

1-1-2015

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### Recommended Citation

Cantatore, Francina (2015) "Boosting Law Graduate Employability: Using a Pro Bono Teaching Clinic to Facilitate Experiential Learning in Commercial Law Subjects," *Legal Education Review*: Vol. 25 : Iss. 1 , Article 7.  
Available at: <https://epublications.bond.edu.au/ler/vol25/iss1/7>

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# BOOSTING LAW GRADUATE EMPLOYABILITY: USING A PRO BONO TEACHING CLINIC TO FACILITATE EXPERIENTIAL LEARNING IN COMMERCIAL LAW SUBJECTS

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FRANCINA CANTATORE\*

## I INTRODUCTION

Law students entering the competitive work environment can benefit significantly from practical work experience during the course of their law degree. Whether gained through clinical education, external work experience or pro bono programs, the effect is to increase self-confidence, practical experience and, consequently, employability in students. It has been widely recognised that extra-curricular community engagement enhances graduate employability by combining experiential learning, course work and community service.<sup>1</sup> This article contends that, not only is clinical experience an invaluable asset to students to enhance learning and to prepare them for practice, but a pro bono teaching clinic has the added benefit of developing a sense of social responsibility in students. It further considers the advantages of incorporating service learning — which falls under the category of experiential education<sup>2</sup> — into a *commercial law* pro bono clinic, by reference to a case study of a successful clinic established within a university law faculty. The article further examines the challenges and considerations inherent in establishing such a clinic within a law school, and suggests solutions for implementing an effective faculty-run pro bono teaching clinic.

The traditional differences between clinical legal experience (‘CLE’) and pro bono programs are acknowledged and discussed below. This article advocates for a stronger focus on pro bono programs, and indeed, *pro bono clinics* in law schools, as distinct from externship programs for academic credit. As discussed below, the advantages of such faculty-run clinics are numerous — not only do they provide the faculty with experiential learning opportunities for students at a low cost, but they also

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<sup>1</sup> Shelley Kinash et al, ‘Supporting Graduate Employability from Generalist Disciplines Through Employer and Private Institution Collaboration’ (Report, Australian Government Office for Learning and Teaching, 2015) 11.

<sup>2</sup> Michael Blissenden, ‘Service Learning: An Example of Experiential Education in the Area of Taxation Law’ (2006) 16 *Legal Education Review* 183, 184.

offer pro bono work opportunities for local legal practitioners, as well as render a valuable community service. Other benefits to students include interaction with ‘real’ clients and cases; development of social responsibility, empathy and interpersonal skills; networking and integrating with legal professionals; and promotion of ethical behaviour in students.

## II CLINICAL LEGAL EDUCATION VERSUS PRO BONO PROGRAMS

Although there is some overlap between clinical legal education (CLE) and pro bono programs, they have generally been regarded as ‘separate and distinct entities’.<sup>3</sup> The main distinguishing factors between the two models appear to be as follows:

- Academic credit is usually awarded for CLE programs,<sup>4</sup> as opposed to purely voluntary non-reward arrangements for pro bono students.
- The term ‘pro bono’ refers to voluntary work done out of a sense of professional responsibility, where the primary motivation for the work is a concern for justice or for reasons of kinship or friendship, as opposed to securing gain.<sup>5</sup>
- CLE programs typically have a *teaching* focus whereas pro bono programs typically have a *community service* focus.<sup>6</sup>
- Usually pro bono programs are at no financial cost to students whereas academic fees are usually payable for CLE programs.
- CLE programs are usually required to have formal assessment procedures to produce specific learning and teaching outcomes whereas pro bono programs generally implement informal feedback and reflective practices.

This distinction is evident in US law schools, where some universities mandate a certain number of pro bono hours for law students as a prerequisite to graduation.<sup>7</sup> The pro bono requirement is a separate component of the law degree, and can be undertaken in a number of ways and at different institutions, *one option* being clinical work.<sup>8</sup> The

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<sup>3</sup> Les McCrimmon, ‘Mandating a Culture of Service: Pro Bono in the Law School Curriculum’ (2003) 14 *Legal Education Review* 53, 54–57.

<sup>4</sup> Adrian Evans et al, ‘Best Practices Australian Clinical Legal Education’ (Report, Australian Government Office for Learning and Teaching, 2012) 23.

<sup>5</sup> John Corker, ‘How Does Pro Bono Students Australia (PBSA) Fit with Clinical Legal Education in Australia?’ (Paper presented at the Third International Journal of Clinical Legal Education Conference and Eighth Australian Clinical Legal Education Conference, 13–15 July 2005) 5.

<sup>6</sup> Ibid 6.

<sup>7</sup> See American Bar Association, *Pro Bono Publico* (2015) <[http://www.americanbar.org/groups/legal\\_education/resources/pro\\_bono.html](http://www.americanbar.org/groups/legal_education/resources/pro_bono.html)>.

<sup>8</sup> Generally work undertaken as part of a clinical subject may count towards the US pro bono requirement; see, eg, New York University, *New Pro Bono Info* <[http://www.law.nyu.edu/sites/default/files/upload\\_documents/NewProBonoInfo.pdf](http://www.law.nyu.edu/sites/default/files/upload_documents/NewProBonoInfo.pdf)>, which explains that pro bono work in law clinics may be counted at NYU. See also Harvard Law School, *Pro Bono Graduation Requirement* (2015)

Association of American Law Schools has made the following distinction between CLE and pro bono projects:

[T]he principle goal of most clinics is to teach students lawyering skills and sensitivity to ethical issues through structured practice experiences and opportunities to think about and analyze those experiences. By contrast, the most important single function of pro bono projects is to open students' eyes to the ethical responsibility of lawyers to contribute their services.<sup>9</sup>

This article proposes that pro bono projects need not exclude a strong learning and teaching focus, and that practical legal skills and ethics, as well as social responsibility, can be effectively taught within a pro bono teaching clinic with a commercial law focus. Seen from a community perspective, a primary function of a pro bono clinic is of course to provide consumers with access to legal services, but it also offers students a unique learning opportunity.

### *A Clinical Legal Education (CLE)*

To contextualise this pro bono teaching proposition, it is necessary to consider more closely what is meant by CLE, and the desirable outcomes of CLE programs. CLE is generally defined as a student's involvement with 'real clients' in a legal centre<sup>10</sup> or in-house campus clinic; or through a placement program or internship.<sup>11</sup> In this context the term refers to 'any law school course or program in which law students participate in the representation of actual clients under the supervision of a lawyer/teacher'.<sup>12</sup> In his paper,<sup>13</sup> Corker provides the definition of CLE used by Griffith University in their Strategic Plan:

"[C]linical legal education" involves an intensive small group learning experience in which each student takes responsibility for legal and related work for a client (whether real or simulated) in collaboration with a supervisor. The student takes the opportunity to reflect on matters including their interactions with the client, their colleagues and their

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<<http://law.harvard.edu/academics/clinical/pro-bono/index.html>> which explains clinical courses automatically qualify for inclusion in the pro bono requirement.

<sup>9</sup> McCrimmon, above n 3, 58, citing Association of American Law Schools Commission on Pro Bono And Public Service Opportunities, 'Learning to Serve: A Summary of the Findings and Recommendations of the AALS Commission on Pro Bono and Public Service Opportunities' (Report, Association of American Law Schools, 1999) <<http://www.aals.org/probono/report.html>>.

<sup>10</sup> See, eg, Susan Campbell, 'Blueprint for a Clinical Program' (1991) 9 *Journal of Professional Legal Education* 121, 122; Frank Bloch, 'The Andragogical Basis of Clinical Legal Education' (1982) 35 *Vanderbilt Law Review* 321, 326.

<sup>11</sup> For a discussion of external placement programs, see, eg, Graeme Coss, 'Field Placement (Externship): A Valuable Application of Clinical Education' (1993) 4 *Legal Education Review* 29; cf Laura Lundy, 'The Assessment of Clinical Legal Education: An Illustration' (1995) 29 *Law Teacher* 311; Janet Motley, 'Self-Directed Learning and the Out-of-House Placement' (1989) 19 *New Mexico Law Review* 211.

<sup>12</sup> Bloch, above n 10, 326.

<sup>13</sup> Corker, 'PBSA Fit with Clinical Legal Education in Australia?', above n 5, 5.

supervisor as well as the ethical aspects and impact of the law and legal processes.<sup>14</sup>

CLE has been incorporated in most law schools in Australia. A recent comprehensive review of law school clinics in Australia by Evans et al revealed that most Australian law schools had implemented CLE programs.<sup>15</sup> The report distinguished between the following models: wholly law school funded in-house live-client clinics, in-house live-client clinics (with some external funding), external live-client clinics ('agency clinics'), externships (including internships and placements) and clinical components in other courses (including simulations of legal practice activities and encounters).<sup>16</sup>

The report also aligned 'service learning' with CLE:

*Service learning* is a teaching and learning strategy that integrates meaningful community service with instruction and reflection to enrich learning experiences, teach civic responsibility and strengthen communities. CLE shares these objectives and might be considered a specific example of service learning.<sup>17</sup>

Clinical pedagogy generally involves formal assessments during and at the end of semesters. The benefits of clinical training are well-recognised,<sup>18</sup> and it has been found to be consistent with Dewey's curriculum theory and the power of experiential learning, thereby producing 'graduates who can deal effectively with the modern world.'<sup>19</sup> Goldfarb proposes that clinical legal education is interconnected with the notion of 'personal and social responsibility' within the profession, as well as focusing on the transferrable skills pedagogy of clinical education, for example, effective collaboration and communication with other lawyers and clients.<sup>20</sup> Clinical pedagogy also accords with a number of

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<sup>14</sup> Griffith Law School, 'Clinical Legal Education Programs Strategic Plan' (Strategic Plan, Griffith Law School, 2003–2007) 1.

<sup>15</sup> Evans et al, 'Best Practices Australian Clinical Legal Education', above n 4, 7; Kingsford Legal Centre, *Clinical Legal Education Guide 2011–12* (2007) University of New South Wales <[http://www.klc.unsw.edu.au/sites/klc.unsw/CLE\\_GUIDE\\_2011\\_12.pdf](http://www.klc.unsw.edu.au/sites/klc.unsw/CLE_GUIDE_2011_12.pdf)>; see also National Pro Bono Resource Centre, *Information Paper: Pro Bono and Clinical Legal Education Programs in Australian Law Schools* (August 2004) <[http://www.nationalprobono.org.au/publications/documents/PUBLISHEDVERSION\\_000.doc](http://www.nationalprobono.org.au/publications/documents/PUBLISHEDVERSION_000.doc)>: 'clinical legal education programs are available at 23 of the 28 law schools (82%)'.

<sup>16</sup> Evans et al, 'Best Practices Australian Clinical Legal Education', above n 4, 7.

<sup>17</sup> Ibid 4.

<sup>18</sup> See generally *ibid*.

<sup>19</sup> Ibid 5. Experiential learning has attracted the attention of academics in several professional fields, for example, teaching, engineering and pharmacy. Numerous studies have investigated the purpose and value of this learning model, its structure, and its relationship to units or courses as a whole and it is now widely accepted that students need exposure to professional practice to develop critical decision-making skills and to place classroom learning in an authentic context. See, eg, Kevin Taylor and Ian Bates, 'Pharmacy Student Numbers are Bound to Affect Educational Standards' (2003) 271(7271) *Pharmaceutical Journal* 546.

<sup>20</sup> Phyllis Goldfarb, 'Back to the Future of Clinical Legal Education' (2012) 32 *Boston College Journal of Law and Social Justice* 279, 301.

the threshold learning outcomes (TLOs) for LLB and JD degrees, such as ethics and professional responsibility,<sup>21</sup> thinking skills,<sup>22</sup> research skills,<sup>23</sup> and communication and collaboration.<sup>24</sup>

Castles and Hewitt propose that legal graduates must be equipped with a broader practical skills base: 'first-tier skills' which they describe as 'intellectual and social aptitude including critical thinking and problem solving, oral and written communication, and the capacity to work both independently and cooperatively.'<sup>25</sup> CLE allows students to engage in and develop several of these skills in the context of providing oral and written client advice. Additionally, Curran points to other advantages of clinics for law students: the broader experience base they take into employment and the ability to make a positive impact on policy-making and law reform.<sup>26</sup>

Clinical legal education has been distinguished from pro bono law clinics.<sup>27</sup> Giddings argues that despite the similarities between 'clinical' and 'pro bono' programs, a definite difference in objectives exists between the two.<sup>28</sup> He suggests that while the 'practice based context of clinical legal education has the potential to offer a very rich learning environment',<sup>29</sup> these benefits can be lost in an environment without the necessary supervision or control over casework.<sup>30</sup> In his article on pro bono work in law schools, Grimes also argues that 'professionally supervised' (by legal practitioners) student involvement in practical legal work at university will have a multitude of benefits.<sup>31</sup> Thus, in both CLE and pro bono programs there should be a requirement for professional supervision to maximise the benefits and increase the learning outcomes for student participants.

Evans et al also distinguish CLE from 'pro bono publico and student-run volunteer programs':

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<sup>21</sup> Sally Kift, Mark Israel and Rachael Field, 'Learning and Teaching Academics Standards Project' (Australian Learning and Teaching Council, December 2010) 14 <<http://www.cald.asn.au/assets/lists/Resources/KiftetalLTASStandardsStatement2010%20TLOs%20LLB.pdf>>.

<sup>22</sup> Ibid 17.

<sup>23</sup> Ibid 19.

<sup>24</sup> Ibid 20.

<sup>25</sup> Margaret Castles and Anne Hewitt, 'Can a Law School Help Develop Skilled Legal Professionals? Situational Learning to the Rescue!' (2011) 36 *Alternative Law Journal* 90, 91.

<sup>26</sup> Liz Curran, 'Innovations in an Australian Clinical Legal Education Program: Students Making a Difference in Generating Positive Change' (2004) 6 *International Journal of Clinical Legal Education* 162, 174.

<sup>27</sup> See Tracy Booth, 'Student Pro Bono: Developing a Public Service Ethos in the Contemporary Australian Law School' (2004) 29 *Alternative Law Journal* 280; Corker, 'PBSA Fit with Clinical Legal Education in Australia?', above n 5; Evans et al, 'Best Practices Australian Clinical Legal Education', above n 4.

<sup>28</sup> Jeff Giddings, 'Contemplating the Future of Clinical Legal Education' (2008) 17 *Griffith Law Review* 1, 14.

<sup>29</sup> Ibid 17.

<sup>30</sup> Ibid.

<sup>31</sup> Richard Grimes, 'Why (and how to) do Pro Bono Work in Law Schools' (2008) 6 *Journal of Commonwealth Law and Legal Education* 27.

Such placements have limited educational objectives compared to CLE, do not generally seek to develop students' normative awareness and do not set out to strengthen wider legal education and law reform curricula, although both can awaken and sustain graduates' civic consciousness once they are in practice.<sup>32</sup>

Whilst the reservations expressed by Evans et al may hold true for student-run programs – such as the Pro Bono Students Australia program discussed below – there may be multiple social and pedagogical benefits attached to a pro bono *faculty-run* clinic, with professional supervision, which has a focus on *both* community service objectives and learning and teaching outcomes.

## B Pro Bono Programs

### 1 Programs in Australia

This article focuses upon the pro bono clinic operated by the Bond University Faculty of Law. There are however other successful university-run law clinics. The Kingsford Legal Centre at the University of New South Wales ('UNSW')<sup>33</sup> incorporates a number of different clinical subjects and is run by a staff solicitor. The South Australian law schools – Flinders University, University of South Australia and University of Adelaide<sup>34</sup> – also adopt a similar model involving legal academics who also have legal practice experience and current unrestricted practising certificates to provide legal advice to clients. Similarly, the Pro Bono Centre at the University of Queensland (UQ)<sup>35</sup> incorporates a number of different clinics in which students can enrol for academic credit (although the UQ clinic differs from the UNSW and South Australian models in that is no dedicated staff solicitor).

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<sup>32</sup> Evans et al, 'Best Practices Australian Clinical Legal Education', above n 4, 5.

<sup>33</sup> See University of New South Wales, *Kingsford Legal Centre* <<http://www.klc.unsw.edu.au/>>, which states that 'Kingsford Legal Centre's clinical legal education courses provide opportunities for law students to engage directly with disadvantaged communities about pressing legal matters. Students work to empower not just the individual client, but the community or group's interests as a whole.' At Kingsford Legal Centre, clinics are offered in Community Law, Employment Law and Family Law.

<sup>34</sup> See Tania Leiman, Deborah Ankor, and Jocelyn Milne, 'Beginning in the First Year: Towards a Vertically Integrated Curriculum for Clinical Legal Education: A Practice Report' (2015) 6 *International Journal of the First Year in Higher Education* 171; and Tania Leiman, 'What's Ahead? Telling Prospective Students about the Inherent Skills They Need to Succeed' (2014) 5 *International Journal of the First Year in Higher Education* 1.

<sup>35</sup> See The University of Queensland – TC Beirne School of Law, *UQ Pro Bono Centre* (2010) <<http://www.law.uq.edu.au/uq-pro-bono-centre/>>, which states that '[t]he UQ clinics aim to provide students with work experience in a legal setting for academic credit. Clinics are currently run out of the Queensland Public Interest Law Clearing House, Caxton Legal Centre, the Prisoners' Legal Service, the Refugee and Immigration Legal Service, Queensland Advocacy Inc., the Environmental Defenders Office and Tenancy Law Clinic. In their clinical placement, law students spend one day per week during semester undertaking legal work supervised by lawyers.'

All of these models can be distinguished from the Bond University program, which seeks to engage local law firms (often alumni of the institution) in a pro bono partnership with the university, and where student involvement is not for formal academic credit.

Cognisance is also taken of the Pro Bono Students Australia ('PBSA') program mentioned above. The PBSA program was developed by the National Pro Bono Centre in conjunction with the University of Western Sydney Law School ('UWS'), and is based on the Pro Bono Students Canada ('PBSC') model.<sup>36</sup> The initiative combines education and public service, 'enabling law students to develop their legal skills and broaden their education while providing critical legal services to a broad range of community organisations that are involved in delivering services to disadvantaged people.'<sup>37</sup> The PBSA program aims to involve law students in setting up pro bono programs at universities, which provides a low cost option for student participation in various projects identified by UWS. Since its inception in 2004, the National Pro Bono Centre has provided PBSA materials to students at at least 8 universities.<sup>38</sup>

The pro bono teaching clinic at Bond University differs from the PBSA model in that the program is run by members of the law faculty (not by students) in conjunction with local law firms.

## 2 Definition of 'Pro Bono'

The Australian Law Reform Commission ('ALRC') defines pro bono work as 'legal services provided in the public interest by lawyers for free or for a substantially reduced fee'.<sup>39</sup> As for what constitutes 'legal services provided in the public interest', the UCLA Program in Public Interest Law and Policy defines them as:<sup>40</sup>

all interests under-represented by the private market, including the poor, ethnic minorities, unpopular causes 'across the political spectrum' and diffuse interests (such as environment and peace).<sup>41</sup>

<sup>36</sup> See Pro Bono Students Canada, *Pro Bono Students Canada* (2015) <<http://www.probonostudents.ca/>>.

<sup>37</sup> See National Pro Bono Resource Centre, *Setting Up a Pro Bono Program at Your University* (2015) <<http://www.nationalprobono.org.au/page.asp?from=9&id=94>>.

The page also describes the Pro Bono Students Australia program: 'The program assists organisations that are involved in the delivery of services to the disadvantaged in the community of Western Sydney by matching law students with law-related projects that seek to enhance access to justice for disadvantaged individuals or groups.'

<sup>38</sup> Email from John Corker (Director of National Pro Bono Resource Centre) to Franci Canatore, 25 May 2015: 'There are no records available of the number of students who have been engaged in this program, but there are currently 34 students are placed on 17 projects through UWS'; see also National Pro Bono Resource Centre, *Setting Up a Pro Bono Program*, above n 37.

<sup>39</sup> Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No 89 (2000) 304.

<sup>40</sup> McCrimmon, above n 3, 55.

<sup>41</sup> Richard Abel, 'Choosing, Nurturing, Training and Placing Public Interest Law Students' (2002) 70 *Fordham Law Review* 1563, 1565.



The National Pro Bono Resource Centre relies on the following definition of pro bono:

Giving legal assistance for free or at a substantially reduced fee to:

- (a) individuals who can demonstrate a need for legal assistance but cannot obtain Legal Aid or otherwise access the legal system without incurring significant financial hardship; or
- (b) individuals or organisations whose matter raises an issue of public interest which would not otherwise be pursued; or
- (c) charities or other non-profit organisations which work on behalf of low income or disadvantaged members of the community or for the public good;
- (d) conducting law reform and policy work on issues affecting low income or disadvantaged members of the community, or on issues of public interest;
- (e) participating in the provision of free community legal education on issues affecting low income or disadvantaged members of the community or on issues of public interest; or
- (f) providing a lawyer on secondment at a community organisation (including a community legal organisation) or at a referral service provider such as a Public Interest Law Clearing House.<sup>42</sup>

Related to that, the National Pro Bono Resource Centre adopts the following definition of ‘student pro bono’, in the context of discussing the PBSA initiative:

‘[S]tudent pro bono’ is where students, without fee, reward or academic credit provide or assist in the provision of services that will provide or enhance access to justice for low income and disadvantaged people or for non-profit organisations that work on behalf of members of the community who are disadvantaged or marginalised, or that work for the public good.<sup>43</sup>

The definition of pro bono often excludes university courses for credit, and Corker observes that pro bono and CLE programs ‘occupy different roles in the context of a law school education.’<sup>44</sup> However, there sometimes exists an overlap in instances such as the Flinders Legal Advice Clinic at Flinders University, where both enrolled students and student volunteers are accommodated as interns. In such cases enrolled students will generally be required to meet course requirements for academic credit. Corker regards ‘the primary focus of the clinical program [as] the development of practical lawyering skills in a closely supervised environment’, whereas the ‘primary focus [of pro bono work] is community service.’<sup>45</sup>

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<sup>42</sup> National Pro Bono Resource Centre, *What is Pro Bono?* <<http://www.nationalprobono.org.au/page.asp?from=3&id=189>>.

<sup>43</sup> National Pro Bono Resource Centre, *Information Paper*, above n 15, 8.

<sup>44</sup> Corker, ‘PBSA Fit with Clinical Legal Education in Australia?’, above n 5, 6.

<sup>45</sup> *Ibid.*

It is proposed that free legal services to qualifying small businesses and entrepreneurs, and non-profit organisations, meet the definition of being 'in the public interest', and thus fall within the definition of 'pro bono services.'<sup>46</sup> In the context of the commercial law clinic model described below, these services are rendered by students and lawyers without charge and are not for students' academic credit.

Booth points out that pro bono work does not necessarily form part of the academic curriculum and is instead focused on instilling future graduates with a community and public service rooted mentality.<sup>47</sup> She argues that an increased focus on pro bono work is consistent with the need for modern legal education to 'instill certain fundamental professional values', as opposed to merely focusing on the acquisition of legal knowledge.<sup>48</sup>

Corker identifies the following key objectives in promoting pro bono engagement by law students:

- To develop and nurture a commitment in law students to practice law in a way that promotes justice and fairness for all, particularly the poor and disadvantaged members of society.
- To provide legal services that benefit poor and disadvantaged members of society.
- To introduce law students to the workings of the legal profession and to meet, observe and work with practising lawyers involved in public interest work.
- To assist students to develop interpersonal skills in a professional environment.
- To provide students with practical experience in research, writing and advocacy in a legal environment.<sup>49</sup>

In this sense the pro bono clinic enhances student skills that might otherwise be embedded in the curriculum. Other advantages for students are the ability to engage with and interview 'real clients' and deal with 'real cases', thereby developing their self-confidence and general communication skills in preparation for legal practice.<sup>50</sup> Additionally, it is hoped that active participation in pro bono work will cultivate a sense of altruism in law graduates, which would ideally be carried over into their work ethic as lawyers. As noted above, McCrimmon cautions against the expectation that empathy will necessarily follow through into the work environment.<sup>51</sup>

An Information Paper of the National Pro Bono Resource Centre found that, in 2004, pro bono or other volunteering activities for students

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<sup>46</sup> The Bond Law Clinic provides free legal services to small businesses, entrepreneurs and non-profit organisations that cannot pay market rates. They are required to demonstrate why they are unable to pay market rates by disclosing their income and expenditure.

<sup>47</sup> Booth, above n 27, 280.

<sup>48</sup> Ibid 281.

<sup>49</sup> Corker, 'PBSA Fit with Clinical Legal Education in Australia?', above n 5, 7.

<sup>50</sup> These advantages are common to both CLE and pro bono work.

<sup>51</sup> McCrimmon, above n 3, 68.

‘were organised or facilitated either through the law school faculty or law student society/association’ in 16 of the 29 law schools (55%) surveyed.<sup>52</sup> There has been little organised research into the types of activities in which these students engage; however, it is apparent that pro bono activities usually involve free legal advice on a number of topics to individuals who cannot afford legal assistance, or pro bono activities where students work on projects for community organisations.<sup>53</sup>

### 3 A Voluntary Initiative

While this article contends that the pro bono clinic offers students an opportunity for skills development and inculcation of professional values, it does not contend *per se* that pro bono service should be a compulsory requirement for either graduation or admission to practice as a solicitor. At present there is no requirement in Australia for law graduates to complete pro bono work as a requirement for admission, although some have suggested that it should be the case.<sup>54</sup> In the USA, some States have imposed compulsory pro bono requirements for law graduates. For example, the New York State Bar requires that law graduates complete at least 50 hours of voluntary legal work before being admitted to the legal profession.<sup>55</sup> In the USA, at least 39 law schools require students to engage in pro bono or public service as a condition of graduation. These schools may require a specific number of hours of pro bono legal service as a condition of graduation (e.g. 20-75 hours) or they may require a combination of pro bono legal service, clinical work and community-based volunteer work.<sup>56</sup>

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<sup>52</sup> National Pro Bono Resource Centre, *Information Paper*, above n 15, 8.

<sup>53</sup> See, eg, National Pro Bono Resource Centre, *Setting Up a Pro Bono Program*, above n 36, which states that students in the University of Western Sydney Pro Bono Students program have worked in ‘law-related projects that seek to enhance access to justice for disadvantaged individuals or groups’.

<sup>54</sup> See John Corker, ‘Pro Bono Partnerships: The State of Pro Bono Service Delivery in Australia’ (Speech delivered at the National Pro Bono Resource Centre, Brisbane, 13 May 2013) 8 <[https://wic041u.server-secure.com/vs155205\\_secure/CMS/files\\_cms/Pro%20Bono%20Partnerships%20The%20State%20of%20Pro%20Bono%20Service%20Delivery%20in%20Australia%20-%20Brisbane%20May%202013.pdf](https://wic041u.server-secure.com/vs155205_secure/CMS/files_cms/Pro%20Bono%20Partnerships%20The%20State%20of%20Pro%20Bono%20Service%20Delivery%20in%20Australia%20-%20Brisbane%20May%202013.pdf)>.

<sup>55</sup> See the New York State Board of Law Examiners, *Mandatory 50-Hour Pro Bono Requirement* <<http://www.nybarexam.org/MPB.html>>, which explains that since 1 January 2015 candidates seeking admission to the New York Bar have to provide evidence showing that they have completed 50 hours of qualifying pro bono work, as required by Rule 520.16 of the Rules of the Court of Appeals. The approaches differ from State to State, see, eg, Florida International University, *Pro Bono Brochure* (August 2014) <[https://law.fiu.edu/wp-content/uploads/sites/21/2014/09/2014-2015ProBono\\_BrochurerevisedAug2014.pdf](https://law.fiu.edu/wp-content/uploads/sites/21/2014/09/2014-2015ProBono_BrochurerevisedAug2014.pdf)>, which states that law students in Florida are required to complete 30 pro bono hours.

<sup>56</sup> See American Bar Association, *Pro Bono Publico*, above n 7; See also Harvard Law School, *Pro Bono Graduation Requirement* (2015) <<http://law.harvard.edu/academics/clinical/pro-bono/index.html>>, which states that Harvard Law School Juris Doctor students are required to complete 50 hours of pro bono work (which may include clinical subjects) before graduating.

Corker and Legg caution against the imposition of mandatory pro bono requirements in law schools:

To make it compulsory for an aspiring lawyer may dilute the honourable aspect of the pro bono ethos. Pro bono may become more about counting hours and minimum compliance than a genuine commitment to helping others in need.<sup>57</sup>

There appears to be an inherent conflict in mandating pro bono work, which is generally regarded as voluntary work, although the US position reflects the view that the public good should prevail:

If pro bono is a core value of our profession, and it is, and if we aspire for all practising attorneys to devote a meaningful portion of their time to public service, and they should, these ideals ought to be instilled from the start, when one first aspires to be a member of the profession.<sup>58</sup>

The US view was shared by the Commonwealth Attorney-General in 2013, when he stated that he felt:

very strongly that innovations such as compulsory pro bono requirements for students to be admitted as lawyers would enhance the sense of social justice in aspiring lawyers in universities around Australia, and help foster a pro bono culture, whilst also providing very valuable and practical legal experience.<sup>59</sup>

It is not inconceivable that a greater emphasis on student pro bono engagement will foster a culture of social responsibility in law graduates.<sup>60</sup> Comprehensive arguments have been made for and against imposing mandatory pro bono requirements in law schools, although this article does not specifically call for a mandatory approach.<sup>61</sup> In order to justify a mandatory pro bono requirement in Australian law schools, further research would be required to establish the projected value and impact of such pro bono services, the cost of pro bono initiatives to government, students and law schools, and the underlying concerns of equity and diverse student cohorts.

McCrimmon argues that '[e]ven if a clinical program is beyond the financial capacity of a law school, an obligation exists to perform some form of "institutional pro bono".'<sup>62</sup> Interestingly, McCrimmon further notes that the research suggests '[t]here is evidence, although not entirely uncontroverted, that law students' altruism and interest in public service decrease more than do other professionals' as a result of professional

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<sup>57</sup> John Corker and Michael Legg, *Take Care in Pushing Student Pro Bono* (2013) UNSW Newsroom <<http://newsroom.unsw.edu.au/news/law/take-care-push-ing-student-pro-bono>>.

<sup>58</sup> *Ibid*, quoting New York Court of Appeals Chief Judge Jonathan Lippman.

<sup>59</sup> See Corker, 'Pro Bono Partnerships', above n 54, 8, quoting The Honourable Mark Dreyfus QC.

<sup>60</sup> Christina Rosas, 'Mandatory Pro Bono Publico for Law Students: The Right Place to Start' (2002) 20 *Hofstra Law Review* 1069, 1078.

<sup>61</sup> McCrimmon, above n 3, 61.

<sup>62</sup> *Ibid* 62.

school and practice.<sup>63</sup> Specifically, in the Australian context, research has shown that ‘there is significant hesitation, possibly even a lack of sufficient interest, in working for the public good’<sup>64</sup> and that

[s]imply participating in a pro bono program while at law school will not necessarily manifest in a willingness to engage in pro bono work following graduation. The experience must be monitored closely to ensure that the educational objective – that is, to foster or, in some cases, to inculcate, an ethic of volunteer service – is achieved.<sup>65</sup>

This article acknowledges the concerns raised by McCrimmon concerning mandatory imposition of pro bono service, including the issues about funding of such programs. However, *voluntary* pro bono service during students’ law degrees undeniably, at the very least, acquaints and familiarises them with the concept of community service, and with the benefits resulting from such experience. It may also be argued that changes in the employment landscape since McCrimmon’s observations some 14 years ago may have resulted in changes in students’ willingness to engage in pro bono work following graduation in order to boost their employability. Overall, the benefits of pro bono work may include a sense of personal satisfaction, due to the voluntary nature of their involvement, a practice-based learning experience and sense of achievement through real client contact, but also an opportunity to improve their resume, benefit from mentoring by experienced practitioners and build valuable networks. Provided the experience is a positive one – a voluntary decision and not a mandatory requirement – it is likely to result in a sense of heightened social responsibility in participants and to foster a culture of community service engagement once graduates enter into practice.

In Australia, the National Pro Bono Aspirational Target provides an incentive for law firms to engage their staff members in pro bono work.<sup>66</sup> This may be an advantage for work seeking graduates with past pro bono experience, should a firm have a strong pro bono focus and value a pro bono ethos in potential employees. It has been shown that engaging with volunteering opportunities can be a personally transformative

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<sup>63</sup> Ibid 63–64. See also Susan Daicoff, ‘Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism’ (1997) 46 *American University Law Review* 1337, 1406; and Jane Aiken, ‘Striving to Teach “Justice, Fairness, and Morality”’ (1997) 4 *Clinical Law Review* 1, 8, who asserts that legal educators ‘are actively training students to divorce themselves from issues relating to justice, fairness and morality.’

<sup>64</sup> Adrian Evans, ‘Lawyer’s Perceptions of Their Values: An Empirical Assessment of Monash University Graduates in Law, 1980–1998’ (2001) 12 *Legal Education Review* 209, 240.

<sup>65</sup> McCrimmon, above n 3, 68.

<sup>66</sup> See National Pro Bono Resource Centre, *National Pro Bono Aspirational Target* <<http://www.nationalprobono.org.au/page.asp?from=8&id=169>> which explains that the National Pro Bono Aspirational Target is a voluntary target that law firms, individual solicitors and barristers can sign up to and strive to achieve the target of at least 35 hours of pro bono legal services per lawyer per year.

experience,<sup>67</sup> and it has also been suggested that volunteering is strongly linked to ‘a values based approach and enhances an individual’s leadership and teamwork skills, including resilience, courage and recognising one’s impact on others (which) augment the suite of employability skills that may have been more explicitly honed through other activities.’<sup>68</sup> All of these attributes contribute to a strong and diverse employment profile in a law graduate. They also align with a number of the TLOs for LLB and JD degrees,<sup>69</sup> as mentioned above.

It has also been recognised that some of the benefits offered by pro bono involvement may distinguish graduates in employment, such as increased skills, real-world experience and community engagement.<sup>70</sup> A university run pro bono teaching clinic is the ideal venue in which to develop these attributes.

### C *Overlapping Objectives*

Despite the distinctions between pro bono and CLE programs, it is clear that there is an inevitable overlap between the two models. Corker acknowledges that

[i]n many Australian law schools CLE programs take place in a community service setting and are deliberately established with a view to engendering a pro bono ethos in the participating students.<sup>71</sup>

Additionally, both models generally rely on placements or partnerships with community organisations or law firms<sup>72</sup> (sometimes referred to as ‘externships’), and both facilitate dealings with ‘real’ clients and cases.<sup>73</sup>

Styles and Zariski argue that CLE can instill law graduates with a ‘public interest’ oriented-focus, and define ‘clinical legal education’ to include participation in pro bono work and law reform activity.<sup>74</sup> Similarly, as noted above, many US universities with pro bono stipulations accept completion of clinical subjects as satisfaction of their pro bono requirements.<sup>75</sup>

There is merit in both models – the CLE model which is for academic credit, and the more informal pro bono program without formal academic credit – but a ‘hybrid’ model incorporating both pro bono work and specific learning and teaching outcomes provides students with an

<sup>67</sup> Kinash et al, above n 1, 12.

<sup>68</sup> Ibid.

<sup>69</sup> Kift, Israel and Field, above n 21, 14.

<sup>70</sup> Shelley Kinash et al, ‘Global Graduate Employability Research’ (Draft Report, Business 20 Human Capital Taskforce, 2014) 28–29.

<sup>71</sup> Ibid 5.

<sup>72</sup> See generally Evans et al, ‘Best Practices Australian Clinical Legal Education’, above n 4, for a discussion on CLE; see also National Pro Bono Resource Centre, *Information Paper*, above n 15, for a discussion on pro bono resources.

<sup>73</sup> Ibid.

<sup>74</sup> Irene Styles and Archie Zariski, ‘Law Clinics and the Promotion of Public Interest Lawyering’ (2001) 19 *Law in Context* 65, 66.

<sup>75</sup> See, eg, American Bar Association, above n 7.

optimum practice-based learning experience. If such a program is conducted at the university premises, rather than externally, the benefits become even more pronounced due to the interaction of students, lawyers and academic staff in the faculty environment.

### III CASE STUDY: A PRO BONO COMMERCIAL LAW CLINIC

#### *A Nature and Scope of the Clinic*

The Commercial Law Clinic ('the Clinic') run by the Bond Law Clinic at Bond University serves as an example of a pro bono teaching clinic that incorporates an effective service learning model. At Bond University, clinical subjects have been offered consistently as part of the LLB and JD curricula,<sup>76</sup> endorsing the practical benefits offered to students by the clinical experience. The Bond Law Clinic was established to complement the existing clinical training programs offered by the Bond University Law Faculty. Further, the Clinic sought to offer students the opportunity to undertake pro bono legal work within the sheltered environment of the law school, under the supervision of experienced legal practitioners. The Clinic is held at the Faculty premises and students are supervised by both academics (who attend to the administration and running of clinic sessions) and volunteer legal practitioners (who supervise students in client interviews and settle draft advices).<sup>77</sup>

The Clinic was an initiative that challenged existing models of CLE programs and pro bono services, by merging pro bono service and experiential learning in a commercial law context. The Clinic was launched subsequent to the final Evans report,<sup>78</sup> but the report nevertheless provided evidence that the Clinic would be unique and distinctive. Specifically, the Clinic is the only purely *commercial* law pro bono teaching clinic in Australia, where students deal with real cases involving small business, entrepreneurship and not-for-profit organisations. In a recent report by the National Pro Bono Resource Centre,<sup>79</sup> where different models of delivering pro bono legal assistance were traversed, no other dedicated commercial law clinics were identified.

The Clinic was designed with this distinctive difference after auditing and reviewing Bond graduate outcomes, which revealed that applied experience with commercial law is a necessary employability attribute for students entering commercial law practice.<sup>80</sup> Practical commercial

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<sup>76</sup> Bond University currently offers the following clinical elective subjects: *Clinical Legal Placement, Family Law Practice Clinic and Administrative Law Clinic*.

<sup>77</sup> The author is the Director of the Bond Law Clinic, see Franci Cantatore, *About The Bond Law Clinic* (2015) Bond Law Clinic Program <<http://bond.edu.au/current-students/opportunities/bond-law-clinic-program>>.

<sup>78</sup> Evans et al, 'Best Practices Australian Clinical Legal Education', above n 4.

<sup>79</sup> Leanne Ho, *Pro Bono Partnerships and Models: A Practical Guide to What Works* (2013) National Pro Bono Resource Centre <[https://wic041u.server-secure.com/vs155205\\_secure/CMS/files\\_cms/Pro%20Bono%20Partnerships%20and%20Models%20%20A%20Practical%20Guide%20to%20WHAT%20WORKS.pdf](https://wic041u.server-secure.com/vs155205_secure/CMS/files_cms/Pro%20Bono%20Partnerships%20and%20Models%20%20A%20Practical%20Guide%20to%20WHAT%20WORKS.pdf)>.

<sup>80</sup> Kinash et al, above n 1, 6.

experience is often under-represented in Australian law curricula and is thus frequently missing from learning activities and resources. The Clinic, with its associated resources and learning activities, has remedied this absence for students at Bond University through the participation of experienced legal practitioners.<sup>81</sup> In addition, it provides a valuable service to qualifying small business, non-profits and entrepreneurs throughout Queensland, entities and persons who would typically not be accommodated by Legal Aid or most other community legal centres. Currently 95 per cent of the two million actively trading businesses in Australia are regarded as small businesses under the *Corporations Act 2001* (Cth) ('the Act'). This is a large sector of the Australian economy, one that does not traditionally have access to free legal advice.<sup>82</sup> The Clinic adheres to the Act's definition of a small business, which defines it as a business having 'less than 100 employees if a manufacturing business, and otherwise less than 20 employees; or no employees'.<sup>83</sup> It provides free basic legal advice to these entities in relation to issues such as business structures, leases, debt recovery, intellectual property, sale and purchase of business advice, franchising and general commercial law matters.

The need for such a Clinic is borne out by the increasing number of referrals of clients by Legal Aid and other community legal centres to the Clinic, and the inability of the Clinic to keep up with a demand for its services.<sup>84</sup> The value of the Clinic to small businesses seeking legal advice has also been recognised by the Queensland Government Business and Industry portal by the provision of a web link to the Clinic's website.<sup>85</sup>

Further research into the lack of government funding for pro bono clinics is desirable,<sup>86</sup> to explore the benefits of university run pro bono clinics in providing access to justice for disadvantaged parties. More recognition of the value of such university run clinics would also support the findings and recommendations of the 2014 Productivity Commission Enquiry Report about promotion and implementation of volunteer legal work.<sup>87</sup>

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<sup>81</sup> Students are supervised by lawyers during client interviews, and academic staff offer additional assistance in guiding students in advice preparation. Although only some academic staff members in the Clinic have current practising certificates, all of them teach in areas of commercial law.

<sup>82</sup> Ellis Connolly, David Norman and Tim West, 'Small Business: An Economic Overview' (Report, Reserve Bank of Australia, 2012).

<sup>83</sup> *Corporations Act 2001* (Cth) s 761G.

<sup>84</sup> Since its inception in 2013, all Clinic appointment times have been fully booked and the demand for appointments has outstripped the available appointment times. Client surveys conducted since the beginning of 2014 show that 75 per cent of all clients have been referred to the Clinic by the Legal Aid Board.

<sup>85</sup> See Business and Industry Portal, *Legal Requirements* (10 April 2015) Queensland Government <<https://www.business.qld.gov.au/business/starting/legal-obligations/meeting-legal-obligations/legal-requirements>>.

<sup>86</sup> Such further research is currently being undertaken by the author.

<sup>87</sup> Warren Mundy and Angela Macrae, 'Access to Justice Arrangements' (Report No 72, Australian Government Productivity Commission, 5 September 2014) 67.



Thus, the Clinic is a joint effort by the Faculty of Law and local legal practitioners to provide students with a practical learning opportunity in commercial law matters and to provide assistance to the community at the same time. The objectives of the Clinic are four-fold: first, to provide students with an opportunity to engage in pro bono legal work and promote a sense of community service; second, to provide students with practice-based learning to prepare them for legal practice; third, to provide small businesses, non-profits and entrepreneurs with much-needed legal advice and service; and fourth, to enable lawyers to engage in pro bono activities and provide community services and student mentoring. Although the Clinic was established as part of the student learning experience in the Faculty of Law, none of these objectives takes precedence over the other: the structure and operation of the clinic reflects a commitment to meeting each of these objectives in a consistent and meaningful way.<sup>88</sup>

### B *Structure of the Clinic*

Integral to the successful operation of the Clinic is the involvement of its four foundational components, namely law students, legal practitioners, academic staff and clients. The relationship between these parties is reciprocal in respect of learning opportunities and provision and receipt of legal services, which creates a mutually beneficial and supportive framework for a successful pro bono enterprise. In the Bond Law Clinic the involvement of the Law Students Association has greatly assisted with the running of the Clinic in respect of marketing and student applications; however, the administration of the Clinic rests with an appointed academic who is responsible for the running of the Clinic, together with a part-time administrative assistant and other academics who volunteer as scheduled. In the Bond Law Clinic the appointed academic is an experienced lawyer who holds a practising certificate,<sup>89</sup> which ensures that the management of the Clinic is undertaken by someone with knowledge of the practicalities of legal practice. At no time do the students provide 'legal advice'; the legal advice provided during interviews is given by the supervising lawyers (although students observe, and may participate in the interviewing process), and any written advices prepared by students are signed off by the lawyer before being provided to clients. Academics involved in Clinic sessions supervise the running of the Clinic and provide students with research and administrative assistance; however, they are not involved with the client interviews and thus do not require practising certificates.

As participation in the Clinic is entirely voluntary for the students, academics and lawyers, it provides students with the opportunity to provide a community service and engage in meaningful volunteer work while gaining practical work experience. The Clinic effectively integrates

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<sup>88</sup> Also see Evans et al, 'Best Practices Australian Clinical Legal Education', above n 4, 5.

<sup>89</sup> The academic in this instance is the author, who also practices as a consultant with a local law firm.

key elements of CLE<sup>90</sup> and pro bono programs.<sup>91</sup> It has a pronounced focus on community service and volunteering, yet it also provides strong support for the development of legal skills (e.g. client interviewing, drafting, professional and ethical training, and the giving of high quality practical advice to clients). Students who volunteer commit a few hours on a fortnightly basis for the duration of a semester and are supervised by legal practitioners and academics during the operating hours of the Clinic. By the end of the semester, students have had the opportunity to interview real clients under professional supervision, conduct legal research and draft legal advice, interact with professionals from local law firms, be trained in ‘client know-how’ techniques and office processes, and receive professional and ethical guidance from experienced lawyers. It also provides them with opportunities for networking and building relationships with their peers and law firms, which is an important employability asset.<sup>92</sup> Both volunteer lawyer and student volunteer groups receive training at the beginning of the semester in separate sessions, to acquaint them with the practice and procedures followed in the Clinic. To this end the Bond Law Clinic Volunteer Handbook sets out the duties and responsibilities of all participants in the Clinic. As part of their supervising responsibilities, volunteer lawyers provide students with timely and detailed feedback about client advices, and informal and immediate feedback about interviewing skills.

Although commercial clinics are not evident at other Australian universities, examples of specifically commercial law focussed clinics at universities in the USA include the Community Enterprise Clinic at Columbia University,<sup>93</sup> and the Business Law Transaction Clinic at New York University (‘NYU’).<sup>94</sup> Similar to the Bond Law Clinic, the Community Enterprise Clinic at Columbia University provides legal assistance to non-profit organizations and small businesses that cannot pay market rates for legal services.<sup>95</sup> The Business Law Transaction Clinic at NYU also provides legal services to:

non-profit organizations, as well as to small businesses, entrepreneurs and social enterprises that may not have access to the traditional legal market and that operate in areas of concern to the public.<sup>96</sup>

These clinics, however, differ from the Bond Law Clinic in that they are examples of CLE in a commercial law context, rather than pro bono

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<sup>90</sup> See generally Goldfarb, above n 20; Castles and Hewitt, above n 25; Curran, above n 26.

<sup>91</sup> Kinash and Crane, above n 69, 28–29.

<sup>92</sup> Ibid.

<sup>93</sup> See Columbia Law School, *Community Enterprise Clinic* (2015) <<http://web.law.columbia.edu/clinics/community-enterprise-clinic>>.

<sup>94</sup> See New York University Law, *Business Law Transactions Clinic* (2015) <<http://www.law.nyu.edu/academics/clinics/semester/business>>.

<sup>95</sup> See Columbia Law School, above n 92.

<sup>96</sup> See New York University Law, above n 93.

clinics. Students obtain academic credit for their involvement in those clinics, and they are subject to formal assessment requirements.<sup>97</sup>

### *C Developing a Pro Bono Culture in a Commercial Law Context*

The importance of promoting a pro bono culture in Australian law students has been recognised,<sup>98</sup> as well as the general obligation of legal practitioners to provide pro bono legal services.<sup>99</sup>

There are societal perceptions of lawyers as ‘sharks’, jokes which centre on lawyers’ avarice,<sup>100</sup> and an erroneous idea that commercial lawyers are necessarily self-serving and intent on financial reward to the exclusion of worthier causes. This is not the reality, and many law students with an interest in commercial law have a strong sense of social justice and public interest issues.<sup>101</sup> However, historically (and as reflected in the scope of different types of law clinics at Australian Universities),<sup>102</sup> small businesses have rarely been recognised as deserving recipients of pro bono legal advice. Non-profits are in some instances benefited by student involvement in pro bono projects,<sup>103</sup> but again many small non-profits and social enterprises are unable to access free legal advice about commercial law matters. Considering the high cost of legal services it can be onerous – and in some instances, unaffordable – for small home-run businesses or non-profit organisations to have adequate access to legal services when needed. This need has, for example, been recognised by the ACT government, which has established a free legal service for small businesses.<sup>104</sup>

Students with a keen interest in commercial and corporate law are often unable to obtain any practical exposure to real clients and cases in a commercial context, other than during internships. Even in that context, they may be relegated to a specific department drafting contracts or researching specific areas of the law, without the opportunity for personal client contact. The Bond Law Clinic provides students with a unique

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<sup>97</sup> Ibid. See also Columbia Law School, above n 92. In both these clinics, students are required to attend weekly seminars and students generally participate in projects (subject to assessment), rather than engage with individual clients.

<sup>98</sup> See Corker, ‘Pro Bono Partnerships’, above n 5, 8, quoting The Honourable Mark Dreyfus QC.

<sup>99</sup> McCrimmon, above n 3, 75; Kristin Booth Glen, ‘Pro Bono and Public Interest Opportunities in Legal Education’ (1998) 70 *New York State Bar Journal* 20.

<sup>100</sup> Raymond Wacks, *Law: A Very Short Introduction* (Oxford University Press, 2008) 108, quoting Mark Twain: ‘It is interesting to note that criminals have multiplied of late, and lawyers have also; but I repeat myself.’

<sup>101</sup> National Pro Bono Resource Centre, *Information Paper*, above n 15, 5; Corker, ‘Pro Bono Partnerships’, above n 53, 5.

<sup>102</sup> See generally Ho, above n 78.

<sup>103</sup> See, eg, University of New South Wales, above n 33; National Pro Bono Resource Centre, *Setting Up a Pro Bono Program*, above n 36, for a discussion of the University of Western Sydney Law School’s program.

<sup>104</sup> See Australian Capital Territory Government Information Portal, *Legal Assistance for Local Small Businesses* (2014) <[http://www.business.act.gov.au/resources\\_and\\_networks/news\\_archive/news](http://www.business.act.gov.au/resources_and_networks/news_archive/news)>.

opportunity to gain both pro bono and service learning experience in a commercial law context. It is envisaged that students exposed to this type of community service will be inclined to implement and continue this public service ethic once they enter practice, whether through a scheme such as National Pro Bono Aspirational Target,<sup>105</sup> or as a local community service initiative to engage their firms in pro bono work.

#### D *Challenges and Considerations*

Relying on US pro bono research,<sup>106</sup> Corker identifies the following issues that law schools should consider in establishing pro bono programs:<sup>107</sup>

1. Finding the necessary funds.
2. Securing adequate staffing and space.
3. Location and structure of projects.
4. Should student participation be required or voluntary?
5. Relationship between clinical courses and pro bono projects.
6. Adequacy of supervision for students.
7. The importance of enthusiasm of law deans and faculties and rewarding the efforts of student leaders.

Mc Crimmon discusses the issue of funding in relation to mandatory pro bono programs in law schools, and notes that '[t]he cost to the faculty of maintaining a clinical program can be substantial.'<sup>108</sup> The proposed clinic structure can reduce the need for funding by the faculty, as it utilises existing resources (local lawyers, academics and students) on a pro bono basis. Currently no specific provision for external funding for pro bono university law clinics exists for Australian universities.<sup>109</sup>

The requirements of staffing and space can be alleviated by using university law faculty staff and premises for the conduct of clinic training and appointments. For example, if the clinic is conducted in the evenings, tutorial rooms and offices can be used to conduct interviews. Supervision can be conducted by lawyers and academics as a pro bono activity.

A key issue is balancing the four clinic 'ingredients', namely lawyers, students, clients and academic staff. Enough volunteer lawyers are needed to ensure sufficient supervision, enough students are needed to volunteer to justify the running of the clinic and enough clients are needed to require the services offered to make the clinic viable. Academic staff involvement is also necessary in administering and running the clinic, preferably with the assistance of a professional staff member. The clinic

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<sup>105</sup> See National Pro Bono Resource Centre, *National Pro Bono Aspirational Target*, above n 65.

<sup>106</sup> Association of American Law Schools Commission on Pro Bono And Public Service Opportunities, above n 9.

<sup>107</sup> Corker, 'PBSA Fit with Clinical Legal Education in Australia?', above n 5, 8.

<sup>108</sup> McCrimmon, above n 3, 71.

<sup>109</sup> The author proposes to undertake further research into the viability and benefit of allocating government funding to support pro bono university law clinics.

administration team is responsible for coordinating and administering the client appointments, rostering of lawyers and academics and appointment and training of students. This can be a significant burden for academic staff. The ability to apply their volunteer hours to their firms' National Pro Bono Aspirational Target<sup>110</sup> may be an incentive for lawyers to partner with law faculties in building a pro bono teaching clinic, and, indeed, a strong industry partner can alleviate the burden of the administration team by coordinating a team of volunteer lawyers. In the same way, allocating certain clinic responsibilities to law student associations can ease the administrative burden on academic staff. The enthusiasm of the Law Dean is an essential requirement for the successful execution of such an enterprise, both in building industry relationships and making students and staff aware of the individual and community benefits of service learning.<sup>111</sup> It is also important that the structures for informal and formal student feedback are implemented in a structured manner as discussed above to maximise service-learning outcomes for students.

#### IV PROMOTING EMPLOYABILITY THROUGH A PRO BONO LAW CLINIC

It has been well established that the habits of mind, work ethic, behaviours and professional identity learners develop through experiential opportunities in higher education are critical to their graduate employability.<sup>112</sup> CLE has been lauded as providing opportunities for growth in these areas,<sup>113</sup> but pro bono programs with their community service focus are also ideal vehicles to advance these attributes in law students. Although there may be a perceived tension between the idea of altruistic behaviour and promotion of graduate employability, these two propositions are not mutually exclusive, and can in fact go hand-in-hand. It is thus proposed that the Bond Law Clinic improves student employability by developing important aspects of their learning, but also serves to support a community purpose. As explained above, students volunteering in the Clinic undergo induction training about how to interview clients, conduct research in practice, draft legal advice and interact responsibly with clients, and are supported by Volunteer Practice Manuals setting out student conduct and ethical guidelines. Students are also provided with access to a secure database for the Clinic where client advice is stored, and are taught the importance of ensuring client confidentiality and ethical practice habits.

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<sup>110</sup> See National Pro Bono Resource Centre, *National Pro Bono Aspirational Target*, above n 65.

<sup>111</sup> Corker, 'PBSA Fit with Clinical Legal Education in Australia?', above n 5, 8.

<sup>112</sup> Mantz Yorke and Peter Knight, 'Embedding Employability into the Curriculum' (Learning and Employability Series 1 and 2, Higher Education Academy, 2006) <[http://www.employability.ed.ac.uk/documents/Staff/HEABriefings/ESECT-3-Embedding\\_employability\\_into\\_curriculum.pdf](http://www.employability.ed.ac.uk/documents/Staff/HEABriefings/ESECT-3-Embedding_employability_into_curriculum.pdf)>.

<sup>113</sup> Evans et al, 'Best Practices Australian Clinical Legal Education', above n 4, 5.

### A *Assessment*

Assessment mechanisms can be indicative of the success of the learning process in a clinic. Although there is no summative assessment of student pro bono work in the Clinic, students are engaged in the following learning activities in the Clinic, under supervision of legal practitioners and academics, during the course of the semester:

- Receiving induction training in professional communication with clients, interviewing skills, ethics, client file management and confidentiality.
- Interviewing commercial law clients;
- Conducting legal research in relation to a specific commercial law issue/problem.
- Drafting advice and receiving feedback from supervising solicitors on their draft advice.
- Drafting fact sheets for use in the clinic under supervision of academics and receiving feedback on drafting skills.

Significantly, students benefit from the following formative assessment processes:

- Students receive personalised feedback from supervising solicitors about each piece of interviewing, research and advice that they attempt, as well as copies of the model advice issued to the client after finalisation by the solicitor.
- At the beginning of each Clinic session the problems and issues of the previous week are discussed so that all student volunteers can learn from the experience.
- Students receive feedback about and assistance with drafting of fact sheets from academic staff during the semester.
- Students are asked to complete a survey reflecting and commenting on their experience at the end of each semester.

More formal in nature is the ability of law students to claim ‘work experience points’ for their ‘Beyond Bond’ core degree requirement.<sup>114</sup> ‘Beyond Bond’ is a Bond University initiative that requires completion of a ‘work experience’ component by all undergraduate Bond students prior to graduation. This connection between the Bond Law Clinic and Beyond Bond demonstrates how the Clinic assists students to be work-ready. Students can claim 20 points per semester for volunteering in the Clinic. As students may volunteer in the Clinic for up to 2 semesters, they can earn 40 (out of 100 required credit points to satisfy the core requirement) for volunteering in the Clinic. Beyond Bond also mandates a non-graded 1,000 word essay by the student reflecting on the value of their experience and indicating how their experience enhanced their

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<sup>114</sup> Career Development Centre, *Beyond Bond* (2015) Bond University <<https://bond.edu.au/current-students/opportunities/career-development-centre/beyond-bond>>.

employability skills.<sup>115</sup> Reflection has been recognised as an important part of the learning experience.<sup>116</sup>

In addition to the practical skills developed within the ambits of the Clinic, students also undergo a formal application process<sup>117</sup> for volunteering positions, similar to a job application. The application process and interviewing of shortlisted applicants acquaint students with the rigours involved in applying for work in practice. This approach equips participants with a further employability skill, namely how to effectively secure employment, thus preparing them for the 'real world'.

The cumulative effect of these activities serves not only to create experiential learning opportunities and increase student confidence and communication skills, but also to promote students' employability.

## B Evidence of Success

Although the Bond Law Clinic has only been operational for two years, there is some qualitative evidence from both students and the profession to support the contention that student employability is improved through participation in the Clinic.

### 1 Student Feedback

Students are surveyed at the end of each semester by way of a short electronic survey on SurveyMonkey to obtain their feedback about their Clinic experience. The survey feedback from volunteer students over the past two years has been positive, without exception, and most students have indicated in their comments that the Clinic assisted them with employment skills and work readiness. Although the evidence to date is largely anecdotal, the positive student comments reflect the value of the experience for participants.

Students described how the Clinic increased their work skills. For example:

The BLC helped me able to engage with a range of people, and my client interview skills developed very quickly because of the volunteer position. I have a current volunteer internship with The Tax Institute and they were particularly interested in the BLC program because a lot of the responsibilities in this role are similar to those in the BLC. I am able to use those skills: administration, time management, report-writing and response to solutions and client-interviewing in this role, and didn't

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<sup>115</sup> Ibid.

<sup>116</sup> David Boud, Rosemary Keogh and David Walker, 'Promoting Reflection in Learning: A Model' in Richard Edwards, Ann Hanson and Peter Raggatt (eds), *Boundaries of Adult Learning* (Routledge Publishing, 2013) 32.

<sup>117</sup> The application is based on a cover letter, academic transcript and the student's resume, weighted equally.

require additional training because they felt my skills had developed to the appropriate level.<sup>118</sup>

BLC was a perfect way to start developing my professionalism. My readiness to work in a fast paced legal environment has exceptionally excelled. I learnt invaluable skills by drafting legal advice, participating in interviews and even just talking amongst the lawyers themselves. It was a time I will never forget because work keeps bringing my mind back to the practical skills I learnt!<sup>119</sup>

Other students commented on their increased confidence and improved communication skills, as well as the Clinic's role in helping them to obtain employment:

The Bond Law Clinic was crucial to giving me the confidence in interviews to demonstrate I have had practical experience outside the classroom. It provided a level of comfort for me to attack and approach a client's case because of the different challenges I faced with the clinic. Interviewing clients, writing letters of advice and doing legal research, were all key components which I felt were beneficial for my current position.<sup>120</sup>

I am currently undertaking an internship as a paralegal and also secured three clerkships with three different top tier law firms. The Bond Law Clinic a significant role in enabling me to obtain all of these things - it was brought up by my interviewer in every single interview I attended and I was able to speak about my experience working in the pilot program as an administrator, seeing the range of problems that the clinic dealt with, the way the other law students researched and delivered information to the clients, and the extreme levels of professionalism required by a law firm in all correspondence and interactions.<sup>121</sup>

Another student described how the Clinic helped to prepare her for her current legal position:

BLC helped to develop my personal interaction skills. I was a Business Development Manager at the BLC, and so I was required to greet and assist all clients that came in for consultations from the moment that they arrived. This forced me to be calm and confident in communicating with strangers, and developed my initiative in understanding and responding to a variance of different requests and enquiries. At work I am constantly required to communicate to senior level lawyers and partners and respond

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<sup>118</sup> Email communication to author from Bond University Law Graduate (Semester 153, December 2015), who has been accepted into a Professional Legal Training Program since volunteering in the Bond Law Clinic in 2015.

<sup>119</sup> Email communication to author from Bond University Law Graduate (Semester 152, May 2015), who secured an internship and placement since volunteering in the Bond Law Clinic in 2015.

<sup>120</sup> Email communication to author from Bond University Law Graduate (Semester 152, May 2015), who secured a legal placement since volunteering in the Bond Law Clinic in 2015.

<sup>121</sup> Email communication to author from Bond University Law Graduate (Semester 153, September 2015), who secured an internship and three clerkships since volunteering in the Bond Law Clinic in 2015.



to their instructions and questions. I feel that I can hold myself more comfortably in both professional and social situations.<sup>122</sup>

## 2 *Legal Practitioner Feedback*

The feedback from the lawyers volunteering at the Bond Law Clinic has also been positive without exception.<sup>123</sup> It may be said that their support of the Clinic is in itself a validation of its perceived value in the profession.

When asked whether the Bond Law Clinic experience would be viewed as an advantage or positive benefit for graduates if they were applying to their firms for work, the lawyers participating in the Clinic all answered in the affirmative.<sup>124</sup> Additionally, they were all of the view that the Clinic experience contributed to students' employability skills and made them more practice-ready. Some lawyers commented as follows:

The more experience a student has with real life cases and client interaction the better. Further, to be accepted into the program is also evidence of the student's excellence in their studies, initiative to apply, ambition to further their education by volunteering their time and willingness to learn from and make connections with legal professionals in practice.<sup>125</sup>

Employability often goes hand in hand with confidence and personality. The more experience the student has the more practice ready they will be, because their confidence in different legal situations with actual clients is increased by their experiences at the Bond Law Clinic.<sup>126</sup>

Although academic grades only count for one third of the application process, as explained above, the first lawyer's comment indicates that lawyers may regard students' participation in the Clinic as evidence of academic achievement. This is not strictly true as social justice motivation reflected in a compelling cover letter would be a strong consideration when shortlisting applicants. The legal practitioner feedback, although anecdotal, is however particularly significant, in light of the fact that the number of law students in Australia has doubled between 2004 and 2014, with more than 12,000 graduates entering a job market which has only approximately 66,000 practising solicitors.<sup>127</sup> In a broader context, recent

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<sup>122</sup> Email communication to author from Bond University Law Graduate (Semester 152, May 2015), who secured a part-time clerkship with a top-tier law firm whilst completing his studies, since volunteering in the Bond Law Clinic in 2015.

<sup>123</sup> Currently five law firms send volunteers to the Bond Law Clinic, namely Minter Ellison Lawyers, Cronin Litigation Lawyers, MBA Lawyers, The Stone Group and Ivan Poole Lawyers.

<sup>124</sup> Ibid.

<sup>125</sup> Email communication from Bond Law Clinic lawyer to author, 3 August 2015.

<sup>126</sup> Email communication from Bond Law Clinic lawyer to author, 3 August 2015.

<sup>127</sup> Urbis, '2014 Law Society National Profile' (Final Report, Law Society of New South Wales, 2014) <<http://www.urbis.com.au/think-tank/general/the-changing-face-of-the-legal-profession>>; Edmund Tadros, 'Graduate Glut: 12,000 New Lawyers Every Year', *Sydney Morning Herald* (online), 16 February 2014

figures released by Graduate Careers Australia ('GCA') indicate that only 68% of bachelor graduates from the class of 2014 had a full-time job 4 months after graduating, the lowest rate since 1982, when GCA began measuring employment statistics.<sup>128</sup> These figures support the contention that law graduates today need to distinguish themselves from their peers to be assured of strong employment prospects.

## V CONCLUSION

With increasing competition for law graduate positions,<sup>129</sup> it has become paramount that law students enhance their employability as much as possible during their law degree. This article has suggested that students develop a higher level of work-related skills and thus increase their employability through engaging in voluntary work in a pro bono teaching clinic. It has been shown that CLE opportunities currently exist in most Australian universities, but pro bono clinics run by university faculties are a relative rarity, a phenomenon that needs to be further explored as a teaching opportunity.

As early as 2001 the ALRC stated that:

Australian law schools should be encouraged to support programs that (a) highlight the legal profession's service ideal and promote a pro bono legal culture, and (b) enable students to acquire 'high order professional skills and a deep appreciation of ethical standards and professional responsibility.'<sup>130</sup>

It appears that Australian law schools have not yet adequately explored the benefits to be gained from engaging students in pro bono service, compared to other jurisdictions such as the USA.

Furthermore, the National Pro Bono Centre also advocates the introduction of pro bono education in law schools:

This Centre would argue that CLE and student pro bono activity are vital components of a comprehensive social justice education at law school. They should both exist in all law schools in Australia so as to provide a proper legal education for students. It is important that they be managed as complementary activities, occurring in close cooperation with each other.<sup>131</sup>

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<<http://www.smh.com.au/business/graduate-glut-12000-new-lawYERS-every-year-20140214-32qnm.html>>.

<sup>128</sup> Joshua Healy, 'Graduating into a Weak Job Market: Why So Many Grads Can't Find Work', *The Conversation* (online), 29 July 2015 <<http://theconversation.com/graduating-into-a-weak-job-market-why-so-many-grads-cant-find-work-45222>>.

<sup>129</sup> Tadros, above n 125.

<sup>130</sup> David Weisbrot, *Foreword to Information Paper: Pro Bono and Clinical Legal Education Programs in Australian Law Schools* (August 2004) National Pro Bono Resource Centre, 30 <[http://www.nationalprobono.org.au/publications/documents/PUBLISHEDVERSION\\_000.doc](http://www.nationalprobono.org.au/publications/documents/PUBLISHEDVERSION_000.doc)>. This was also recommended earlier in Australian Law Reform Commission, above n 50.

<sup>131</sup> Corker, 'PBSA Fit with Clinical Legal Education in Australia?', above n 5, 6.

Again, this has not occurred. Despite student-based programs such as PBSA, there has been no concerted effort to promote the introduction of pro bono activities in Australian law schools. There may be a case for government funding to be provided in respect of such pro bono initiatives in law schools and for a more cohesive approach, which could be aptly administered by the National Pro Bono Scheme. This article has laid the foundation for further research in this area, which will be required to establish the viability of implementing pro bono law clinics in universities nationally, as little empirical research currently exists regarding the effective learning outcomes of pro bono student activities. Clearly, to maximise the impact and learning outcomes of pro bono clinics, a cohesive and structured approach will be required across higher education institutions, together with targeted qualitative research to implement an effective strategy.