

2019 NATIONAL TAX CLINIC PROJECT: MELBOURNE LAW SCHOOL TAX CLINIC

SUNITA JOGARAJAN* KATE FISCHER-DOHERTY** AND JULIAN PANETTA***

Abstract

[In 2019, Melbourne Law School ran a tax clinic for vulnerable taxpayers under the Federal Government’s National Tax Clinic trial. The trial was administered by the Australian Taxation Office. This paper discusses the experience of setting up and running the MLS Tax Clinic in 2019. The paper covers the clinic design, the activities undertaken by the clinic (advice, representation, education, and advocacy), and the observations and reflections of those involved – clients, tax practitioners, academics, and students. The paper concludes by making several recommendations in relation to legal and administrative reform to improve the tax experience for vulnerable taxpayers.]

[Tax; Clinical legal education; advocacy, education, client representation]

I INTRODUCTION

In 2019, Melbourne Law School (‘MLS’) welcomed the Federal Government’s invitation to participate in the National Tax Clinic trial. MLS has a longstanding public interest focused clinical legal education programs with subjects such as Public Interest Law Clinic, Disability Human Rights Clinic, Sustainability Business Clinic and the NDIS and Disability Benefits Clinic.¹ The addition of a tax clinic, focused on assisting vulnerable taxpayers, was seen as a natural and favourable addition to the existing program. However, the tax clinic represented MLS’ first in-house, client-facing clinic and thus involved significant set-up in a short period of time. This article sets out our experience in establishing and running the MLS Tax Clinic in 2019, as well as the lessons learned and our recommendations arising from that experience.

Section II outlines the design of the MLS Tax Clinic and discusses the involvement of students, clients, and tax practitioners in assisting vulnerable taxpayers through advice and representation services, educational activities and advocacy of tax reform. Section III summarises the observations and reflections regarding the Tax Clinic experience from the perspectives of clients, volunteer tax practitioners, and academics. Students were invited to participate in a formal survey at the commencement and conclusion of their Tax Clinic experience and this data is also discussed in Section III. Section IV provides several recommendations relating to tax literacy, administrative and legal reform arising out of the Clinic experience. Finally, Section V provides some concluding remarks regarding the critical factors to the success of the Clinic in 2019 and future research.

* Professor, Melbourne Law School, University of Melbourne. Contact: sunita@unimelb.edu.au.

** Senior Lecturer and Director, Melbourne Law School Clinics, Melbourne Law School, University of Melbourne. Contact: kfischer@unimelb.edu.au.

*** Lecturer and Supervisor, Melbourne Law School Tax Clinic, Melbourne Law School, University of Melbourne. Contact: julian.panetta@unimelb.edu.au.

¹ The Public Interest Law Clinic encompasses an employment law clinic, refugee law clinic and civil justice clinic. For more information on MLS’ clinics program, see: <https://law.unimelb.edu.au/students/jd/enrichment/pili>

II CLINIC DESIGN

The Federal Government broadly recommended that tax clinics undertake four categories of activities as part of the National Tax Clinic trial. The four categories of activities were advice to taxpayers, representation of taxpayers, advocacy of tax reform, and educational activities. At MLS, these activities were carried out in different ways. The work done to assist individual taxpayers (advice and representation) was performed through the ‘MLS Tax Clinic’. The educational activities were organised by MLS academic staff and presented by tax practitioners, academics and Australian Taxation Office (‘ATO’) staff. Finally, the advocacy work was done by MLS Juris Doctor (‘JD’) students through a legal research paper and oral presentations to ATO staff.

A *Advice and Representation Activities*

As mentioned above, advice and representation services to individual clients was performed through the ‘MLS Tax Clinic’. The MLS Tax Clinic is registered as a ‘community legal service’ with the Victorian Legal Services Board.² The MLS Tax Clinic operated from August to October (tying in with the tax lodgement period for individuals).³ During this period, the Clinic operated three half-day client-facing sessions and three half-day preparatory sessions per week. As the Clinic could accommodate three concurrent interviews per hour, the Clinic had the capacity to see 27 clients per week (one-hour appointment per client). In most weeks, the Clinic operated at full capacity and additional client-facing sessions were added in the last few weeks of October to meet client demand.

It was fortunate that existing office space could be repurposed for the Clinic and as such, the MLS Tax Clinic was located within the MLS building on campus. The Clinic is well located for access by both clients and volunteer tax practitioners. MLS is situated at 185 Pelham Street, Carlton, adjacent to the main University of Melbourne campus. The street address makes the Clinic easily locatable for potential clients unfamiliar with the University. Additionally, MLS is conveniently close to the Melbourne CBD and is well serviced by public transport (bus, tram, train). There is also ample on-street and off-street public parking in the vicinity. For clients able to travel but for whom public transport costs present a barrier to attending in person, the Clinic made available Myki Explorer packs which permit one-day unlimited travel on public transport in Melbourne.

The Clinic space comprises three meeting rooms, two offices and a reception area. The meeting rooms are fitted with two doors, video surveillance and panic buttons, as needed to meet occupational health and safety requirements. The Clinic space is set aside for use exclusively by the Clinic and can only be accessed by the Clinic’s supervisor and students using swipe card access. Additionally, any hard copy material related to the Clinic is stored in a locked filing cabinet in the Clinic supervisor’s locked office which can only be accessed by the supervisor. The

² The ATO obtained confirmation from the Tax Practitioners Board that tax agent registration is not required for the provision of tax services for no fee or reward. The promotion of such services was specifically allowed for through a gazettal by the Commissioner of Taxation effective 8 March 2019. However, due to concerns that the Tax Clinic’s services could constitute ‘unqualified legal practice’ under the Legal Profession Uniform Law, it was considered necessary to register the MLS Tax Clinic as a ‘community legal service’. See further, University of Melbourne Submission to the Review of the Tax Practitioners Board available at <https://treasury.gov.au/consultation/c2019-t398920> (accessed 6 May 2020).

³ Outside this period, MLS reached an agreement to refer urgent matters to tax practitioners for assistance on a pro bono basis. In such cases, the client would be a client of the practitioner rather than the MLS Tax Clinic. Several clients were referred to MLS from the ATO and the office of the Inspector General of Taxation during this time and on-referred to volunteer tax practitioners.

accessibility and suitability of the premises were significant factors in making the decision to locate the Clinic at MLS.

The Clinic was staffed by a full-time clinic supervisor who is a practicing legal practitioner. The clinic supervisor was assisted in the set-up and educational aspects of the Clinic by two academic staff members. There were also nineteen students working at the Clinic and they worked on client matters in groups of two or three. The clinic supervisor was assisted in supervising the students by volunteer tax practitioners who attended the clinic for all client-facing sessions. Initially, practitioners sat in with students during client interviews but after a couple of weeks, practitioners worked in one of the offices while students met with clients and then discussed the client's issues with the practitioners and agreed on the appropriate course of action. The Clinic was structured similarly to a law or accounting practice with the students being the 'junior employees', the tax practitioners being the 'managers' and the clinic supervisor being the 'partner'. Ultimate sign-off for all work at the Clinic sat with the clinic supervisor.

1 *Student involvement*

The MLS Tax Clinic was offered as a clinical legal education subject that could be undertaken by MLS students as an elective subject in the JD. As mentioned above, MLS has a long-standing and strong commitment to offering public interest law subjects and the MLS Tax Clinic was a natural addition to that program.

Clinical legal education, as a form of experiential learning, provides students with the opportunity to deepen and extend their classroom learning through hands-on practice. In particular, experiential learning subjects can assist students to develop their professional and interpersonal skills (including communication skills) and enhance problem-solving and capacity to deal with unfamiliar problems and situations.⁴ They are well-suited to fulfilling a number of Threshold Learning Outcomes for the JD including ethical decision-making and professional judgment, self-management and interpersonal skills and the application of legal knowledge to contemporary social problems.⁵ Clinical methodologies, including an emphasis on reflective practice, enhance students capacity for lifelong learning - students 'learn how to learn' from their experience.⁶

Students were required to have completed introductory taxation studies either in their prior undergraduate degree or during their JD studies, prior to enrolling in the MLS Tax Clinic. Students were assessed through a reflective writing piece, oral presentation (based on a case or situation experienced by the student at the Clinic), and a legal writing brief or research essay. The reflective component to the course design and assessment regime was modelled on the format used in MLS' other clinical subjects and reflects best practice in clinical learning design. It has long been recognised that systematic reflection on experience is needed to capture and consolidate deep learning from that experience.⁷ In this case, students were encouraged to reflect not only on their learning about tax law in practice but also on the broader implications of the kind of matters and clients assisted through the Clinic for their future legal and taxation practice.

⁴ Sally Kift, '21st century climate for change: Curriculum design for quality learning and engagement in law' (2008) 18 *Legal Education Review* 1; Roy Stuckey et al, *Best Practices for Legal Education: A Vision and a Roadmap* (2007); Deborah Maranville et al, *Beyond Best Practices: Transforming Legal Education in a Changing World* (Lexis Nexis 2015).

⁵ Council of Australian Law Deans, *Juris Doctor Threshold Learning Outcomes* (March 2012) <https://cald.asn.au/wp-content/uploads/2017/11/Threshold-Learning-Outcomes-JD.pdf>.

⁶ Evans et al, *Australian Clinical Legal Education* (2016) 153, citing Roy Stuckey et al, *Best Practices for Legal Education: A Vision and a Roadmap* (2007).

⁷ Evans et al, *Australian Clinical Legal Education* (2016); Michele Leering, 'Conceptualising Reflective Practice for Legal Professionals' (2014) 23 *Journal of Law and Social Policy* 83.

2 *Client involvement*

In establishing the National Tax Clinic trial, the Federal Government indicated that tax clinics were to assist ‘vulnerable’ taxpayers. However, no prescriptive guidance as to who qualified as a ‘vulnerable’ taxpayer was provided. The MLS Tax Clinic adopted the working definition that a ‘vulnerable’ taxpayer was a low-income individual (annual income less than \$60,000, in line with Tax Help qualification criteria), an individual with low financial literacy or an individual from a non-English speaking background.⁸ In the case of businesses, assistance was limited to disputes with the ATO or general establishment information, not tax planning. This decision was made on the basis that tax planning costs should be factored into a business plan and the tax clinic should not be used as a substitute for paid tax advice in such cases. This limitation was accepted by clients and well received by the profession.

In 2019, the MLS Tax Clinic saw a wide range of clients, reflecting the broad marketing activities undertaken to promote the Clinic. The Tax Clinic was advertised through the following channels:

- Inclusion in the MLS Events Newsletter (sent to approximately 3,700 recipients);
- Brochures and advertisements on plasma screens located at the City of Melbourne’s Multicultural Hub;⁹
- Email and hard copy communication and brochures sent to 88 State MPs, 16 Federal MPs, 34 community legal centres, 45 community centres or neighbourhood houses, 44 financial literacy organisations and/or charities, and 20 community libraries;¹⁰
- Inclusion in the weekly staff newsletter for four weeks (sent to more than 10,000 recipients);
- Inclusion in the student online noticeboard (the University of Melbourne has more than 50,000 students);
- Paid Facebook campaign for a three-week period (ads attracted approximately 22,000 unique viewers);
- Inclusion in the ATO’s small business newsroom (4000+ ‘hits’ on Tax Clinic item); and
- Inclusion in ATO social media – Twitter and LinkedIn (700+ ‘clicks’).

Each of these marketing channels resulted in taxpayers visiting the Clinic. In addition, clients were also referred to the Clinic by the ATO and the office of the Inspector General of Taxation. The key client bases were University of Melbourne students and staff, refugees and low-income taxpayers referred through financial counselling providers and charitable organisations, and small businesses through the ATO’s small business newsroom. In total, the MLS Tax Clinic assisted more than 230 clients in 2019. Approximately a quarter of these clients required more than one appointment.

Reflecting the diversity of the Tax Clinic clients, the range of issues dealt with by the Tax Clinic was also large. However, there were several key issues which came up repeatedly. Perhaps unsurprisingly, the two main questions for specific advice related to deductions and individual tax residency. In the case of deductions, clients either wanted advice in relation to specific expenses incurred or general guidance on what expenses could be claimed as deductions. The former group were assisted through specific advice while the latter group were provided with printouts of

⁸ The MLS Tax Clinic was able to register for the Federal Government’s Translation and Interpretation Service which enabled the Clinic to use an interpreter for free.

⁹ The Multicultural Hub is a community space operated by the City of Melbourne and located in the Melbourne CBD. Advertising through the Hub was identified as one avenue of reaching some target clientele groups such as new migrants and refugees.

¹⁰ The University of Melbourne has existing partnerships with the Brotherhood of St Laurence and the Carlton Neighbourhood Learning Centre and in addition to the email and hard copy communication, academic staff visited these organisations to discuss the establishment of the MLS Tax Clinic.

general information from the ATO website and this information was also explained orally to clients. Clients seeking assistance with determining their tax residency were generally quite sophisticated in that they had already worked through the ATO's tax residency decision tool but were not confident as to whether they had used the tool correctly and were in essence, seeking reassurance rather than a second opinion. Many taxpayers visited the Tax Clinic for assistance with payment plans and/or debt relief and the Clinic was generally able to assist these taxpayers quite easily.

A significant 'win' for the Tax Clinic in this regard was the waiver of a tax debt of approximately \$10,000 for a refugee who incurred the debt due to their employer not withholding tax as required and the taxpayer subsequently losing their job and being unable to repay the debt. Although the ATO had classified the debt as 'non-pursuit', it was clearly taking a toll on the taxpayer's mental health and the taxpayer was brought to the Clinic by a support worker from a charitable organisation. Following several phone calls to the ATO, the debt was waived and the relief for the taxpayer in having the debt waived was obvious to all involved.

Following mention in the ATO's small business newsroom, a large number of taxpayers sought assistance from the Clinic in relation to the establishment of a business. These businesses are best described as micro-businesses and, in these situations, the Clinic assisted by providing general information regarding the income tax and GST consequences of carrying on a business.

Finally, a significant number of taxpayers sought assistance from the Clinic in completing their first tax return and navigating myTax. Some taxpayers were quite knowledgeable and simply wanted reassurance that they were fulfilling their obligations correctly while others required more detailed assistance. Again, the Clinic's assistance was limited to the provision of general information regarding tax returns and myTax. The MLS Tax Clinic is not a registered tax agent and does not provide lodgement services.

3 *Practitioner involvement*

MLS enjoys a strong relationship with the tax profession with many tax professionals teaching in the Melbourne Law Masters and tutoring in the undergraduate tax program. It was therefore natural in establishing the MLS Tax Clinic to involve the tax profession. As mentioned above, volunteer tax practitioners were required to attend the Clinic's premises during the client-facing sessions and provide mentorship and guidance to the students. There was overwhelming interest from the profession in contributing to the Clinic and the number of practitioners had to be limited in 2019 as we trialled the model. The volunteer tax practitioners came from law firms, consulting firms, the Victorian Bar, and sole practitioners.¹¹ In the case of firm involvement, all of the firms committed at a firm level. However, some firms established a roster internally as to who would attend the Clinic while others had one particular practitioner attend the Clinic each week. The Clinic's decision not to provide tax planning advice to businesses was well received and practitioners, particularly sole practitioners, did not consider themselves to be in competition with the Clinic.

B *Educational Activities*

In addition to the information and education provided to individual clients through the MLS Tax Clinic, educational activities were also undertaken on a broader scale to the general community. The following three sessions were held in May 2019:

¹¹ In 2019, the MLS Tax Clinic was supported by BDO Australia, Greenwoods + Herbert Smith Freehills, HWL Ebsworth Lawyers, Lachlan Molesworth (Victorian Bar), Perigee Advisers, Pitcher Partners, Sladen Legal, and Tax Scope.

- Taxpayer Rights and Obligations presented by a tax practitioner and ATO staff and held at the City of Melbourne’s Multicultural Hub on a Saturday morning (20+ attendees);
- The Gig Economy presented by a tax practitioner, an employment law practitioner and an employment law academic, held at a University location on a weekday lunchtime (30+ attendees); and
- Investment Income and Related Expenses presented by a tax practitioner and held at the MLS building on a weekday evening (70+ attendees).

The different locations and times were trialled to identify best practice going forward. The sessions were also professionally recorded and made available through the MLS Tax Clinic website and YouTube. The recordings have received more than 700 views to date.

C *Advocacy Activities*

The Federal Government identified advocacy for tax and/or administrative reform as being one of the purposes of the National Tax Clinic trial. The MLS Tax Clinic has been involved in advocating for administrative reform informally through the ATO’s local liaison officers and National Tax Clinic trial project lead. The main issue identified for reform was in relation to ATO debt practices. MLS JD students also undertook research projects on several issues identified as potentially affecting vulnerable taxpayers and being suitable for reform. All JD students are required to complete a research paper of approximately 8,000 words in the final year of their degree and the tax advocacy papers were completed through that subject. The tax advocacy stream was limited to five students. Two students who participated in the MLS Tax Clinic also chose to enrol in the tax advocacy stream while the remaining three students had not participated in the MLS Tax Clinic but had undertaken prior tax studies. The five students presented their research to ATO staff and their research papers were also provided to the ATO.

In 2019, two students revisited the question as to whether Australia should introduce a ‘standard deduction’ system. This research was prompted by the experience at the MLS Tax Clinic which indicated that many taxpayers consider it necessary to obtain advice in relation to their tax affairs due to the availability of deductions. The students examined the operation of a standard deduction in other jurisdictions such as the United States and South Korea. Based on their research, the students concluded that a standard deduction system has its merits but must be carefully designed.

One student considered whether the ATO should be separated into two divisions (administration and appeals), which is also a question that has been discussed by politicians and the media. The student examined the experience in the United States which has separated the functions and found that there were many benefits but also significant financial costs in such a system.

Another student considered the appropriateness of applying a single tax-free threshold to a taxpayer who was receiving a salary and a compensation payment, which was treated as income, for the death of a spouse. The taxpayer’s argument being that if the spouse were still alive, they would have two incomes and two tax-free thresholds. This issue was referred to the MLS Tax Clinic by the ATO. The ATO had concluded that the law was being applied correctly but queried whether this was an area for potential reform. Despite the apparent unfairness of the situation, the student’s research indicated that the current law is appropriate, and reform is not necessary.

Finally, one student investigated the possibility of introducing a deemed tax residency status for international students. This issue also arose from the work at the MLS Tax Clinic where many international students attended the Clinic to obtain advice regarding their residency for Australian tax purposes. The student examined the tax treatment of international students in comparable jurisdictions such as New Zealand, Canada, the United Kingdom, and the United States. Based on this research, the student recommended a deemed tax residency status be introduced for international students with accompanying reforms. ATO staff thought that this proposal had merit,

particularly in improving simplicity and certainty, but any push for reform has been superseded by later events.

III OBSERVATIONS, REFLECTIONS AND SURVEY DATA

This section discusses the observations and reflections arising out of the MLS Tax Clinic experience in 2019. We did not systematically survey clients and tax practitioners for this article and the comments below are based on our informal conversations in the clinic setting. Similarly, the academics involved in establishing and running the Clinic were not interviewed or surveyed regarding the experience. However, students were invited to voluntarily complete a formal survey at the commencement and conclusion of the MLS Tax Clinic experience and this survey data is discussed below.

A *Clients*

By all accounts, the clients who visited the MLS Tax Clinic were happy with the assistance provided. The assistance broadly fell into two categories – individualised assistance or advice unique to the taxpayer (e.g. advice on particular issues, assistance with debts) and general information adapted to the taxpayer’s circumstances (e.g. assistance with first tax return or myTax). In both scenarios, clients felt adequately assisted by the Clinic. The clients in the first group could have been assisted by a tax practitioner but met the Clinic’s criteria for free assistance. In most cases, these clients would not have sought paid assistance as they either could not have afforded such assistance, or the tax amounts involved were so small as to make any fees prohibitive. The clients in the second group would not have been able to obtain the assistance provided by the Clinic elsewhere. The ATO’s ‘Tax Help’ program serves a purpose but does not quite meet the needs of the second group of clients.

Several clients commented favourably on the level of supervision of the students assisting them in the Clinic (with tax practitioners and the clinic supervisor being present in the Clinic and actively supervising the students). This appeared to increase their confidence in the services provided by the Clinic. Interestingly, there was no discernible difference in client experience or satisfaction between having the practitioner in the room during the meeting and when students had to leave the room to discuss the client matter with the practitioner in another office. This is perhaps because the students had significantly developed their knowledge and interviewing skills by the time that they met with clients on their own.

As part of the application process, clients were asked to indicate their postcode. This information demonstrated that, although the Clinic’s clients were predominantly from suburbs close to the University, clients came to the Clinic from all over Melbourne. However, clients from regional locations did not come to the Clinic. This was expected in 2019 but going forward, it is expected that the MLS Tax Clinic will try to better serve regional taxpayers through a mobile clinic service. However, the logistics of involving students and volunteer practitioners will need to be considered. The Clinic is also considering the possibility of introducing a phone or video service for regional clients. One of the Clinic’s partner firms has a strong regional presence and there are opportunities to reach regional taxpayers through that relationship.

Perhaps the most significant challenge faced by the Clinic in 2019 was the number of clients who simply did not attend their appointment without prior notice. This was inconvenient for students who missed out on the experience and learning opportunity and for practitioners who had taken the time out of their workday to attend the Clinic. The situation improved after the Clinic’s administrator started sending confirmation text messages and requiring confirmation of attendance on the day of appointment, but this was time consuming. We are looking into technological solutions to automate the process going forward. The challenge of clients failing to attend their appointments, while frustrating, did nonetheless provide another ‘real life’ reflection opportunity

for students who were encouraged to consider the various reasons for client non-attendance, and their own preconceptions and responses.

B *Tax Practitioners*

As mentioned above, tax practitioners were eager to be involved in the MLS Tax Clinic. The Clinic's proximity to the Melbourne CBD, certainly made it easier for practitioners to be involved along with all client-facing sessions being held during business hours.¹² All of the practitioners who volunteered in the Clinic in 2019 found it to be a rewarding experience and have already indicated that they would like to be involved again in 2020. Overall, practitioners were motivated to participate in the Clinic because of a desire to assist 'vulnerable' taxpayers as well as an interest in teaching and mentoring students. Practitioners felt that the opportunity to be involved in the Tax Clinic gave them a sense of 'giving back' to the community and enabled them to use their particular tax skills in a volunteer capacity. Several practitioners mentioned that they had previously tried to volunteer at community legal centres but found that these facilities do not provide tax services. They noted that the Clinic enabled them to do meaningful pro bono work. Practitioners who were motivated by a desire to be involved in teaching found the experience to be very rewarding as the students were far more engaged than they would be in a typical classroom scenario.¹³ Further, practitioners felt that they had more to contribute as they were not just teaching legal content but also practical legal skills. Several practitioners noted that their interaction with the students really made them think about and improve skills such as how to succinctly get to the bottom of an issue, how to ask the right fact-finding questions and how to provide practical, comprehensible advice. Practitioners also felt heartened watching the students improve their skills and grow in confidence over the course of the semester.

In the case of more junior practitioners who attended the Clinic (practitioners were required to have a minimum of 2 years post admission or qualification experience), the Clinic provided them an opportunity to assume a leadership role. At least one of these practitioners commented that the Clinic experience greatly boosted their self-confidence and leadership skills. Overall, all practitioners, including partners in firms, felt that the Clinic provided them with the opportunity to develop their listening, communication, and empathy skills in response to tricky and challenging personal situations. These practitioners are accustomed to complicated tax issues or complex commercial arrangements, but the Clinic's clients presented a very different set of challenges.

From a firm perspective, the involvement in the Clinic was seen as an opportunity to provide a point of difference for the firm as a potential employer. Firms also felt that existing employees viewed their employer more favourably following the decision to be involved in the MLS Tax Clinic. Some firms invited employees to volunteer to attend the Clinic while others simply instructed staff to attend as part of their work obligations. The Clinic was generally treated as a client of the firm and staff were able to bill the Clinic hours in the usual way for internal purposes and thus did not feel an additional pressure in terms of billable hours by attending the Clinic.

Finally, practitioners noted that the Clinic provided students with a remarkable opportunity to advance their practical skills in applying the law and improved them as prospective legal practitioners and employees. Indeed, several students received employment opportunities as a direct result of their involvement in the MLS Tax Clinic.

¹² The firms that were involved indicated that they would be less likely to participate if the sessions were held outside business hours as they would not be able to require their staff to attend the Clinic outside work hours.

¹³ One practitioner described the Clinic as a very 'hands-on' experience as compared to classroom teaching.

C *Academics*

One observation arising out of the Tax Clinic experience is that for many ‘vulnerable’ taxpayers, fulfilling their tax obligations can be the cause of significant anxiety. This is not because they are in any way doing the wrong thing or trying to minimise their tax but because of a lack of understanding of their obligations and a belief that any small error will have severe consequences. There were two particular groups for whom the Clinic’s services clearly had a positive impact on mental health. The first group, as may be expected, were taxpayers who were in a dispute with the ATO or had outstanding debts. In such cases, the resolution of their issues with the ATO removed a significant cause of stress. The second group were taxpayers who were completing their tax return for the first time. In our interactions with them, many of these taxpayers were obviously stressed by the task and were extremely grateful for the assistance received. Although their tax affairs were relatively straightforward, these clients often expressed their thanks and relief at knowing that they were fulfilling their obligations correctly. Many of these clients expressly stated that they were less stressed about tax after their visit to the Clinic and were confident that they would be able to complete their tax return on their own in future.

A second observation relates to the independence of the Clinic from the ATO. Although the Clinic received Federal Government funding in 2019 (this was made clear on the Clinic’s website) and the National Tax Clinic trial was administered by the ATO, this does not appear to have had any impact on the perceived independence of the Clinic from the Government and the ATO.¹⁴ In fact, clients accepted the advice from the Clinic as being unbiased but questioned the information provided on the ATO website. This was particularly obvious in situations where the Clinic was providing general information and printed the information from the ATO website. Some clients stated that they had gone to the ATO website but were unsure as to whether the information provided was correct. However, they were reassured by the Clinic’s confirmation that the ATO information was accurate. The Clinic’s experience in 2019 indicated that the independence of the Clinic from the ATO is crucial to its success. Some clients commented that they did not use the ‘Tax Help’ program as it is an ATO service. However, it must also be noted that a large part of the success of the Clinic in 2019 was due to the productive working relationship between the Clinic and the ATO’s local liaison officers and the National Tax Clinic trial project lead. The support of these ATO staff was vital in ensuring that clients could be helped in a timely manner. This was particularly important in the context of the Clinic’s limited operation period.¹⁵

Thirdly, the tax clinics are particularly suited to the University environment as much of the Clinic’s work was time consuming (e.g. repeated phone calls to the ATO regarding debts, explanations regarding tax issues). This work either would not be done by a tax practitioner or would be too costly even if it could be done by a tax practitioner. However, it was perfect for a University-based Clinic as these matters provided students with important experience. The Clinic was happy to take the time to educate taxpayers regarding their tax obligations and tax return preparation and adopted the philosophy that we wanted to get taxpayers to a position where they were comfortable meeting their tax responsibilities going forward (assuming their circumstances did not change). In contrast to tax practitioners, the Clinic’s preference is not to have repeat business.

Fourthly, the Clinic experience provided an important reminder of the need to manage the expectations of both students and clients. Students were frustrated by clients who did not attend their meetings or were unprepared and also by their inability to explain or analyse a client issue.

¹⁴ There is no question that the Federal Government funding and the ATO administration had any impact on the actual independence of the Clinic.

¹⁵ Arrangements were made for any outstanding client matters at the conclusion of the Clinic be handled by the clinic supervisor or be referred to volunteer tax practitioners, but this did not prove necessary in 2019.

Similarly, it was necessary to manage clients' expectations as to the scope of assistance that could be provided by the Clinic.

Finally, the advocacy work enabled students to do meaningful legal research. The legal research topics were identified as a result of the Clinic experience and in conjunction with ATO staff. Students appreciated the opportunity to present their research to ATO staff and felt like they were making a difference with their work. As mentioned above, final year JD students are required to complete a legal research paper as part of their degree and therefore, the tax advocacy stream was beneficial for all involved.

D *Students*

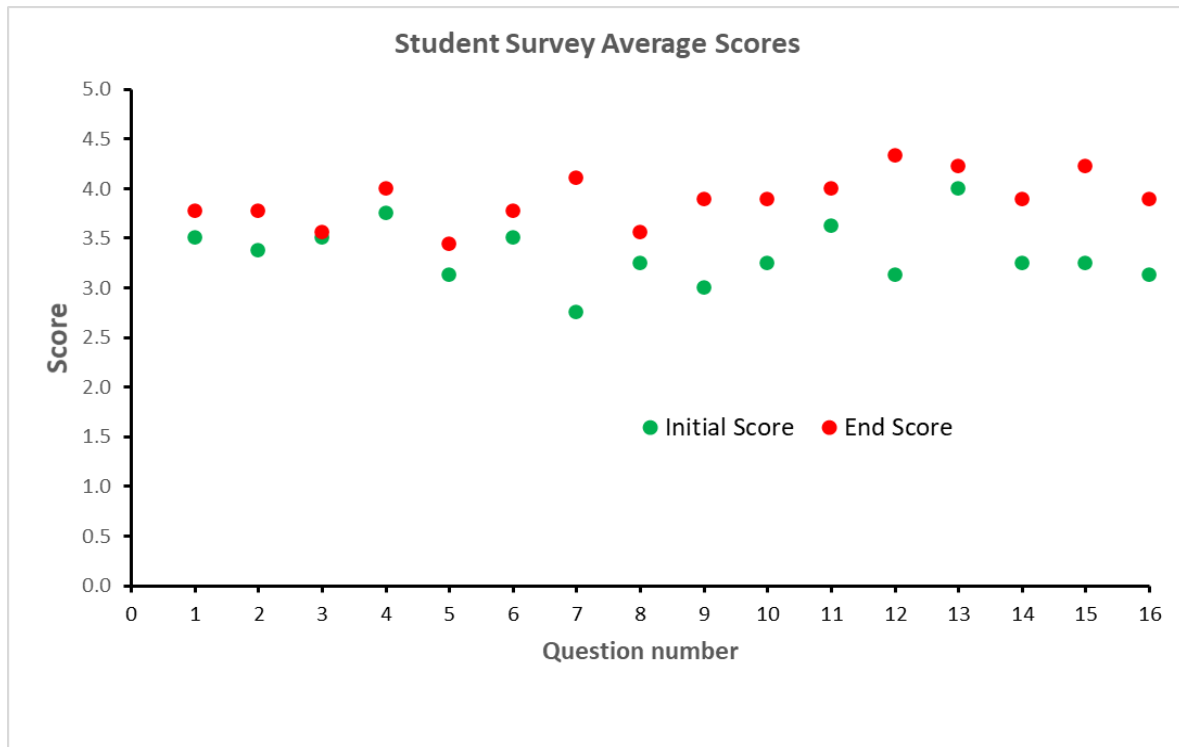
Students were unanimously positive regarding their Clinic experience. This was reflected in the responses to the 'subject experience survey' conducted by the University and the overall satisfaction questions in the student check-in survey.¹⁶ Students appreciated the practical nature of the subject and the ability to apply the law to real-world cases, the opportunity to develop skills such as client interviewing and file management, the ability to work closely with a range of tax practitioners, and the fact that they were helping the broader community. Students noted that the Clinic experience enabled them to observe a range of different approaches to client interviewing and management and identify best practices. They felt that this approach gave them a head start in developing their own skills. Students also liked the collaborative nature of the subject as students were required to work in teams of two and three with the volunteer tax practitioners and clinic supervisor in developing solutions to client issues.

At the first session, students were asked their motivation in choosing to undertake the Tax Clinic subject. Broadly, a third of the students were motivated by the fact that the Clinic would assist 'vulnerable' taxpayers and they wanted to 'do good'. A third of the students elected to do the subject because of its practical nature and felt that it would improve their practical legal skills and employability. And a third of the students opted to do the subject because it was a tax clinic and they had enjoyed their previous tax studies and were considering a career in tax. As noted above, the focus of the Clinic on 'vulnerable taxpayers' brought it squarely within the framework of the existing MLS Clinics program, despite the fact that taxation law itself may not – at first glance – appear to be a key focus for public interest practice. In this way, the Clinic may have provided an opportunity for some JD students who would not otherwise have chosen a 'public interest' focussed subject to engage with the importance and challenges of this work in the context of their own future career aspirations.

The initial survey undertaken at the commencement of the Tax Clinic was completed by 9 students (5 males, 4 females; 5 international students, 4 domestic students). All of the students were in the 20-30 age range. Six students had at least one parent who had graduated from University. Interestingly, only three students did not have prior relevant working experience (i.e. at a law or accounting firm). The end survey undertaken at the conclusion of the Tax Clinic was also completed by 9 students but it does not appear to be the exact same 9 students based on the demographic data (4 male, 4 female, 1 prefer not to say; 3 international students, 6 domestic students). Again, all of the students were in the 20-30 age range. Five students had at least one parent who had graduated from University while four did not and seven of the nine students had prior relevant working experience.

¹⁶ The responses to the overall satisfaction questions on the student check-in survey are included in the Appendix.

The graph below clearly demonstrates that students’ confidence in their abilities improved following the Tax Clinic experience (0=not confident; 1 = a little confident; 2 = slightly confident; 3 = moderately confident; 4 = quite confident; 5 = very confident).¹⁷



Unfortunately, as it appears that it was not the same students who completed the initial and end surveys, and the survey tool did not enable us to track individual student responses to the survey questions, it is not possible to draw any specific conclusions from the data. However, some general observations can be made regarding the student experience. First, students were reasonably confident of their abilities even at the start of the clinic experience with most students choosing ‘moderately confident’, ‘quite confident’ or ‘very confident’ in assessing their abilities. This is likely because the students are postgraduate students and as indicated by the demographic data, many had relevant prior working experience. Second, the biggest improvements could be seen in question 7 regarding communicating with clients in an effective manner and question 12 regarding contributing ideas for a team result. This is reflective of the Clinic experience and the expectations of students working in the Clinic. The next biggest improvements were in question 9 regarding being clear when presenting ideas and question 15 regarding the ability to analyse topics to identify what information is required to produce a good result. Again, these improvements can be attributed to the Clinic experience and the nature of the work undertaken by students at the Clinic. Little or no improvement was seen in question 3 regarding being better able to manage time and in question 13 regarding being able to research tax issues confidently. With regard to researching tax issues, students were already reasonably confident of their abilities in this regard at the commencement of the Tax Clinic experience, with an average score of 4.0, and this is likely because students were required to have completed tax studies prior to undertaking the Tax Clinic subject.

¹⁷ The full survey results and questions are included in the Appendices.

IV RECOMMENDATIONS

This section outlines our recommendations arising from the Tax Clinic experience in 2019. These recommendations broadly fall into two categories – legal reform and administrative reform. However, there is one recommendation that does not fall into either category. The Clinic experience indicates that there is a need to improve tax literacy in the general community. Most first-time tax return preparers (generally high school or university students in their first part-time job and subject to PAYG withholding) are aware of the fact that they need to complete a tax return but not much beyond that. The ATO is making strides in this direction with the ‘Tax, Super and You’ program and it is possible that taxpayers will be better informed going forward.¹⁸ However, based on the Clinic’s experience in 2019, it would appear that more needs to be done to improve tax literacy in the general community.

A *Legal Reform*

There are two areas for potential legal reform that were highlighted by the Clinic experience in 2019, as discussed above under the Clinic’s advocacy activities. Both of these reforms would improve simplicity, one of the criteria for a good tax system.¹⁹ The first potential reform is to simplify ‘deductions’ whether this be through the introduction of a ‘standard deduction’ or some other mechanism. There are certainly good policy reasons for the availability of deductions but perhaps for taxpayers with taxable income of less than \$60,000, the tax system ideal of simplicity should take precedence over other considerations such as equity and efficiency. The removal of general deductions for low-income taxpayers could be accompanied with the introduction of a standard deduction or an increase in the low and middle-income tax offset. The second potential reform is in relation to the tax residency status of international students. Again, a desire to be comprehensive and apply general residency principles is creating unnecessary uncertainty and complexity. The introduction of a deemed tax residency status for international students should be considered.

B *Administrative Reform*

The Clinic experience also highlighted two areas of potential administrative reform. First, we should consider the option that low-income taxpayers who only have salary income that has been subject to PAYG withholding should not have to lodge a tax return. It is important for such taxpayers to lodge a tax return as they are generally due a refund. However, the obligation to lodge a standard tax return is quite onerous for these taxpayers. A simplified tax return with minimal questions regarding other income and private health insurance should be considered. Anecdotal evidence indicates that, in the UK, taxpayers with only salary income can elect to confirm by phone that they do not have any other income and are not required to lodge a tax return. Data matching and myTax have made the tax return process easier but simplification for low-income taxpayers with only salary income should be a priority and will remove a lot of unnecessary anxiety.

The second potential area for administrative reform is in relation to the information produced on the ATO website. The website includes general information, fact sheets, guides, decision tools, public rulings, practical compliance guidelines, and law administration practice statements. There is a wealth of information which is tremendously useful to the sophisticated user. However, the Clinic experience indicates that the general community is either overwhelmed by the ATO resources, do not understand the ATO guidance or do not trust it. The Clinic experience indicates that taxpayers not using a tax agent are generally not assisted by the ATO’s online resources. And

¹⁸ Tax, Super and You available at <https://www.taxsuperandyou.gov.au/> (accessed 9 May 2020).

¹⁹ Kenneth Asprey, *Taxation Review Committee Full Report* (1975) 15.

if it is the case that the ATO's online resources are largely for tax agents, this could and should streamline the ATO's work. Systematic research into who is using the ATO's online information and its true value is required to better understand where ATO resources should be located.²⁰ Our assessment is that there is currently a lot of very good work being done which is not being used or valued by its target audience.

V CONCLUSION

Overall, the Tax Clinic experience in 2019 was a positive one for all involved – clients, students, practitioners, and academics. The Clinic provided all parties with different benefits and is a welcome addition to the MLS' public interest focused clinical legal education program. There were a few challenges in establishing and running the Clinic in 2019 but these were largely due to the short-time frame involved and none were insurmountable. Two factors were critical to the success of the Clinic in 2019. First, the collaborative nature of the National Tax Clinic trial, particularly the generosity of the pioneering Curtin Tax Clinic, meant that Clinics were not in competition and happy to share ideas, information, and experiences. Second, as mentioned above, the ATO local liaison officers and the National Tax Clinic trial project lead were extremely supportive of the program and provided whatever assistance was necessary. This enabled the Clinic to assist as many clients as possible in a timely manner. It is reassuring that the Federal Government has committed to continuing to fund tax clinics at Universities. The benefits for all parties are clear to see. However, systematic research into the student and client experience is necessary to better understand the value of tax clinics to both universities and the general community.

²⁰ For example, the resources currently being spent on producing online information for the general community could be reallocated to focus on simplification such as the Office of Tax Simplification in the UK: Office of Tax Simplification available at <https://www.gov.uk/government/organisations/office-of-tax-simplification> (accessed 9 May 2020). The OTS is an independent adviser to the UK government on simplifying the UK tax system.

VI APPENDICES

A *Appendix 1: Student Check-In Survey – Overall Confidence Questions*

The students responded as follows in assessing their abilities (the number of students who picked a particular response is indicated with the first line representing the initial survey and the next line (shaded grey) representing the end survey):²¹

	<i>How confident are you in your ability to</i>	Not confident	A little confident	Slightly confident	Moderately confident	Quite confident	Very confident
1	... accomplish difficult tasks when faced with them.			2	1	4	1
					3	5	1
2	... perform quite well under pressure.			2	2	3	1
				1	1	6	1
3	... better manage time.			1	2	5	
					4	5	
4	... begin a career in the Degree I am studying.			1	2	3	2
					2	5	2
5	... achieve my career goals.			2	3	3	
				1	3	5	
6	... understand what is expected of me as a professional advisor.				5	2	1
					3	5	1
7	... communicate with clients in an effective manner.	1		1	4	2	
					1	6	2
8	... structure and write an advice.		1		3	4	
					5	3	1
9	... be clear when presenting my ideas.			3	3	1	1
				1	2	3	3
10	... communicate with colleagues in an effective manner.			2	3	2	1
					3	4	2
11	... coordinate tasks within my work group.				3	5	
					2	5	2
12	... contribute ideas for a team result.			2	3	3	
					1	4	4
13	... research tax issues confidently.				2	4	2
					2	3	4
14	... use a range of software applications.			2	2	4	
				1	2	3	3
15	... analyse topics to identify what information I need to produce a good result.			2	2	4	
					1	5	3
16	... critically evaluate the relevance, reliability and authority of information I find so that I know what to use and what to discard.		1		4	3	
					3	4	2

²¹ One student in the initial survey only provided the demographic data and did not respond to the confidence questions.

B *Appendix 2: Student Check-In Survey – Overall Satisfaction Questions*

<i>Please rate the extent to which you agree with the following statements:</i>		Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
1	Participating in the Tax Clinic was a valuable learning experience				1	8
2	Working on client issues improved my learning				2	7
3	Being part of the Tax Clinic provided an insight into professional life				3	6
4	Being part of the Tax Clinic is effective to improve my understanding of tax law				1	8
5	Being part of the Tax Clinic is effective to develop my teamwork skills				2	7
6	Being part of the Tax Clinic is effective to develop my problem-solving skills				3	6
7	Being part of the Tax Clinic is effective to develop my research skills			1	4	4
8	Being part of the Tax Clinic is effective to develop my written communication skills		1		3	5
9	Being part of the Tax Clinic is effective to develop my oral communication skills				2	7
10	Being part of the Tax Clinic is effective to develop my professional identity				3	6
11	Being part of the Tax Clinic is effective to develop my interest in doing pro bono work in the future				3	6
12	Being part of the Tax Clinic has improved my ability to empathise with people				3	6
13	I felt supported by my supervisors/mentors at the Tax Clinic					9
14	I would recommend participating at the Tax Clinic to fellow students					9



Minerva Access is the Institutional Repository of The University of Melbourne

Author/s:

Jogarajan, S

Title:

2019 National Tax Clinic Project: Melbourne Law School Tax Clinic

Date:

2020

Citation:

Jogarajan, S. (2020). 2019 National Tax Clinic Project: Melbourne Law School Tax Clinic. Journal of Australian Taxation, 22 (2), pp.27-48

Persistent Link:

<http://hdl.handle.net/11343/252760>

File Description:

Accepted version