian CLE programs, the NQP will also provide valuable opportunities for Australian clinicians to develop their research expertise.

Where to From Here for Australian CLE?

The Commonwealth government is increasingly interested to explore the possibility of greater law student involvement in legal aid service delivery. Such involvement is likely to continue to occur through clinical programs linked to CLCs. In 1997/98, Victorian CLCs were the subject of a major review instigated by the Commonwealth and Victorian Governments. The report of the review, published in July 1998, referred to law and legal studies students making "a significant contribution to the provision of services by CLCs and the experience gained in working in a service environment contributes significantly to the legal education of potential legal and paralegal practitioners."[58]

The CLC Review report further referred to CLCs specialising in CLE activities as having a specialist function which had hitherto been unacknowledged, describing the function of CLE as "a distinctive competency which contributes to the education of legal practitioners and leads to direct positive outcomes for clients as the volume of community legal service oriented legal practitioners grows."[59] While recommending the amalgamation of various other Victorian CLCs, the Review supports the retention of centres involved in CLE and suggests that growth in student demand for CLE will facilitate the CLCs involved becoming "centres of excellence".[60]

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56 Letter dated 3 March, 1999 from Dr Margaret Browne (First Assistant Secretary, Family Law and Legal Assistance Division, Attorney- General's Department) to Curriculum Committees of Australian Law Schools.

57 *Ibid*.

58 Impact Consulting Group, *Review of Victorian Community Legal Centre Funding Program: Final Report*, (July 1998) Vol 1, at 74.

59 *Ibid*, 138.

60 *Ibid*, 140.

> The Review nominated CLCs associated with the La Trobe and Monash programs as CLE providers along with Fitzroy Legal Service. Fitzroy, which is not currently involved in any formal CLE program, is referred to in the report as the inner urban CLC with the greatest capacity to establish a formal CLE program with the University of Melbourne 'when the latter institution accepts the inevitable necessity to expand training opportunities for law students'.[61]

The Commonwealth CLE funds have been directed towards existing programs rather than to law schools considering the establishment of CLE programs. Law Schools which do not currently operate CLE programs may consider it strategic to develop their CLE expertise in anticipation of further CLE funds becoming available. Such law schools will need to think small and smart with a view to minimising the set-up costs. For those law schools with existing CLE programs, there is likely to be pressure to increase participating student numbers, something which may call into question the very basis of clinical teaching method.

Australian law schools are likely to explore options for external placements and more specialised live-client clinics. So far, there has been only limited involvement in external placement programs. Such programs are operated by several law schools (Adelaide, Griffith, Newcastle, Sydney and Wollongong). Not all of these existing programs involve assessment of the students performance[62] and some involve students in assuming only very limited responsibility for the work which they do.[63]

Whether such externship programs fit a definition of CLE which emphasises reflection and critique will depend on the program in question. More sophisticated models are likely to be developed although some elements of the legal profession are likely to view such placements as another training burden they do not wish to bear. All such programs rely on the goodwill and cooperation of the placement sites and, unlike in the United States of America,[64] there is not a

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61 *Ibid*, 139.
62 Lamb *supra* note 8 (Lamb & Goldring) at 380-1.
63 Lamb at 376, Boersig supra note 27 at 476.
64 In 1990/91, more than 10,000 law students in the USA participated in an externship placement. American Bar Association, Section of Legal Education and Admissions to the Bar, (1992) *Legal Education and Professional Development – An Educational Continuum: Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, 253.

strong ethos in the Australian legal profession in relation to hosting such student placements. The Griffith program takes external placements beyond mere work experience and incorporates them within a coherent seminar program which critiques the roles played by legal professionals as well as covering a range of generic skills. The first offering of the subject has resulted in several students receiving articled clerkships with prestigious city law firms with which they were placed.

The first specialist live-client clinic in Australia was established on a pilot basis by Monash University with the South Eastern Centre Against Sexual Assault in 1996.[65] Griffith University established an alternative dispute resolution clinic in 1998 which involves students in policy and client-intake work for the Alternative Dispute Resolution Branch of the Department of Justice. As outlined above, the Commonwealth will now be funding specialist family law clinics to be run by Griffith and Monash.

It appears likely that law schools will consider establishing specialist clinics in areas where they have academic strengths. Areas likely to be considered for such programs include:

- law for older members of the community. There is an abundance of evidence that older people encounter a range of difficulties in accessing various community services. This is despite the fact that in 1990 11.2% of Australia's population were more than 65 years of age. By 2030, it is estimated that this figure will have increased to 19.1%. Access to free legal advice and, where appropriate, ongoing representation would be of significant assistance to older people, particularly those who are on fixed incomes. While many community legal centres provide assistance to older people, these centres and legal aid organisations have not been able to develop detailed expertise in areas of particular concern as outlined above.
- environmental law. A network of environmental defenders offices (EDOs) was set up with funds from the *Justice Statement* launched by the then Federal Labour Government in 1995. Subsequently, this "soft money" source has dried up. Such EDOs may well consider links with clinical programs as a mechanism for broadening the services which they can offer. University of Sydney Law School has established a

65 A Evans, Specialised Clinical Legal Education Begins in Australia (1996) 21 *Alt LJ* 79.

program where students spend a half-day per week at the New South Wales EDO for eight weeks. Clinical work on environmental issues has been particularly politically contentious in the USA.[66]

- industrial relations. The current Federal Government and a range of conservative state legislatures have introduced legislation which substantially limits the ability of trade unions to fulfil their traditional roles in negotiating conditions of employment. In the UK, the Bar Vocational Course has since 1992 provided students with an opportunity to be involved in representing clients in employment disputes before the industrial tribunals.[67]

CLE programs are likely to seek to formalise student rights of appearance[68] before courts and tribunals with a view to making greater use of appearances as a learning experience. While advocacy simulations in the form of moots have been used extensively,[69] Australian Law Schools have been slow to promote rights of appearance in court being extended to students. Newcastle, Monash and Griffith all incorporate student appearance work into their CLE programs.[70] Each of these programs rely on the discretion of individual magistrates and judges to grant leave to students to appear in their court and this has recently created difficulties for the Monash program.[71]

66 See P Joy & C Weisselberg, Access to Justice, Academic Freedom, and Political Interference: A Clinical Program Under Siege (1998) 4 (2) *Clinical Law Review* 531 where, in the context of a discussion of threats to the Tulane Environmental Law Clinic in Louisiana, they state "No law school clinic has been the target of as many sustained attacks as the in-house environmental law clinic at the University of Oregon."

67 N Duncan, On Your Feet in the Industrial Tribunal: A Live Clinical Course for a Referral Profession (1996) 14(2) *Journal of Professional Legal Education* 169.

68 There is no student "right" of appearance before Australian courts. Rather, students must obtain leave from a court before making their appearance.

69 Lynch, *supra* note 45.

70 For an outline of the Monash program, see S Campbell My Learning Friend (1993) 67 (10) *Law Institute Journal* 914.

71 Changes to the *Legal Profession Practice Act* have raised concerns regarding the standing of students to appear in court as advocates. See J Faine, Student Counsel Scheme Under Threat (1997) 71 (1) *Law Institute Journal* 17. Noone suggested in 1991 that legislative amendment was the best way to create the certainty needed to promote student appearances. MA Noone, Student Practice Rule – Is it Time? (1992) 66 (3) *Law Institute Journal*, 190.

Conclusion

The Commonwealth's interest in CLE clearly arises more from a concern to deliver cheaper legal services to the community rather than an agenda primarily directed to improving legal education. The question is the extent to which both community service and educational objectives can be achieved in the same program. The links with CLCs and the commitment to improving access to legal services, central to the establishment of most Australian CLE programs, have now resulted in some CLE programs receiving significant funding support from the Commonwealth. It is in this sense that the title of this article refers to Australian CLE as a "circle game".

The Commonwealth will no doubt monitor carefully the progress of the funded CLE programs. Whether further Commonwealth funds are made available for CLE will depend substantially on the performance of the funded programs. Attorney-General, Daryl Williams, commended Australian law schools for their overwhelming response to the call for expressions of interest regarding such programs. Mr Williams also commended the high standard of the submissions.[72] Those law schools which did not receive CLE funds will now need to consider whether to continue or commence allocating resources towards CLE with a view to obtaining Commonwealth funds if and when further funds become available.

72 "Clinical Legal Education Initiative", News Release from the Hon Daryl Williams, 29 January, 1999.