



Clinic in the times of COVID19

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Accepted: 27 November 2020 / Published online: 13 February 2021
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Abstract

This article considers the challenges faced by clinical legal education programmes in responding effectively to the COVID19 pandemic. Client needs are different and more acute. They also need to be balanced with the safety of students and staff. Services will need to be delivered remotely. The article considers some of the key legal issues generated by the pandemic, highlighting the need for clinics and other legal service providers to respond to these emerging legal and related needs. In responding, clinics will be best served by adhering to their pedagogical principles in the design of new services and in reshaping existing practices. This should enable clinical programmes to ensure that the experience of students remains distinctive, albeit different. The experience of the Monash Clinical Program is provided to demonstrate the value of using a clinical best practices framework to guide the responses to the challenges generated by COVID19. Research related to clinical best practices undertaken as part of the planning for implementation of the Monash Clinical Guarantee has shaped the programme's response to COVID19. The article then considers a range of issues generated by the move to virtual delivery of client services and the clinic's teaching programme. The article concludes with contemplation of how clinical programmes can best plan for 'the new normal' that will present itself after the pandemic.

Keywords Clinical legal education · Law clinics · Social justice · Best practices · Supervision · COVID19

1 Introduction

This article considers the challenges faced by clinical legal education (CLE) programmes in responding effectively to the COVID19 pandemic. With societies facing new risks that have prompted unprecedented change and upheaval, clinics face

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new sets of challenges and choices. They must respond to the new and accentuated service needs of clients while also safeguarding students and staff facing difficulties in adjusting to new circumstances. Clinics also need to fit with the responses of their universities and governments in terms of complying with social distancing requirements.

The article includes an account of how a substantial Australian CLE programme has responded to the COVID19 pandemic. Monash Law Faculty established Australia's first CLE programme in 1975.¹ Monash is now the first Australian law school to guarantee its students the opportunity to participate in a clinic-based learning experience during their degree.² Monash Law has developed enduring partnerships with other community legal centres and supported other agencies engaged in front-line service delivery. These agencies are now facing unprecedented demand for assistance from people seriously impacted by circumstances generated by the pandemic.

The article is Australian in its focus, but it appears clear that different nations share many of the issues raised by the pandemic. Being an island nation with a greater capacity to control international arrivals, Australia did not initially face the infection rates and fatalities encountered in many countries. However, a subsequent wave of infection outbreaks in my home state of Victoria led to a second, more restrictive lockdown, that lasted for more than four months, across the Greater Melbourne region. More severe lockdowns were implemented for certain public housing estates, impacting harshly on the already vulnerable and disadvantaged communities. There have been particular issues related to the lack of preparedness of nursing homes for dealing with COVID19, the susceptibility of vulnerable aged residents, and the potential for rapid spread of the virus in such homes.³

While these issues will emerge in different ways in different locations, one thing is clear—the most vulnerable members of society are bearing the brunt of the pandemic's impact. People with underlying health conditions are particularly vulnerable to the effects of COVID19. Community mental health has been undermined by the isolation and uncertainty generated by the pandemic. In our globalised world, people are also more likely to be concerned for the well-being of family and other loved ones who are living or working in, or visiting, other countries.

¹ Jeff Giddings, *Promoting Justice through Clinical Legal Education* (Justice Press 2013), Chapter 6; Bryan Horrigan, 'Designing and Implementing an Enhanced Clinical Program in the Age of Disruption. Part One: The Environment for Clinic' (2019) 26(2) *International Journal of Clinical Legal Education* 75; Bryan Horrigan, 'Designing and Implementing an Enhanced Clinical Program in the Age of Disruption. Part Two: Clinical Activities' (2020) 27(1) *International Journal of Clinical Legal Education* 204–230.

² <https://www.monash.edu/law/home/cle>. Accessed 17 August 2020.

³ Julie Power, 'COVID-19 Has Exposed Australia's Aged Care Sector's Flaws, Royal Commission Hears' (*The Age*, 10 August 2020). <https://www.theage.com.au/national/covid-19-has-exposed-australia-s-aged-care-sector-s-flaws-royal-commission-hears-20200810-p55k7p.html>. Accessed 11 August 2020; Jed Montayre and Richard Lindley, 'Should All Aged-Care Residents with COVID-19 Be Moved to Hospital? Probably, but There Are Drawbacks Too' (*The Conversation*, 7 August 2020). <https://theconversation.com/should-all-aged-care-residents-with-covid-19-be-moved-to-hospital-probably-but-there-are-drawbacks-too-143826>. Accessed 17 August 2020.

A range of significant social issues with profound legal dimensions have come to the fore due to COVID19. Court processes have changed dramatically with many non-urgent cases postponed until 2021. In Victoria, criminal accused were given the right to elect to have their charges determined by a judge sitting without a 12-person jury.⁴ The Victorian Civil and Administrative Tribunal adjourned all claims that require an in-person hearing and has expanded the types of claims that can be determined ‘on the papers’ or via a teleconference or videoconference.⁵

Governments are having to navigate uncharted waters in responding to the pandemic⁶ and civil society faces a difficult balance between supporting decision-makers and holding them to account.⁷ Universities have understandably sought to work closely with government and clinics are expected to play their part in complying with government requirements. This has been challenging in a context where universities are heavily dependent on the revenue generated by hosting international students, with significant job losses across the higher education sector.⁸ It has been estimated that, in Australia, this sector will lose around \$19 billion in international student revenue across 2020–2023.⁹

The uncertainty generated by the pandemic has created significant challenges of maintaining cohesion when people are under great pressure. There are important legal dimensions to many of the community protection measures that governments have imposed. These measures impact most particularly on people who were already vulnerable. Schools were closed to most students¹⁰ and places of religious worship also closed along with non-essential businesses.¹¹ Serious concerns continue to be

⁴ Accused persons have, to date, been reluctant to exercise this right. See Adam Cooper and David Estcourt, ‘Victoria to Hold First Judge-Only Trial, but Lawyers Favour Jury System’ (*The Age*, 5 July 2020). <https://www.theage.com.au/national/victoria/victoria-to-hold-first-judge-only-trial-but-lawyers-favour-jury-system-20200705-p5594e.html>. Accessed 6 July 2020.

⁵ <https://www.vcat.vic.gov.au/news/vcat-hearings-during-coronavirus-restrictions>. Accessed 6 July 2020.

⁶ The Australian Senate resolved to establish a Select Committee on COVID19 to inquire into the Australian government’s response to the COVID-19 pandemic. https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/COVID-19/COVID19. Accessed 11 August 2020.

⁷ Denis Muller, ‘Tensions Rise on Coronavirus Handling as the Media Take Control of the Accountability Narrative’ (*The Conversation*, 11 August 2020). <https://theconversation.com/tensions-rise-on-coronavirus-handling-as-the-media-take-control-of-the-accountability-narrative-144195>. Accessed 11 August 2020.

⁸ Richard Holden, ‘Vital Signs: This University Funding Crisis Was Always Coming — COVID-19 Just Accelerated It’ (*The Conversation*, 14 August 2020). <https://theconversation.com/vital-signs-this-university-funding-crisis-was-always-coming-covid-19-just-accelerated-it-144365>. Accessed 16 August 2020.

⁹ Peter Hurley, ‘Australian Universities Could Lose \$19 Billion in the Next 3 Years. Our Economy Will Suffer with Them’ (*The Conversation*, 17 April 2020). <https://theconversation.com/australian-universities-could-lose-19-billion-in-the-next-3-years-our-economy-will-suffer-with-them-136251>. Accessed 16 August 2020.

¹⁰ Louise Phillips and Melissa Cain, ‘“Exhausted beyond Measure”: What Teachers Are Saying about COVID-19 and the Disruption to Education’ (*The Conversation*, 4 August 2020). <https://theconversation.com/exhausted-beyond-measure-what-teachers-are-saying-about-covid-19-and-the-disruption-to-education-143601>. Accessed 23 November 2020.

¹¹ Dafydd Mills Daniel, ‘How to Celebrate Easter Under Lockdown’ (*The Conversation*, April 10, 2020). <https://theconversation.com/how-to-celebrate-easter-under-lockdown-136063>. Accessed 24 November 2020; Mehmet Olzap, ‘How Coronavirus Challenges Muslims’ Faith and Changes Their

expressed regarding growth in racial discrimination generated by the pandemic.¹² Heightened uncertainty around what the future may hold is also impacting on the mental health of many people.¹³ These restrictions and anxieties have obviously reshaped the services clinical programmes can offer.

The next part of this article provides an account of the key legal issues generated by the pandemic, highlighting the need for clinics and other legal service providers to respond to emerging legal and related needs. I then argue that in responding to such needs, clinics will be best served by adhering to their pedagogical principles in the design of new services and in reshaping existing practices, while recognising the crucial social justice dimensions of their work. I identify a range of hallmarks of effective clinic-based learning and suggest practices that can be used to maintain these hallmarks. I suggest that the experience of clinic students should be different but still distinctive.

The Monash Clinical Program is described to demonstrate the value of using a clinical best practices framework to guide the responses of clinical programmes to the challenges generated by COVID19. Research related to clinical best practices undertaken as part of the planning for implementation of the Monash Clinical Guarantee has shaped the programme's response to the pandemic. The article then considers a range of issues generated by Monash's move to virtual delivery of client services and the clinic's teaching programme. The article concludes with contemplation of how clinical programmes can best plan for 'the new normal' that will present itself after the pandemic.

2 Changing legal needs in exceptional times

This section of the article identifies a range of legal issues that have become more prominent and problematic due to COVID19. Legal service providers, including clinics, have needed to respond quickly and compassionately to these issues.

2.1 Family safety and security

With families spending more time together at home due to lockdowns and facing a range of emotional and financial pressures, there is heightened potential for various forms of intimate violence. Keeping women and children safe while they shelter at home has been a major concern for service providers and policy-makers. This was exacerbated by the closure of schools during lockdown periods. Childcare services

Footnote 11 (continued)

Lives' (*The Conversation*, 2 April 2020). <https://theconversation.com/how-coronavirus-challenges-muslims-faith-and-changes-their-lives-133925>. Accessed 24 November 2020.

¹² Nicholas Aroney, 'New Research Shows Religious Discrimination Is on the Rise Around the World, Including in Australia' (*The Conversation*, 6 August 2020). <https://theconversation.com/new-research-shows-religious-discrimination-is-on-the-rise-around-the-world-including-in-australia-141789>. Accessed 16 August 2020.

¹³ Ian Hickie, 'As "Lockdown Fatigue" Sets In, the Toll on Mental Health Will Require an Urgent Response' (*The Conversation*, 4 August 2020). <https://theconversation.com/as-lockdown-fatigue-sets-in-the-toll-on-mental-health-will-require-an-urgent-response-143817>. Accessed 23 November 2020.

were also closed to most families in lockdown areas.¹⁴ There has been heavy reliance on police and other services to effectively respond to violence and threats of infection.¹⁵ Digital courts have improved the conduct of such cases as they can enable parties who have been subjected to violence to take part without having to be in the company of the perpetrator of that violence.

Disputes relating to care and residence of children have become more complex and more common. Within three weeks of the pandemic hitting Australia, the Family Court of Australia and the Federal Circuit Court transitioned into digital delivery. These courts created a ‘COVID List’ to deal digitally with urgent COVID-related cases with decisions being made within 72 hours. The suggestion for this proactive court list to address these cases came from the Women’s Legal Service in Queensland, informed by the prevalence of domestic violence history in cases coming before family law courts.¹⁶

2.2 Health

Older people are understandably very concerned with the possibility of infection. Major challenges have arisen for nursing homes and the aged care sector given the higher vulnerability of older people to the effects of the COVID19 virus. Nursing homes have been the sites of major COVID19 hotspots in many Australian cities with residents unable to spend time with family and friends due to lockdown restrictions.¹⁷ Maintaining arrangements to curb the spread of the virus in nursing homes while ensuring older people receive the physical and emotional care they need will continue to be a major challenge for health authorities.¹⁸

Many clinic clients have pre-existing health conditions and are particularly vulnerable to the effects of COVID19. Across the community, this has generated concerns with the lack of social distancing exercised by other community members who consider themselves less susceptible to the effects of the virus. Significant conflicts have been generated by the choice of some people not to wear a face mask in public. Other people have legitimate reasons not to wear a mask, for medical, behavioural

¹⁴ Kate Noble, ‘Childcare Closed to Most Families, No JobKeeper: What Melbourne’s Stage 4 Lockdown Means for Parents and the Sector’ (*The Conversation*, 4 August 2020). <https://theconversation.com/childcare-closed-to-most-families-no-jobkeeper-what-melbournes-stage-4-lockdown-means-for-parents-and-the-sector-143845>. Accessed 23 November 2020.

¹⁵ *The Law Report*, ‘Covid-19 and Family Law’ (Australian Broadcasting Corporation Radio National (ABC RN), 30 June 2020). <https://www.abc.net.au/radionational/programs/lawreport/covid-19-and-family-law/12379060>. Accessed 3 July 2020.

¹⁶ *Ibid.*

¹⁷ *RN Breakfast*, ‘Federal Authorities Accused of Failing to Prepare Nursing Homes for the Pandemic’ (ABC RN, 11 August 2020). <https://www.abc.net.au/radionational/programs/breakfast/did-government-fail-to-prepare-nursing-homes-for-the-pandemic/12544210>. Accessed 11 August 2020.

¹⁸ Prateek Bandopadhyay, ‘A Resident of Aged Care Shouldn’t Need to Surrender Their Human Rights’ (*The Age*, 11 August 2020). <https://www.theage.com.au/national/a-resident-of-aged-care-shouldn-t-need-to-surrender-their-human-rights-20200808-p55ju3.html>. Accessed 11 August 2020.

or psychological reasons.¹⁹ Some participants in Black Lives Matter protests in Australian cities defied directions not to congregate in contravention of social distancing requirements. These protests generated intense debate around the appropriateness of protesting in the midst of the pandemic.²⁰

2.3 Work and financial hardship

Employment has been seriously impacted by the COVID19 pandemic. Job losses due to complete or partial closure of sectors of the economy have resulted in dramatic increases in unemployment. Government support for people to retain their job or to cope with the loss of employment has been substantial but inconsistent.²¹ While many Australian workers were given access to financial support until the end of March 2021, casual employees were ineligible while others (for example, university staff and childcare workers) had their access to such support removed more quickly.²² Government support for industries affected by COVID19 has tended to safeguard the jobs of men more than women.²³ Many people have lost their jobs or had their incomes dramatically reduced. This has left many unable to service their personal loans. Some have sought permission to gain early access to the balance of their superannuation account.²⁴

Major issues have also arisen for people concerned that they are being required to work in what they consider to be unsafe conditions, including due to scarcity of personal protective equipment.²⁵ This has been a particular issue for health-care workers.²⁶ The Australian Council of Trade Unions has advocated for all

¹⁹ Holly Searle, 'Masks to Protect from Coronavirus Might Be Mandatory in Melbourne, but Some People Really Can't Wear a Mask' (ABC News, 29 July 2020). <https://www.abc.net.au/news/2020-07-29/its-easy-to-judge-but-some-people-really-cant-wear-a-mask/12498782>. Accessed 13 August 2020.

²⁰ 'Melbourne Black Lives Matter Protest Organisers to Be Fined for Breaching Coronavirus Restrictions' (ABC News, 6 June 2020). <https://www.abc.net.au/news/2020-06-06/melbourne-black-lives-matter-protest-organisers-fined-by-police/12329514>. Accessed 23 November 2020.

²¹ Michelle Grattan, 'Government to Announce Revamped Wage Subsidy Amid Huge COVID Uncertainty' (*The Conversation*, 19 July 2020). <https://theconversation.com/government-to-announce-revamped-wage-subsidy-amid-huge-covid-uncertainty-142969>. Accessed 11 August 2020.

²² Michelle Grattan, 'Free Childcare Ends July 12, with Sector Losing JobKeeper but Receiving Temporary Payment' (*The Conversation*, 8 June 2020). <https://theconversation.com/free-childcare-ends-july-12-with-sector-losing-jobkeeper-but-receiving-temporary-payment-140253>. Accessed 11 August 2020.

²³ Leah Ruppner, Caitlyn Collins, and William Scarborough, 'COVID-19 Is a Disaster for Mothers' Employment. And No, Working from Home Is Not the Solution' (*The Conversation*, 21 July 2020). <https://theconversation.com/covid-19-is-a-disaster-for-mothers-employment-and-no-working-from-home-is-not-the-solution-142650>. Accessed 11 August 2020.

²⁴ Gregory Mowle, 'Mortgage Deferral, Rent Relief and Bankruptcy: What You Need to Know if You Have Coronavirus Money Problems' (*The Conversation*, 25 June 2020). <https://theconversation.com/mortgage-deferral-rent-relief-and-bankruptcy-what-you-need-to-know-if-you-have-coronavirus-money-problems-141274>. Accessed 3 July 2020.

²⁵ 'Nurses on Covid-19 Frontline Concerned about Access to Proper PPE' (ABC, 11 August 2020). <https://www.abc.net.au/radio/newsradio/victorian-nurses-concerned-about-access-to-proper/12546156>. Accessed 13 August 2020.

²⁶ Kirsten Robb, 'Complaining about Wearing a Mask because of Coronavirus? These Nurses Don't Want to Hear It' (ABC News, 3 August 2020). <https://www.abc.net.au/news/2020-08-03/nurses-do-not-want-public-to-complain-about-coronavirus-masks/12512436>. Accessed 13 August 2020; Alicia Dennis

employers to develop Workplace Action Plans to address the health risks generated by COVID19.²⁷

2.4 Housing

Housing and tenancy concerns have been particularly prominent. People with insecure housing arrangements have been heavily impacted.²⁸ Renters who have lost their employment have had to negotiate with landlords who rely on rent to service their mortgage debt. Australia has some of the highest household debt rates in the world and heavily mortgaged landlords have been reluctant to negotiate rent reductions for their tenants despite government action requiring them to do so.²⁹ For universities, a key group that has been heavily impacted by COVID19 is international students. The Australian economy relies heavily on both international students and international tourists.³⁰ Controversially, international students have not been able to access COVID19-related government support available to Australian citizens.

3 Different but still distinctive

In this section, I argue that the fundamentals of clinical pedagogy need to inform the responses of clinical programmes to circumstances generated by COVID19. These fundamentals relate to small groups of students engaging in law-related work with responsibility for clients in collaboration with a supervisor. The students receive feedback on their contributions and are given opportunities to engage in structured reflection to explore issues raised by their experiences.³¹ Those academics responsible for clinical programmes need to be flexible and mindful enough to adapt their practices to new circumstances informed by the enduring principles of clinical pedagogy. These relate to social justice, respectful relationships, collaborative learning,

Footnote 26 (continued)

and Jane Whitlaw, 'PPE Unmasked: Why Health-Care Workers in Australia Are Inadequately Protected against Coronavirus' (*The Conversation*, 4 August 2020). <https://theconversation.com/ppe-unmasked-why-health-care-workers-in-australia-are-inadequately-protected-against-coronavirus-143751>. Accessed 23 November 2020.

²⁷ Australian Council of Trade Unions, 'Coronavirus OHS Alert'. <https://www.actu.org.au/coronavirus/cv-alert>. Accessed 13 August 2020.

²⁸ Rachel Ong ViforJ, 'As Coronavirus Widens the Renter-Owner Divide, Housing Policies Will Have to Change' (*The Conversation*, 20 April 2020). <https://theconversation.com/as-coronavirus-widens-the-renter-owner-divide-housing-policies-will-have-to-change-135808>. Accessed 11 August 2020.

²⁹ Geoff Thompson, 'Shaun's Apartment, Maria's Business and Gary's Mortgage Are All Linked by One Thing: Deferred Debt' (ABC News, 10 July 2020). <https://www.abc.net.au/news/2020-07-10/the-dominoes-in-the-australian-economy-set-to-fall-coronavirus/12433768>. Accessed 11 August 2020.

³⁰ Data for 2018 valued higher education as Australia's fourth largest export sector, worth \$35.8 billion to the Australian economy and providing education to some 400,000 international students at Australian universities, supporting more than 241,000 jobs in the Australian economy. See <https://www.universitiesaustralia.edu.au/policy-submissions/international/>. Accessed 6 July 2020.

³¹ Giddings, *Promoting Justice* (n 1) 14.

reflective practice, and community service with an emphasis on the well-being, safety, and security of all participants.

Given that the pandemic is requiring us to revisit our approaches in order to keep our clinics running, we should make the most of these reflections and have them inform our future teaching and instruction. Clinical programmes should look to develop new services rather than seeking to simply replicate existing services in remote mode. They should focus on maintaining the role of students taking responsibility and learning by doing and reflecting on their work. The pandemic will continue to change, and clinical programmes need to continue to respond to new circumstances. This is best achieved through use of flexible practices within effective structures. Structure will be important in providing students, staff, and clients with a sense of certainty and connection in uncertain times.

3.1 Client responsibility

Providing students with frameworks that enable them to take responsibility for addressing the legal needs of clients is perhaps the most distinctive aspect of in-house CLE. Working closely with their supervisor and clients, students have opportunities to develop their professional identity. The pandemic has curtailed opportunities for students and supervisors to work face to face with clients, necessitating a shift to remote service delivery, via telephone and digital platforms like Zoom. This is likely to require supervisors to take a more active role in directing the client interview and advice processes used in clinic work. The experience of the supervisor is likely to be important in ensuring that clients and students can engage in the advice process in ways that safeguard the security and confidentiality of all participants.

3.2 Communication

Client-focused communication tends to be harder when done remotely and this is particularly so in times of uncertainty. Each of the three key participants in clinic-based services—clients, students, and supervisors—should recognise and accept that remote communication can be both harder and more time consuming. Clinicians have the key role of structuring interview and advice processes to make the communications as effective as possible. The opportunities for students to engage in ‘ecological learning’ will be very different. They will not have opportunities to learn directly from being part of the clinic workplace, seeing the dynamics between different staff, different disciplines, and working with other agencies.

In working to make their phone-based or virtual communications with students as effective as possible, clinic supervisors can usefully keep the following effective supervision practices in mind:

- understand the objectives and priorities of the clinical programme;
- communicate clearly with all participants;
- be sensitive to the needs and concerns of all participants;
- be collaborative;

- plan for student development; and
- be accountable.³²

Structure will be important in supporting both students and supervisors. Students will already feel a level of uncertainty and unfamiliarity with clinic arrangements if they are different to what they have encountered in their other studies. They should be encouraged to see their clinic experience as an opportunity to develop both technical and technological knowledge, becoming more confident in their ability to become competent in using a range of digital platforms. Remote delivery provides strong opportunities for students to build skills and awareness for future employability and to build a portfolio to demonstrate their capacity to learn in a workplace.

3.3 Social justice

Clinicians have an important role to play in teaching students to focus on the ‘importance of listening to the client and treating them as a person, not just a legal problem ... reflecting social justice values such as people’s dignity and right to equality’.³³ The pandemic has highlighted the social justice dimensions of many legal processes.³⁴ The uncertainty generated by COVID19 has impacted most particularly marginalised groups and individuals. Sadly, inequality across society has been starkly highlighted by the uneven impact of lockdowns,³⁵ uneven access to health services and protective personal equipment, insecure employment, and work in environments that compromise social distancing. It is simply not possible to safely isolate at home if your home is not safe and secure. People are more vulnerable to infection if they work in compromised situations or if their casualised work in multiple workplaces requires travel through crowded spaces and public transport.

Along with student–supervisor discussions, the classroom component of clinical programmes has important roles to play in revealing the social justice and ethical legal practice dimensions of their work. Supervisors can share with students the social justice dimensions of their work.³⁶ One key practice that can support student awareness and understanding of social justice issues is to identify and name the tensions raised by the law’s operation in particular circumstances. Supervisors can draw student attention to how those tensions can be effectively managed.

³² Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Mary Anne Noone, Simon Rice, and Peter Joy, *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School* (ANU Press 2017) 149–150.

³³ *Ibid.* 110.

³⁴ Carl Grodach, ‘Why Coronavirus Will Deepen the Inequality of Our Suburbs’ (*The Conversation*, 3 August 2020). <https://theconversation.com/why-coronavirus-will-deepen-the-inequality-of-our-suburbs-143432>. Accessed 16 August 2020.

³⁵ Sandra Carrasco, Majdi Faleh, and Neeraj Dangol, ‘Our Lives Matter—Melbourne Public Housing Residents Talk about Why COVID-19 Hits Them Hard’ (*The Conversation*, 24 July 2020). <https://theconversation.com/our-lives-matter-melbourne-public-housing-residents-talk-about-why-covid-19-hits-them-hard-142901>. Accessed 16 August 2020.

³⁶ Jeff Giddings, ‘Supporting Social Justice through Student Supervision Practices’ in Chris Ashford and Paul McKeown (eds), *Social Justice and Legal Education* (Cambridge Scholars Publishing 2018) 43.

3.4 Client engagement

Building rapport with clients is challenging in many situations and this is especially the case when engaging remotely, whether by phone or with the visuals of Zoom or Skype. Issues around client access to reliable internet mean that phone-based services have an important role to play in remote service delivery. Clinicians and students need to be skilled in making the best use of digital platforms and to make them effective for clients. The structures used to interview and advise clients should be reviewed to ensure they operate in ways that foster client engagement and understanding of the issues they face, and the advice being offered to them.

In times of greater demand for legal services, clinics will face pressures from clients, governments, and others to extend the services they offer. This needs to be done in sustainable ways that do not place unrealistic burdens on clinic staff. There may be calls to offer services and self-help resources intended to help clients take greater responsibility for addressing their own legal needs. Clinics need to recognise the limitations of models that are predicated on people helping themselves in complex legal situations. Three key variables impact on the utility of services designed to foster legal self-help:

1. The *context* in which that legal self-help takes place. The attitudes towards self-helpers demonstrated by officials and other personnel involved in the legal system will be important, as will be the circumstances in which the legal self-help is undertaken (e.g., a matter of choice or of necessity) and any emotional dimensions of the legal task involved (whether it is purely administrative or highly personal).
2. The *complexity* of the relevant law and legal process. The potential for effective self-help is framed by the degree of difficulty of the legal work that needs addressing. The level of complexity varies enormously according to the nature of the legal tasks involved.
3. The personal *characteristics* of the self-helper who is undertaking their own legal work. As well as the legal skills and knowledge required, self-helpers need a range of non-legal skills and abilities (such as literacy and numeracy skills). Self-helpers need the ability to make informed decisions and complexity may mean they do not have the skills and knowledge they need and are presumed to possess.³⁷

3.5 Collaboration

With clients, students, and clinic staff physically isolated from each other, clinical programmes need to pay particular attention to retaining and promoting

³⁷ Michael Robertson and Jeff Giddings, 'Self-Advocates in Civil Legal Disputes: How Personal and Other Factors Influence the Handling of Their Cases' (2014) 38(1) *Melbourne University Law Review* 119; Merran Lawler, Jeff Giddings, and Michael Robertson 'Opportunities and Limitations in the Provision of Self-Help Legal Resources to Citizens in Need' (2012) 30(1) *Windsor Yearbook of Access to Justice* 187.

collaboration in the service and learning process. Sharing and collaborating online is clearly a challenge but clinicians can take an intentional approach to fostering such collaboration. We need to build shared understandings of how to collaborate effectively. This comes from how clinic staff, including supervisors, work with students and clients. Having staff model the types of collaborative approaches they want students to adopt will be particularly important. It will also be valuable to have students work on team-based activities, using technology to foster both formal and informal conversations. Students can spend time in different teams during their clinical experience. Clinicians should emphasise to students that modern legal work, and professional work more generally, is increasingly conducted in team-based arrangements. Collaborative learning can be further enhanced by having students share their respective experiences through a carefully designed classroom component linked to their practice-based experience. Creating a clinic environment where students feel safe and comfortable to share their experiences is an important first step to fostering broader collaboration.

The response of clinics to the pandemic also relates to how clinics can best collaborate with other organisations. There is great potential for clinics to contribute to broader partnerships with other service providers. Huxham and Vangen have usefully described various bases for ‘collaborative advantage’, where it is in the interests of organisations to work together.³⁸ They refer to the importance of developing trust, communicating effectively, and understanding that collaboration is a time-consuming process that requires compromise.³⁹ They emphasise the importance of starting with cooperation on small, discrete projects before seeking to collaborate more comprehensively. The effectiveness of clinical programmes will be fostered by organisations and individuals acting in ways that promote client service and professional objectives.

3.6 Reflective practice

Reflective practice will continue to be a distinctive aspect of clinical pedagogy as programmes respond to the pandemic. It will be important for clinicians to model reflective practices and to foster the development of those practices by their students. Anna Copeland draws on the work of Gibbs, Schon, Kolb, and others to demonstrate the importance of reflective practice in CLE. ‘[T]rue reflective practice comes not only from action or experience, but more specifically from the uncertainty, uniqueness and conflict of that experience.’⁴⁰ Michele Leering refers to Fran Quigley’s writing in identifying that ‘by supporting transformative learning when faced with injustice, disorienting and discomfoting situations and clients’ lives, and

³⁸ Chris Huxham and Siv Vangen, *Managing to Collaborate: The Theory and Practice of Collaborative Advantage* (Psychology Press 2005).

³⁹ Ibid. Chapter 3.

⁴⁰ Anna Copeland, ‘Reflective Practice’ in Evans et al., *Australian Clinical Legal Education* (n 32) 158–159.

the day-to-day reality of “law as lived”, reflection can also serve as a tool to increase the legal profession’s engagement in social justice and access to justice issues.⁴¹

The necessary move to online teaching and service presents the opportunity to use technology to structure reflective practice for students. Spencer and Brooks have found that ‘reflective writing is not innate and that it must be taught. It is not enough to merely ask students to reflect without defining what is actually required in that process.’⁴² They have used a ‘Critical Incident Report’ to introduce students to reflective writing. This structured assessable exercise ‘introduces students to the idea of putting into words their reactions to situations that they encounter on their clinic journey’.⁴³

The next section provides an account of how the Monash Clinical Program has sought to address the issues generated by the COVID19 pandemic, drawing on the fundamentals of clinical pedagogy that have been outlined above.

4 Educating for service in the midst of the pandemic

For clinical programmes, COVID19 has created profound challenges around maintaining services to clients while safeguarding students and staff. At Monash University, the implementation of social distancing requirements meant it simply was not possible to have clients, students, and staff attending at our clinic sites. The clinical programme had to move to remote forms of client service and student learning that did not involve face-to-face engagement. This transition was made easier by the programme’s recent experience with developing a range of virtual and remote forms of service delivery.

Legal clinics and similar types of experiential education in other disciplines present particular risks for universities in providing community-based learning experiences for students.⁴⁴ Cameron et al. characterise ‘work-integrated learning’ as offering strategic opportunities for universities while also presenting ‘a number of legal risks that can have serious financial and reputational consequences’.⁴⁵ These risks ‘relate to the conduct of the university, the host organisation and the student before, during and after the student placement with the host organisation ... as well as personal characteristics of the student that can expose the university to legal risk’.⁴⁶

⁴¹ Michele Leering, ‘Conceptualizing Reflective Practice for Legal Professionals’ (2014) 23 *Journal of Law and Social Policy* 83, 106.

⁴² Rachel Spencer and Susan L Brooks, ‘Reflecting on Reflection: A Dialogue Across the Hemispheres on Teaching and Assessing Reflective Practice in Clinical Legal Education’ (2019) 53(4) *The Law Teacher* 458, 471.

⁴³ *Ibid.*

⁴⁴ Craig Cameron, Brett Freudenberg, Jeff Giddings, and Christopher Klopper, ‘The Program Risks of Work-Integrated Learning: A Study of Australian University Lawyers’ (2018) 40(1) *Journal of Higher Education Policy and Management* 67.

⁴⁵ *Ibid.* They define work-integrated learning (WIL) as ‘a curriculum design which combines formal learning with student exposure to real professional, work or other practice settings’.

⁴⁶ *Ibid.* 68.

Students benefit from taking part in authentic work for real clients with the support and direction of experienced supervisors. The unpredictable nature of some encounters students have with clients generates both great learning opportunities⁴⁷ and significant challenges for clinical programmes.⁴⁸ COVID19 has intensified concerns around ensuring the safety of all those people involved in law clinic work—the clients, the students, the supervisors, and other clinic staff.

Monash Law Clinics (MLC) and Springvale Monash Legal Service (SMLS) responded quickly in mid-March 2020, when it became clear that we could not continue with existing arrangements. The clinics put in place remote arrangements with our supervisors going ‘back to the future’, taking on a more conventional lawyer role and conducting file work without student involvement. At MLC, more than 300 current files required close attention in this challenging and rapidly changing situation. Clinic staff worked with new and ongoing clients to pursue their cases. These services were well received with clients appreciative of the clinic’s capacity to continue to offer valuable services in such testing circumstances.

The SMLS effectively transitioned to virtual service delivery, offering telephone advice sessions, reaching out to its client base through the channels they are likely to access. New clients have been taken on by SMLS where there are significant social justice considerations requiring urgent attention, such as employment law matters. The SMLS is also running duty lawyer services remotely, working very closely with courts and legal aid authorities. Both MLC and SMLS have also developed digital versions of their community development programmes.

The MLC recommenced service delivery with a telephone interview and advice service. Unsurprisingly, demand for appointments remains strong with family law, tenancy, and consumer law prominent in the case load. This work has been taxing on clinic staff with many clients feeling particularly vulnerable and lonely. Clients tend to be in desperate need of legal advice and assistance in these challenging times.

At the same time as making these changes to service delivery, the Monash clinical team had to anticipate what needed to be done into the future to ensure our arrangements continue to provide the best outcomes possible for clients, students, and staff. The clinical programme created a model of remote clinical experience that began operating in late June 2020. Students are involved in telephone interviews with clients and then work with their supervisor and other clinic staff to address client legal needs. Experience with remote models provided the foundation for moving all the clinics online. Remote placement models now operate for Monash’s flagship Professional Practice units at MLC⁴⁹ and SMLS.⁵⁰

In 2018, the first of a group of in-house clinical placements was established with the use of a range of hybrid models, with on-site supervisors working with groups

⁴⁷ Fran Quigley, ‘Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics’ (1995) 2 *Clinical Law Review* 37.

⁴⁸ Cameron et al., ‘The Program Risks of Work-Integrated Learning’ (n 44).

⁴⁹ See <https://www.monash.edu/law/home/cle/clinics>. Accessed 24 November 2020. See also <https://www.monashlawclinics.com.au/>. Accessed 17 August 2020.

⁵⁰ <https://www.smls.com.au/>. Accessed 17 August 2020.

of students on cases and projects for national and international partners. The Anti-Death Penalty Clinic, Australian Law Reform Commission Clinic, Modern Slavery Clinic, and International Economic Law Clinic were developed, and they continue to involve students and supervisors in work for external clients or beneficiaries. Induction and seminar programmes were designed to be conducted online with external partners contributing to development and delivery. These hybrid models were modified to operate entirely online when COVID19 necessitated the closure of on-site operations.

Remote service and supervision arrangements in place for these specialist in-house clinical placements are as follows:

- The Anti-Death Penalty Clinic (with the Capital Punishment Justice Project [CPJP]⁵¹) involves students working on death penalty cases, related projects, and the development of advocacy briefs for clients in a range of countries. Students work on cases and projects that highlight the profound impacts of capital punishment on the families and communities of people facing the death penalty. The clinic has established partnerships with a number of non-government organisations (NGOs) and lawyers across Asia and was central to Monash and the CPJP developing a broader Capital Punishment Impact Initiative, now launched as Eleos Justice, with support from the Federal Department of Foreign Affairs and Trade.⁵²
- The Australian Law Reform Commission (ALRC) Clinic involves students working on current inquiries being conducted by the ALRC with input from a range of commission staff as well as their Monash supervisor. Students have been acknowledged for their contributions to a range of ALRC inquiries, including its reviews of the Family Law System,⁵³ the Framework of Religious Exemptions in Anti-discrimination Legislation,⁵⁴ Australia's Corporate Criminal Responsibility Regime,⁵⁵ and the Future of Law Reform.⁵⁶ The subject matter of these inquiries provides extensive opportunities for students to develop their 'social justice radar' when considering the need for law reform in major public policy areas.
- The Climate Justice Clinic⁵⁷ involves students advising climate activists, climate-focused NGOs, and concerned citizens who wish to use legal tools and legal advocacy in their work for climate justice. This clinic highlights the human rights and social justice issues raised by displacement due to climate change.

⁵¹ <https://cpjp.org.au/>. Accessed 25 November 2020; <https://www.monash.edu/law/research/eleos/teaching>. Accessed 17 August 2020.

⁵² <https://www.monash.edu/law/research/eleos/home>. Accessed 17 August 2020.

⁵³ <https://www.alrc.gov.au/inquiry/review-of-the-family-law-system/>. Accessed 17 August 2020.

⁵⁴ <https://www.alrc.gov.au/inquiry/review-into-the-framework-of-religious-exemptions-in-anti-discrimination-legislation/>. Accessed 17 August 2020.

⁵⁵ <https://www.alrc.gov.au/inquiry/corporate-crime/>. Accessed 17 August 2020.

⁵⁶ <https://www.alrc.gov.au/publication/the-future-of-law-reform-2020-25/>. Accessed 17 August 2020.

⁵⁷ <https://www.monash.edu/law/home/cle/clinics/The-Climate-Justice-Clinic>. Accessed 24 November 2020.

A secondment arrangement, whereby Russell Kennedy Lawyers contribute the time of a senior lawyer, has expanded the reach of this clinic.

- **Human Rights Clinic** (with the Castan Centre for Human Rights Law⁵⁸): Students work with external clients (such as domestic and international human rights organisations) on policy or advocacy projects as well as drafting submissions to parliamentary inquiries and preparing shadow reports to United Nations treaty bodies. The framework that underpins the work of this clinic emphasises the importance of social justice concerns in framing and advancing human rights.
- **International Economic Law Clinic** (with TradeLab⁵⁹): Students work in small project teams on specific legal questions related to World Trade Organization issues for clients (characterised as ‘beneficiaries’) such as international organisations, governments, small-medium enterprises, and NGOs. The focus of the clinic is to contribute to building lasting legal capacity for organisations in developing countries, making global economic regulation work more effectively for marginalised people. Close supervision from an academic is augmented by invited experts (‘mentors’) who also provide substantive background to the respective topics through introductory seminars.⁶⁰
- **Modern Slavery Clinic**:⁶¹ Working with partners across Asia (including the Global Pro Bono Bar Association), students assist people caught up in modern slavery, engaging with the ethical, moral, and political dimensions of this complex area. Students engage in research and advocacy tasks, contributing to legal interventions to assist people who might not otherwise have access to resources and expertise. Students develop their sense of the challenges and injustices that pervade modern slavery issues as they work in project teams with close supervision from their academic supervisor and invited experts on specific legal and social questions.
- **National Justice Project Clinic**:⁶² Students work on projects involving active cases and complaints being handled by in-house lawyers of the Sydney-based National Justice Project. These areas include cases relating to the offshore detention of people seeking asylum, coronial inquests where people have died while detained in custody, as well as a submission to an inquiry into overincarceration of Indigenous Australians. Student supervision is structured to reveal the social justice implications of these cases and projects.
- **Start-Up & Innovation Clinic**:⁶³ Students address specific legal questions relating to a range of issues for clients looking to start up new businesses and develop innovative ideas. This clinic involves a partnership with a leading start-up hub

⁵⁸ <https://www.monash.edu/law/research/centres/castancentre>. Accessed 17 August 2020.

⁵⁹ <https://www.tradelab.org/>. Accessed 17 August 2020.

⁶⁰ The nature of projects is outlined at *ibid*.

⁶¹ <https://www.monash.edu/law/home/cle/clinics/Modern-Slavery-Clinic>. Accessed 25 November 2020.

⁶² <https://www.monash.edu/law/home/cle/clinics/The-National-Justice-Project-Clinic>. Accessed 25 November 2020.

⁶³ <https://www.monash.edu/law/home/cle/clinics/Innovation-Start-Up-Clinic>. Accessed 25 November 2020.

(the Eastern Innovation Business Centre) and Monash University colleagues (Monash Innovation and the Generator).

The Monash Street Law Program is operating in 2020 in an entirely remote format, preparing students to deliver community legal education presentations to schools and other community groups. The programme has a strong human rights focus with students trained to identify and highlight the social justice dimensions of the subject matter of their presentations. Three virtual workshops on interactive teaching were delivered to prepare 30 students (selected from more than 90 applicants) for their involvement in the programme. The shift to virtual delivery of the workshops—via Zoom—was managed in ways that kept the interactivity and highlighted the importance of focusing on presenting in ways that work for your audience. With schools moving to online learning, opportunities have presented for Monash Street Law⁶⁴ volunteers to develop and deliver community legal education presentations for schools.

5 Using a best practices framework to respond to COVID19

In this section of the article, I consider the value of clinical programmes using a best practices framework to shape their response to rapidly changing circumstances such as those generated by the COVID19 pandemic. Such a framework fosters the use of effective practices tailored to the relevant context. A review of best practices involves the systematic and explicit articulation of effective qualities and practices in CLE, designed to enhance existing programmes and to inform new ones.⁶⁵

Peter Joy has usefully identified different approaches to developing clinical best practices taken in different countries. In the United Kingdom, a consensus-based approach was used to provide informal standards on how clinics should develop. The United States of America relied more on a review of existing pedagogical literature that included a strong focus on the negative effects of existing legal educational practices on the emotional well-being of law students. The authors of the Australian Clinical Best Practices sought input from clinicians and other legal educators from Australia and elsewhere. They reviewed relevant literature as well as collecting data on what practices were working well in existing programmes.⁶⁶

When implementing its clinical guarantee, Monash Law Faculty sought to develop its programme in line with relevant research, most notably those resources referred to above, and drew on extensive experience in operating effectively

⁶⁴ Monash Law Clinics now operates a Street Law Program, in partnership with the Monash Law Students' Society. In the second half of 2019, a group of 20 volunteer Monash law students to develop their skills to present community legal education talks to school groups. In 2020, 30 volunteers were involved in the programme, run entirely in remote mode.

⁶⁵ Peter Joy, 'Australian Best Practices—A Comparison with the United Kingdom and the United States', in Evans et al., *Australian Clinical Legal Education* (n 32) 221.

⁶⁶ *Ibid.* 230.

integrated education-focused clinics.⁶⁷ For the purposes of its clinical guarantee, Monash identified the following distinctive elements of a best practice clinical experience:

1. It is an experience for which academic credit is awarded.
2. Intensity, in that the experience requires regular and sustained participation.
3. Duration, in that the experience extends across the course of a teaching period.
4. Close supervision, focused on developing student awareness and skills in a professional context.
5. Reflective practice is taught, modelled, and practised.
6. It is integrated with a classroom component.

In responding to COVID19, the Monash clinical programme used these best practices to evaluate possible changes. Particular challenges arose in relation to maintaining the intensity of the student experience, ensuring the programme continued to provide opportunities for students to accept responsibility and be involved in meaningful work on behalf of clients. Interviewing clients remotely, via telephone or using a platform like Zoom, raised security concerns regarding preserving client confidentiality and security of client files. These issues were addressed by changing the interview arrangements, giving supervisors a more active role in the conduct of interviews and in providing advice to clients. Students were required to take more of an observer role than before. This diminution of student responsibility was addressed through the development of more intensive processes of post-interview discussion between supervisors and students, with students continuing to take responsibility for continuing client work.

Supervisors changed their approaches to continue to engage closely with students regarding the work to be completed for clients. It is a credit to the supervisors that they adapted their processes to ensure clients continued to receive appropriate services and that students remained engaged with a range of meaningful activities. The time required for supervisors to prepare and conduct client interviews increased and both supervisors and students engaged in new approaches to completing file-related following-up work. Students were often assigned to complete client work in pairs and engaged in group debriefs with their supervisor.

The classroom components of the Monash clinical units also needed to change in response to the pandemic. All the induction programmes and seminars were conducted online. Fortunately, this was facilitated through using existing material that had been developed to supplement face-to-face teaching. Design of the classroom component was shaped by the need to make it ‘dynamic, characterised by discussion, small group work and simulation for skills development’.⁶⁸ The classroom

⁶⁷ In particular, reference was made to the following sources: Evans et al., *Australian Clinical Legal Education* (n 32); Roy Stuckey and others, *Best Practices for Legal Education: A Vision and a Road Map* (Clinical Legal Education Association 2007); Giddings, *Promoting Justice* (n 1) Chapter 6.

⁶⁸ Evans et al., *Australian Clinical Legal Education* (n 32) 92.

component highlights the impact of COVID19 on social justice concerns facing clinic clients.

Students are facing unprecedented uncertainty and disruption of their studies due to COVID19. They are studying in unfamiliar contexts and facing acute challenges in isolation. They are also questioning the value proposition of studying entirely online. Many have lost paid employment with the closure of various sectors of the economy. Many students have been relying on the clinic to provide them with experience that offers them opportunities to develop and showcase their employability. This is particularly the case for those students who do not have existing professional networks, most notably those who are ‘first in family’ to go to university.⁶⁹ This very challenging context has meant that the messaging to students about the nature of their clinical experience has been important. Monash has emphasised to them the opportunities the clinic provides for them to develop and demonstrate their adaptability and flexibility along with building their use of technologies that are important for legal practice. With changes in the work done by law firms, the remote clinic provides students with opportunities to develop and showcase skills that will be important in future legal service delivery.

Maintaining a coherent programme in the midst of this turmoil has been particularly challenging. A key insight generated by the pandemic has been the central importance of sound structures that enable programmes to respond quickly and effectively to new circumstances. Monash has been assisted by its extensive experience in operating clinics that combine student learning and community service.⁷⁰ This has enabled the development of structures that make effective use of existing partnerships and provide opportunities for new collaborations.

The Monash Clinical Program has also engaged in structured review and reflection on these new arrangements. The preparation of supervisors for these new approaches has worked well with clear instructions being offered, drawing on existing expertise.⁷¹ Supervisors have reported that the move to remote delivery has met or exceeded their expectations. Secure communication systems, particularly Microsoft Teams, Slack, and SharePoint, have been used effectively to foster teamwork and collaboration.

Monash has also developed a ‘Recovery Plan’ to allow for the gradual return of our conventional services when COVID19 restrictions are eased. The Recovery Plan includes consideration of what aspects of the new services and processes developed

⁶⁹ Jeff Giddings and Jacqueline Weinberg, ‘Experiential Legal Education: Stepping Back to See the Future’ in Catrina Denvir (ed), *Modernising Legal Education* (1st edn, Cambridge University Press 2020) 38–56.

⁷⁰ Giddings, *Promoting Justice* (n 1) Chapter 6.

⁷¹ See Giddings, ‘Supporting Social Justice’ (n 36); ‘The Importance of Effective Supervision’ in Evans et al., *Australian Clinical Legal Education* (n 32) Chapter 2; Michael McNamara and Jeff Giddings, ‘Constructive Supervision in Regional, Rural and Remote Legal Practice’ in Amanda Kennedy, Trish Mundy, and Jennifer Nielsen (eds), *The Place of Practice: Lawyering in Rural and Regional Australia* (Federation Press 2017) 219; Jeff Giddings and Michael McNamara, ‘Preparing Generations of Future Lawyers for Legal Practice: What’s Supervision Got to Do with It?’ (2014) 37(3) *University of New South Wales Law Journal* 1226.

due to the pandemic might be retained when the programme returns to face-to-face service delivery. Advocacy opportunities have been identified as an important feature of our future clinical offerings. With generous support from local philanthropic organisations,⁷² Monash is developing plans for clinic staff and students to engage in advocacy activities in a range of legal areas that have been heavily impacted by the pandemic. These include tenancy, guardianship and administration, family law, social security, as well as criminal law. The development of these opportunities has been informed by needs analyses and discussions with existing service providers regarding how to best implement new ideas to ensure effective service delivery for clients and enhanced learning opportunities for students.

6 Virtual and technology-based service delivery

This section provides an account of outcomes generated by pre-pandemic planning for the introduction of new forms of virtual service delivery by the Monash Clinic Program. This planning provided the platform for Monash Law Clinic's response to COVID19 and is described here as a framework that other clinics could consider using in their development of new services.

In Australia, much of current legal service development is focused on virtual delivery. The Victorian government's 2016 *Access to Justice Review* identified ways to help Victorians navigate the legal system and resolve everyday legal issues. The review recognised that the digital revolution means people now expect to be able to access information more easily, ask questions, and resolve some problems more quickly than in the past.⁷³ The review recognised the need to take a user-centred approach to service design, tailoring responses to fit the user's recognition of the legal dimensions of their situation, their capacity to engage with the justice system, and the type of legal problems that they face. Supporting practical access to justice means 'providing the right services, in the right places, at the right time and in the right way'.⁷⁴

This policy focus was important to the development of the Monash Clinical Guarantee with an emphasis on exploring the potential to harness new technologies to deliver appropriate legal services to individuals and communities that struggle to access traditional services. This was also prompted by recognition of the value for students to engage with technologies that will be important to their professional

⁷² In particular, the Pratt Foundation and the Cybec Foundation.

⁷³ Victorian Department of Justice & Regulation, *Access to Justice Review, Volume 1: Report and Recommendations* (Department of Justice and Regulation 2016). https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/3314/8601/7221/Access_to_Justice_Review_-_Report_and_recommendations_Volume_1.PDF. Accessed 17 August 2020; Victorian Department of Justice & Regulation, *Access to Justice Review, Volume 2: Report and Recommendations* (Department of Justice and Regulation 2016). https://engage.vic.gov.au/download_file/845/612. Accessed 24 August 2020.

⁷⁴ Victorian Department of Justice & Regulation, *Access to Justice Review: Summary Report* (Department of Justice and Regulation 2016) 7.

futures. Students gain greater insight into issues relating to social justice, the changing nature of legal work, and the parameters of professionalism.

Monash commenced work in 2017 to develop virtual clinics, with the plan to broaden the services provided to people who could not attend our clinics in person. In addition to developing a virtual clinic, Monash has introduced new technology-based clinics as a key part of broadening our offerings while also extending our existing strengths.⁷⁵ All of the new in-house clinical placements introduced by Monash (outlined earlier in this article) make use of digital technologies to enhance the services provided to clients, beneficiaries, and partner organisations.

The Monash Virtual Clinic focuses on providing legal services to those who cannot attend the clinic in person. Planning identified those living in regional or remote areas, and those who cannot otherwise attend because of disadvantage and marginalisation as potential clients. Clients need to have access to reliable internet services in order to engage with the clinic.

The Virtual Clinic was designed to use the Zoom digital platform for client interviews. Prior to the pandemic, these ‘virtual appointments’ used interview rooms designed to enable technology-based service delivery. Students take instructions and then confer with their supervisor, while the client stays near their computer. Once supervisor and student agree on the steps to be recommended to the client, the student returns to the interview room and conveys that advice.

Design of the Virtual Clinic framework was also informed by the Australian Best Practices in Clinical Legal Education Project.⁷⁶ It provides opportunities for students to develop a range of skills and understandings. This type of clinic exposes students to the ‘realities, demands and compromises of legal practice’. In so doing, it provides students with real-life reference points for learning the law.⁷⁷ Students are guided to tailor their communication and advice to the situation and context of each client as part of a ‘client-centred approach’.⁷⁸ Students can deepen their understanding of the access to justice issues faced by many clients, with chances to reflect on how and why the legal and related needs of many clients and communities could be better met⁷⁹ and the contributions that lawyers can make to addressing injustice and inequality.⁸⁰ It brings together key elements, namely technology, access to justice, community service, reflective practice, and clinical pedagogy.

⁷⁵ Jackie Weinberg and Jeff Giddings, ‘Innovative Opportunities in Technology and the Law: The Virtual Legal Clinic’ in Ann Thanaraj and Kris Gledhill (eds), *Teaching Legal Education in the Digital Age* (Routledge 2020).

⁷⁶ Evans et al., *Australian Clinical Legal Education* (n 32) 12.

⁷⁷ *Ibid.* 20.

⁷⁸ *Ibid.* 209.

⁷⁹ *Ibid.* 117.

⁸⁰ *Ibid.* 75.

7 Planning for the ‘new normal’

In this article, I have considered the constraints and imperatives for clinical programmes generated by the COVID19 pandemic. Clinics need to support their communities, offering services to people in need, while also prioritising the safety of staff and students. In the case of the Monash Clinical Program, the response to COVID19 has been framed by extensive experience in developing and sustaining clinics that balance the dual objectives of student learning and client service. The response has sought to provide supervisors with a degree of flexibility while also providing effective structures to ensure continuity and consistency. Monash’s lengthy experience has provided those involved with the confidence to take appropriate chances and be creative in the design of remote activities. This has involved drawing on existing collaborations to inform new opportunities.

While everyone has felt the impact of COVID19, that impact has been greatest upon vulnerable members of our communities. Clinics should prioritise the delivery of services to groups who have limited opportunities to advocate effectively for themselves. Clinics also have an important role to play in educating our communities about the legal dimensions of effectively responding to issues raised by the pandemic. Street Law and community legal education initiatives will be important in developing legal literacy across communities that have been heavily impacted by COVID19.

Clinics also need to plan for the ‘new normal’ that will present itself as the effects of the pandemic slowly subside. It appears to be easier to close things down than to restart them and clinics will have to retain and restore their services in a very difficult economic environment. The context of CLE will be different on ‘the other side of the pandemic’. Some things will have changed forever while there will also be new practices that clinics can and should hold onto as they develop the ‘new normal’.

With dramatic change across the increasingly globalised higher education sector, it will be challenging for the global clinical community to maintain its connections. Partnerships will be critical to expanding the scope for working with a wide array of clients on issues generated by COVID19. This article has been written in honour of Dr NR Madhava Menon, and his example of sustained leadership and collegiality in the advancement of legal education provides valuable inspiration for those who are the current and future custodians of CLE.

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