

# Tax Research Seminars Online



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## **Attaining tax justice through pro bono tax clinics? An international comparison and framework for evidence-based evaluation**

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Via zoom

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## **Schedule for 2020 Tax Research Seminars Online**

1. **30 July 2020**, Tax and the Inheritance of Wealth – Dr Dan Halliday (University of Melbourne), discussant Professor Miranda Stewart (University of Melbourne)
2. **27 August 2020**, International Tax Frameworks: Assessing the 2020s Compromise – Professor Craig Elliffe (University of Auckland), discussant Professor Kerrie Sadiq (QUT)
3. **17 September 2020**, Diagnosing the VAT Compliance Burden: A Cross-Country Assessment – Professor Richard Highfield (UNSW), co-authored with R Brown, C Evans, B Tran-Nam, M Walpole, discussant Professor Rick Krever (UWA)
4. **29 October 2020**, Attaining tax justice through pro bono tax clinics? An International Comparison and Framework for Evidence-based Evaluation – Dr Ann Kayis-Kumar (UNSW), co-authored with J Noone, F Martin, M Walpole, discussant Associate Professor Kate Fischer (University of Melbourne)
5. **26 November 2020**, The Taxation of Capital Gains in Trust after Bamford: A Critical evaluation of the Streaming Regime in Subdiv 115-C ITAA97 – Dr Sonali Walpola (ANU), discussant Dr Mark Brabazon (University of Sydney and NSW Bar)

# **Attaining tax justice through pro bono tax clinics?**

## **An international comparison and framework for evidence-based evaluation**

[authors]

### **Abstract**

Tax justice is often conceptualised in the context of the taxation of multinationals. However, one of the most illustrative examples of the social justice gains that can occur when tax justice is prioritised as an area of need for vulnerable taxpayers can be found in the work of pro bono tax clinics.

This paper explores and extends the international literature on pro bono tax clinics by: (1) conducting an international comparative analysis of the pro bono tax clinic experiences of Australia, US, UK and Canada; and, (2) developing an evidence-based evaluation framework (the Tax Clinics Program Logic) for a nation-wide university-based pro bono tax clinic program. In doing so, this paper presents a unique contribution to the literature by highlighting lessons learnt from overseas experiences; proposing a novel, evidence-based framework for the evaluation of pro bono tax clinics; and, conceptualising pro bono clinics as a platform for conducting grassroots research to identify systemic injustices and advocate for tax reform.

### **KEYWORDS**

tax clinics, tax justice, program logic

## 1 | INTRODUCTION

Following a successful 12-month pilot of Australia's National Tax Clinic Program, in December 2019 the Australian Federal Government announced that it would provide ongoing funding over the forward estimates for university-based tax clinics to continue operating in each state and territory of Australia.<sup>1</sup> These clinics are designed to operate independently of the Australian Taxation Office (ATO) and act in a complementary manner to the existing range of services that the ATO offers to unrepresented taxpayers, including small businesses.<sup>2</sup> They were introduced with the purpose of helping low-income taxpayers and small businesses who are unable to afford professional advice and representation.<sup>3</sup>

Following this announcement, the University of New South Wales Business School, as one of the recipients of funding for a clinic, hosted a conference on 19-20 June 2019 which was funded by the ATO. This conference enabled representatives from the ten universities to meet and develop approaches to operating the clinics and evaluating their effectiveness. At this conference the representatives present considered and agreed to adopt the Tax Clinics Program Logic.

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<sup>1</sup> Australian Government, Mid-Year Economic and Fiscal Outlook 2019-20 (Statement by The Honourable Josh Frydenberg MP Treasurer of the Commonwealth of Australia and Senator the Honourable Mathias Cormann Minister for Finance of the Commonwealth of Australia, December 2019), 283. For the original announcement regarding the pilot program see: Scott Morrison, 'Australian Chamber of Commerce and Industry Annual Dinner Speech, 28 November 2018' (Speech, Australian Chamber of Commerce and Industry, 28 November 2018) <<https://www.pm.gov.au/media/australian-chamber-commerce-and-industry-annual-dinner>>; Andrew Mills, 'Tax in a changing world- Change is the new black' (Speech, Australasian Tax Teachers' Association 31st annual conference, 17 January 2019) <<https://www.ato.gov.au/Media-centre/Speeches/Other/Tax-in-a-changing-world---change-is-the-new-black/>>; Adam Zuchetti, 'Plans locked in for rollout of tax clinics' *mybusiness* (Article, 18 January 2019) <<https://www.mybusiness.com.au/finance/5365-plans-locked-in-for-rollout-of-tax-clinics>> accessed 9 January 2020.

<sup>2</sup> The Hon Stuart Robert, 'Address to the Australasian Tax Teachers Association 31st annual conference, Duxton Hotel, 1 St Georges Terrace, Perth' (Speech, Australasian Tax Teachers Association 31st annual conference, 16 January 2019) <<https://ministers.treasury.gov.au/ministers/stuart-robert-2018/speeches/address-australasian-tax-teachers-association-31st-annual>>.

<sup>3</sup> Katarina Taurian, 'Government locks in plans to roll out general tax advice scheme', *accountantsdaily* (Web Page, 18 January 2019) <<https://www.accountantsdaily.com.au/news/12550-govt-locks-in-plans-to-roll-out-general-tax-advice-scheme>> accessed 9 January 2020.

This paper is divided into five parts. Section 1 provides some background material to the development of Australia’s National Tax Clinics pilot program. Section 2 expands on this and demonstrates the areas of tax support already provided to low income taxpayers together with an outline of the operation of tax clinics. Section 3 looks at what services are provided in the United States (US), the United Kingdom (UK) and Canada. Section 4 highlights policy recommendations as a result of lessons learnt from overseas experiences and presents the Tax Clinics Program Logic as an evidence-based framework for evaluating tax clinics, and Section 5 is the conclusion.

## **2 | RECOGNISING THE TAX ADVICE GAP IN AUSTRALIA**

### **2.1 | Services offered by the Australian Taxation Office and other government agencies**

The ATO and Federal government offer a wide variety of services to low income, disabled and vulnerable taxpayers. In addition, there are community legal centres and legal aid offices that are funded by various levels of government. However, these community centres do not offer tax advice and cannot assist with matters relating specifically to tax.

The main service offered by the ATO to low income earners is the Tax Help Program. This is a free service to help people complete their tax returns online. It is provided by ATO trained volunteers during July and October - the period when individuals are required to complete tax returns - and is only available for people with non-business income under \$60,000.<sup>4</sup> A similar service is also offered to Indigenous Australians on low incomes.<sup>5</sup> The most problematic aspect of this eligibility criterion is that contractors, those in the ‘gig economy’ and microbusinesses are not eligible. This problem is likely to grow over time as increasingly more workers are

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<sup>4</sup> ‘Tax Help Program’, *Australian Taxation Office* (Web Page, 9 August 2019)

<<https://www.ato.gov.au/Individuals/Lodging-your-tax-return/Tax-Help-program/>> accessed 9 January 2020.

<sup>5</sup> ‘Aboriginal and Torres Strait Islander Peoples’, *Australian Taxation Office* (Web Page, 21 August 2019)

<<https://www.ato.gov.au/General/Aboriginal-and-Torres-Strait-Islander-people/>> accessed 9 January 2020.

being categorised as ‘contractors’ and those on lower income turn to the ‘gig economy’ to supplement their wages.

The ATO also offers a Dispute Assist Service,<sup>6</sup> another free service provided by an experienced Dispute Assist guide to *assist* unrepresented individuals and small businesses with an objection or dispute resolution process – rather than with lodgement of tax returns. It aims to support taxpayers with resolving their dispute, ensure fairness and connect the taxpayers with other people who could assist in the process. This in-house facilitation service provides a mediation process where an impartial ATO facilitator meets with both parties (usually the taxpayer and the ATO case officer) to discuss what the issue is in an attempt to reach a resolution and consider alternatives.<sup>7</sup> This is normally used for less complex disputes and the facilitator does not establish facts or give advice. They are merely there to guide the discussion and aim to keep communication open.

Further services available include the National Debt Helpline.<sup>8</sup> This service offers help to individuals by trained financial counsellors who provide free advice to people with debt problems including but not limited to ATO-related debts. There is also Dispute Support,<sup>9</sup> an online referral tool aimed at helping small businesses find the most appropriate low-cost dispute resolution service and a School Education.<sup>10</sup> The last is a free online teaching resource called ‘Tax, Super + You competition’ and is aimed at being a fun and creative way for students in high school to learn about tax and superannuation.

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<sup>6</sup> ‘Dispute Assist’, *Australian Taxation Office* (Web Page, 7 February 2019) <<https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/Options-for-resolving-disputes/Dispute-Assist/>> accessed 9 January 2020.

<sup>7</sup> ‘In-house facilitation’, *Australian Taxation Office* (Web Page, 29 September 2017) <<https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/Options-for-resolving-disputes/In-House-Facilitation/>> accessed 9 January 2020.

<sup>8</sup> ‘National Debt Helpline’, <<http://www.ndh.org.au>> accessed 9 January 2020.

<sup>9</sup> ‘Dispute Support’, *Australian Small Business and Family Enterprise Ombudsman* (Web Page, 2019) <<https://www.asbfeo.gov.au/disputesupport>> accessed 9 January 2020.

<sup>10</sup> ‘Education Zone’, *Australian Taxation Office* (Web Page, 18 December 2019) <<https://www.ato.gov.au/General/Education-zone/>> accessed 9 January 2020.

## 2.2 | National Tax Clinics pilot program

Tax clinics have now been established at 10 Australian universities in just over one year commencing July 2018. This is shown in Table 1.

**TABLE 1** Launch of National Tax Clinics across Australia

<b>University</b>	<b>Clinic launch date</b>	<b>State or Territory</b>
Curtin University	July 2018 ( <a href="https://businesslaw.curtin.edu.au/law/tax-clinic/">https://businesslaw.curtin.edu.au/law/tax-clinic/</a> )	Western Australia
University of Tasmania	June 2019 ( <a href="https://www.utas.edu.au/__data/assets/pdf_file/0009/1198692/UTAS-Tax-Clinic.pdf">https://www.utas.edu.au/__data/assets/pdf_file/0009/1198692/UTAS-Tax-Clinic.pdf</a> )	Tasmania
Western Sydney University	June 2019 ( <a href="https://www.westernsydney.edu.au/tax-clinic.html">https://www.westernsydney.edu.au/tax-clinic.html</a> )	Parramatta, Sydney
University of New South Wales	June 2019 ( <a href="https://www.business.unsw.edu.au/about/schools/taxation-business-law/unsw-tax-clinic">https://www.business.unsw.edu.au/about/schools/taxation-business-law/unsw-tax-clinic</a> )	Sydney
Charles Darwin University	June 2019 ( <a href="https://www.cdu.edu.au/free-tax-clinic">https://www.cdu.edu.au/free-tax-clinic</a> )	Northern Territory
Griffith University	July 2019 ( <a href="https://www.griffith.edu.au/griffith-business-school/departments/accounting-finance-economics/griffith-tax-clinic">https://www.griffith.edu.au/griffith-business-school/departments/accounting-finance-economics/griffith-tax-clinic</a> )	Queensland
James Cook University	July 2019 ( <a href="https://www.jcu.edu.au/college-of-business-law-and-governance/tax-clinic">https://www.jcu.edu.au/college-of-business-law-and-governance/tax-clinic</a> )	Queensland (northern)
University of Melbourne	August 2019 ( <a href="https://law.unimelb.edu.au/tax-clinic">https://law.unimelb.edu.au/tax-clinic</a> )	Victoria
University of South Australia	August 2019 ( <a href="https://www.unisa.edu.au/Campus-Facilities/community-clinics/tax-clinic/">https://www.unisa.edu.au/Campus-Facilities/community-clinics/tax-clinic/</a> )	South Australia
Australian National University	August 2019 ( <a href="https://www.rsa.anu.edu.au/rsa/anu-tax-clinic/">https://www.rsa.anu.edu.au/rsa/anu-tax-clinic/</a> )	Australian Capital Territory

Table 1 demonstrates that clinics have been established in all states and territories throughout Australia. They are all based on a similar model with a qualified tax practitioner overseeing any final advice and student volunteers interviewing low income and small business taxpayers. Some of the clinics deliver their services at the university campus and others in locations around the city or town where the university is situated.

With the capacity to each help hundreds of taxpayers every year,<sup>11</sup> these clinics are designed to bridge the gap that exists between tax assistance provided by the ATO and costly legal or accounting services. Programs such as the Tax Help Program offered by the ATO can only help people to 'lodge their tax returns or amendment online or claim a refund of franking refunds'.<sup>12</sup> Although the ATO also provides a Dispute Assist Service to unrepresented individuals and small businesses to provide assistance with any dispute resolution issues, mediation or conciliation, these services can neither provide legal advice nor can they represent individuals, which is why tax clinics were introduced. These clinics, funded by the government, can provide advice regarding tax matters, represent taxpayers and advocate on their behalf to the ATO.<sup>13</sup> They are run by volunteers, students and pro bono tax practitioners to provide free

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<sup>11</sup> See, for example, 'Curtin Tax Clinic Annual Report August 2019', *Curtin University* (Web Page) <[https://www.linkedin.com/posts/curtin-tax-clinic\\_2019-annual-report-activity-6577819156249366528-XJm0](https://www.linkedin.com/posts/curtin-tax-clinic_2019-annual-report-activity-6577819156249366528-XJm0)> accessed 9 January 2020.

<sup>12</sup> *Australian Taxation Office* (n 4) [5].

<sup>13</sup> 'Curtin Tax Clinic', *Curtin University* (Web Page) <<https://businesslaw.curtin.edu.au/law/tax-clinic/>> accessed at 9 January 2020; 'University of Tasmania Tax Clinic', *University of Tasmania* (Web Page) <[https://www.utas.edu.au/\\_\\_data/assets/pdf\\_file/0009/1198692/UTAS-Tax-Clinic.pdf](https://www.utas.edu.au/__data/assets/pdf_file/0009/1198692/UTAS-Tax-Clinic.pdf)> accessed 9 January 2020; 'Western Sydney University Tax Clinic', *Western Sydney University* (Web Page) <<https://www.westernsydney.edu.au/tax-clinic.html>> accessed 9 January 2020; 'UNSW Tax Clinic', *University of New South Wales* (Web Page) <<https://www.business.unsw.edu.au/about/schools/taxation-business-law/unsw-tax-clinic>>; 'Free tax clinic', *Charles Darwin University* (Web Page) <<https://www.cdu.edu.au/free-tax-clinic>> accessed 9 January 2020; 'Griffith Tax Clinic', *Griffith University* (Web Page) <<https://www.griffith.edu.au/griffith-business-school/departments/accounting-finance-economics/griffith-tax-clinic>> accessed 9 January 2020; 'Tax Clinic', *James Cook University* (Web Page) <<https://www.jcu.edu.au/college-of-business-law-and-governance/tax-clinic>> accessed 9 January 2020; 'Melbourne Law School Tax Clinic', *University of Melbourne* (Web Page) <<https://law.unimelb.edu.au/tax-clinic>> accessed 9 January 2020; 'Tax Clinic', *University of South Australia* (Web Page) <<https://www.unisa.edu.au/CampusFacilities/community-clinics/tax-clinic/>> accessed 9 January 2020; 'ANU Tax Clinic', *Australian National University* (Web Page) <<https://www.rsa.anu.edu.au/rsa/anu-tax-clinic/>> accessed 9 January 2020.

assistance for disadvantaged communities,<sup>14</sup> and services that cannot be provided through other existing ATO programs.<sup>15</sup>

The main services provided by tax clinics are free advice, guidance and assistance on tax matters including lodgement, debt recovery, review and appeal rights, and general tax law.<sup>16</sup> It is intended that they will create educational activities to better inform individuals regarding their rights and obligations<sup>17</sup> and assist with responding to an ATO notice,<sup>18</sup> through to other requirements such as reporting, meeting, and filing, negotiating a payment plan and assistance with computing tax liability.<sup>19</sup> It is also envisaged that they will assist with other ongoing issues with the ATO<sup>20</sup> and improve knowledge and understanding of taxation law to improve small taxpayer's businesses.<sup>21</sup>

These tax clinics target unrepresented small businesses, individuals, not-for-profit organisations and charities. The threshold for applying for help at such clinics is extremely low, as they are targeted at disadvantaged people. To be eligible for assistance, a person must not currently have a tax agent, must be an Australian citizen (or permanent resident), and be an individual or a small business entity. This scheme has the potential of helping people who are unaware of their rights and obligations, and assisting them with any problems navigating

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<sup>14</sup> Andrew Leigh, 'Free tax clinics will make tax less taxing - Media Release', (Media Release, 19 November 2019) <[http://www.andrewleigh.com/free\\_tax\\_clinics\\_will\\_make\\_tax\\_less\\_taxing\\_media\\_release](http://www.andrewleigh.com/free_tax_clinics_will_make_tax_less_taxing_media_release)>.

<sup>15</sup> Harley Dennett, 'Tax clinic trial helping the vulnerable', *The Mandarin* (online, 19 November 2019) <<https://www.themandarin.com.au/101501-tax-clinic-trial-helping-the-vulnerable/>> accessed 9 January 2020.

<sup>16</sup> See generally Curtin University, University of Tasmania, Western Sydney University, University of New South Wales, Charles Darwin University, Griffith University, James Cook University, University of Melbourne, University of South Australia, Australian National University (n 13).

<sup>17</sup> See generally Curtin University, University of Tasmania, Western Sydney University, University of New South Wales, Charles Darwin University, Griffith University, James Cook University, University of Melbourne, University of South Australia, Australian National University (n 13).

<sup>18</sup> See generally Curtin University, University of Tasmania, Western Sydney University, University of New South Wales, Charles Darwin University, Griffith University, James Cook University, University of Melbourne, University of South Australia, Australian National University (n 13).

<sup>19</sup> 'National Tax Clinic Program', *Australian Taxation Office* (Web Page, 2019) <<https://www.ato.gov.au/General/Gen/National-Tax-Clinic-program/>> accessed 9 January 2020.

<sup>20</sup> See generally Australian Taxation Office (n 19).

<sup>21</sup> See generally Australian Taxation Office (n 19).

Australia's complex tax system.<sup>22</sup> Prior to the introduction of these tax clinics, no law clinics other than the Curtin University Tax Clinic provided any tax law support.<sup>23</sup> This is why the introduction of such clinics has allowed disadvantaged individuals to seek assistance with tax-related matters.<sup>24</sup>

An example of tax clinics in Australia providing valuable assistance to disadvantaged individuals can be seen through the case of a Perth café owner who had got into difficulties with her businesses and found herself with a GST debt of \$200,000. She had suffered from an illness and had some difficult family issues which meant she fell behind in tax as well as other business matters. She came to the attention of the ATO via the Curtin University Tax Clinic and a plan was put in place for her with the ATO to pay off the debt in a reasonable period and ensure that she had good operating procedures for her business going forward.<sup>25</sup>

### **3 | INTERNATIONAL COMPARISON OF LOW INCOME TAX CLINICS**

Issues of taxpayer under-representation are not exclusive to Australia, but in fact remain issues which other governments also grapple with. As we are still in the infancy of the Australian National Tax Clinic Program, it is useful to consider whether there are any existing tax clinic programs in broadly comparable tax jurisdictions from which Australia can learn. Comparative legal research has been defined as 'the science or practice of identifying, explaining, or using the similarities and differences between two or more legal systems or their constituent parts'.<sup>26</sup>

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<sup>22</sup> Mitch Knox, 'Student Tax Clinics set to help vulnerable taxpayers', *Griffith News* (Article, 14 March 2019) <<https://news.griffith.edu.au/2019/03/14/student-tax-clinics-set-to-help-vulnerable-taxpayers/>> accessed 9 January 2020.

<sup>23</sup> See generally Mills (n 1)

<sup>24</sup> Ann Kayis-Kumar, 'How a free tax clinic is rescuing the overwhelmed', *Business Think* (Article, 4 October 2019) <<https://www.businessthink.unsw.edu.au/articles/how-a-free-tax-clinic-is-rescuing-the-overwhelmed>> accessed 9 January 2020.

<sup>25</sup> Chris Jordan, 'Taxing times: positioning the ATO as an instrument of democracy' (Speech, Tax Institute 34<sup>th</sup> National Convention, 14 March 2019) <<https://www.ato.gov.au/Media-centre/Speeches/Commissioner/Commissioner-s-address-to-the-Tax-Institute-National-Convention-2019/>>.

<sup>26</sup> David S Clark, 'Comparative Law Models in the United States' (1988) 16(1), *Roger Williams University Law Review* 134.

We argue that the US, Canada and the UK make good comparators because they are all developed economies that have sophisticated tax systems and a commitment to social welfare.

They also have a common legal heritage, the English common law.

The authors' research reveals however that apart from the US there appears to be no other comparable jurisdiction which has employed a tax clinic program that is as extensive in reach as the Australian system. There are however, limited services offered to low income taxpayers in both Canada and the UK and these are discussed later in the paper.

### **3.1 | United States Low-Income Tax Clinics**

The concept of a Low-Income Taxpayer Clinics (LITCs) originated in the US in the 1970s, with the first recorded clinic at Harvard Law School.<sup>27</sup> This clinic lasted only eighteen months.<sup>28</sup> In 1974 Hofstra University, New York established a clinic that is currently in existence and soon afterwards clinics were established at two other law schools.<sup>29</sup> These clinics were part of an academic movement to equip students with skills training, as well as a broader social movement in providing legal services to vulnerable taxpayers.<sup>30</sup> With growing criticism around graduates lacking sufficient practical skills, and an increasing push for protection of vulnerable taxpayers, it was natural for conversations around the development of the legal skills training and legal aid movements to converge.<sup>31</sup> The Hofstra program was started by Stuart Filler who attended New York University Law School and had worked for the Office of Chief Counsel, Internal Revenue Service (IRS) prior to starting the clinic at Hofstra.<sup>32</sup> Early

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<sup>27</sup> Keith Fogg, 'History of Low-Income Taxpayer Clinics' (Research Paper No 2013-3005, Villanova Law/Public Policy, 8 September 2012).

<sup>28</sup> See generally Fogg (n 27).

<sup>29</sup> Leslie Book, 'Academic Clinics: Benefitting Students, Taxpayers, and the Tax System', (2015) *The Tax Lawyer* 68(3) 449; 'Federal Tax Clinic Practicum', *Hofstra Law* (Web Page, 2016) <<https://law.hofstra.edu/clinics/federaltaxclinicpraciticum/>> accessed 9 January 2020.

<sup>30</sup> See Fogg (n 27).

<sup>31</sup> See Fogg (n 27).

<sup>32</sup> See Fogg (n 27).

evaluation of LITCs focussed on activity levels, with observations centring on whether the income level of clients serviced was appropriate, the type of work being conducted and the level of involvement of the Internal Revenue Service (IRS).<sup>33</sup>

Following positive feedback from these trials, LITCs saw a strong consolidation period through the 1980s, with 10 law school tax clinics established by the beginning of the 1990s. This decade would mark the period of rapid growth and significant change for LITCs. Early in the 1990s, the program's direction and scale was greatly aided by the work of Nina Olson and Janet Spragens. They helped create a new role for LITCs to interact more closely with already-existing federal poverty programs and serve larger proportions of citizens, rather than remain isolated to specific pockets of at-risk communities. This shift also saw the first LITCs move outside the realm of academic institutions, with Nina Olson starting the first non-academic LITC in 1992.<sup>34</sup>

In 1998 the US Congress voted overwhelmingly to restructure and reform the IRS. Included in the restructure was the Restructuring and Reform Act of 1998 (RRA 98) which authorised \$6 million matching grants to LITCs. This enactment, found in the Internal Revenue Code s 7526, allows a 'qualified low-income taxpayer clinic' to be provided grants from the IRS on satisfaction of a number of factors including charges for delivery of services (which should be free, or charge no more than a nominal fee), representation of low-income taxpayers (at least 90% of clients served cannot have incomes which exceed 250% of the poverty level) and provision of matching funds (up to \$100,000 USD per year) to the amount pledged by the IRS. The grant program provides up to \$100,000 per year to qualified organisations to represent low income taxpayers in controversies with the IRS and provide education and outreach to

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<sup>33</sup> See Fogg (n 27).

<sup>34</sup> See Fogg (n 27).

taxpayers who speak English as a second language.<sup>35</sup> Organisations eligible to apply include academic institutions and not-for-profit (NFP) entities throughout the US. The grantee must provide funds that match the amount of the grant, although these can be represented through in-kind activities such as volunteer time.<sup>36</sup>

Clinics participating in the LITC Program provide a number of services. These include pro bono representation on behalf of low income taxpayers in tax disputes with the IRS, including audits, appeals, collection matters and federal tax litigation. LITCs can also help taxpayers respond to IRS notices and correct account problems. LITC staff also assist in educating low income taxpayers and taxpayers whose English is not their first language about taxpayer rights and responsibilities, Furthermore, they will identify and advocate concerning issues that impact low income taxpayers.<sup>37</sup>

LITC services are free or low cost for eligible taxpayers. Although LITCs receive partial funding from the IRS, clinics, their employees, and their volunteers are completely independent of the IRS. Each clinic determines whether prospective clients meet income guidelines and other criteria before agreeing to represent them or provide consultation services. A range of US law schools have participated in this program. They include the University of Michigan, Law School,<sup>38</sup> Harvard Law School<sup>39</sup> and the American University, Washington College of Law.<sup>40</sup>

Figure 1 illustrates the growth of LITCs in the US between 1999 and 2015.<sup>41</sup>

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<sup>35</sup> 'Low Income Tax Clinic', *IRS* (Web Page, 12 December 2019) <<https://www.irs.gov/advocate/low-income-taxpayer-clinics>> accessed 9 January 2020.

<sup>36</sup> N Olson, 'Low Income Taxpayer Clinic Grant Program; Availability of 2020 Grant Application Package', (2019) *Federal Register* 84(85) 18921.

<sup>37</sup> See IRS (n 35).

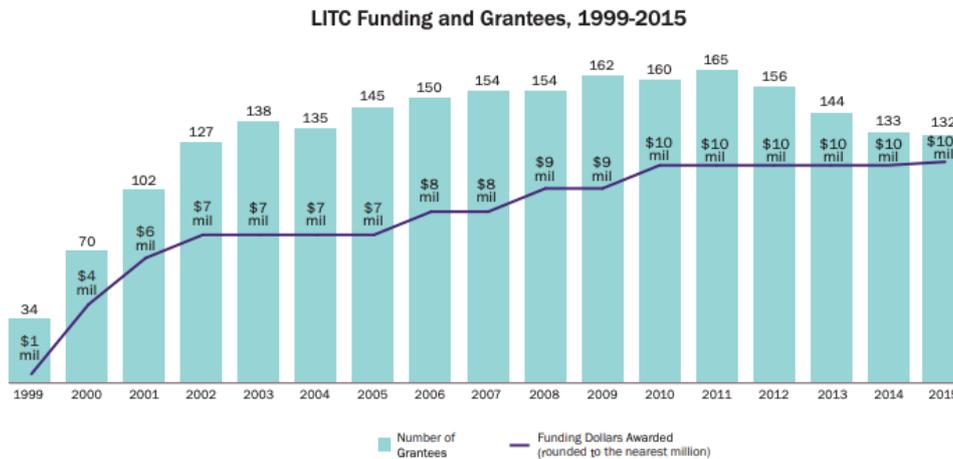
<sup>38</sup> 'Low Income Taxpayer Clinic', *University of Michigan, Law School* (Web Page) <<https://www.law.umich.edu/clinical/litc/Pages/default.aspx>> accessed 9 January 2020.

<sup>39</sup> 'Federal Tax Clinic, *Harvard Law School* (Web Page) <<https://hls.harvard.edu/dept/clinical/clinics/federal-tax-clinic-lsc/>> accessed 9 January 2020.

<sup>40</sup> 'Janet R. Spragens Federal Tax Clinic', *American University, Washington College of Law* (Web Page) <<https://www.wcl.american.edu/academics/experientialedu/clinical/theclinics/federal-tax/>> accessed 9 January 2020.

<sup>41</sup> Taxpayer Advocate Service, *Low Income Taxpayer Clinics Program Report* (Program Report, December 2015) 1 <<https://www.irs.gov/pub/irs-pdf/p5066a.pdf>>.

**FIGURE 1** Expansion of the US LITC Program



In 2018 the US LITC Program awarded over \$11.8 million in grants to 134 organisations representing over 17,000 taxpayers and secured over \$4.6 million in refunds.<sup>42</sup> There has been a marked shift of LITCs moving out of academic institutions with a total of 134 tax clinics across 48 states and the District of Columbia but less than half are university based.<sup>43</sup>

These clinics have not only provided free advice and assistance on tax-related matters but have also been successful in winning court cases.<sup>44</sup> An example of one successful case is *Feigh v Commissioner of Revenue*.<sup>45</sup> In this case the IRS had used an administrative notice to deny the Feigh family earned-income tax credits (in other words, refundable tax credits). The taxpayers were unable to afford legal representation and applied for assistance to the Ronald L Mankoff

<sup>42</sup> ‘Low Income Taxpayer Clinics Celebrate 20 Years of Taxpayer Service’, *Taxpayer Advocate Service* (Web Page, 17 July 2018) <<https://taxpayeradvocate.irs.gov/news/litc-20-years?history>> accessed 9 January 2020.

<sup>43</sup> See Taxpayer Advocate Service (n 42).

<sup>44</sup> Kelundra Smith, ‘Tax clinic wins victories in court’, *Georgia State University* (Article, 14 August 2019) <<https://news.gsu.edu/2019/08/14/tax-clinic-wins-victories-in-court/>> accessed 9 January 2020.

<sup>45</sup> *Feigh v Commissioner of Revenue* (2019) 15 TC No. 15 (United States).

Tax Clinic at the University of Minnesota. The US Tax Court ruled in favour of the taxpayers, concluding that the IRS had no power to remove their statutory benefits.<sup>46</sup>

Problems with the viability of LITCs have arisen throughout their history.<sup>47</sup> The first problems were of gaining clients, due to a lack of advertising capacity and also the refusal by the various state Tax Courts to allow students to appear before them.<sup>48</sup> As the LITCs progressed it was found that oversight of the grant program was a major issue. In 2003 the oversight role was taken over by the National Taxpayer Advocate. This caused friction between the Advocate's goal of servicing as many taxpayers as possible with the academic clinics' aims of education, research and community advocacy.<sup>49</sup>

Other issues include the fact that academics involved in the clinics may have their careers sidelined due to the lack of time/subject matter to research and the difficulty of evaluation of the impact of these clinics. Thus, one of the key contributions of this paper is in outlining the Tax Clinics Program Logic (detailed in Part IV.D) – which can be applied by both academics (in guiding their research by identifying outcomes) and by policymakers (in evaluation of the success of the program).

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<sup>46</sup> Richard Dahl, 'Ronald L. Mankoff Tax Clinic Scores Win for Low-Income Taxpayers in U.S. Tax Court', *University of Minnesota Law School* (Article, 1 July 2019) <<https://www.law.umn.edu/news/2019-07-01-ronald-l-mankoff-tax-clinic-scores-win-low-income-taxpayers-us-tax-court>> accessed 9 January 2020; see generally Smith (n 44).

<sup>47</sup> 'Growing Pains in Law School Tax Clinics: A Report on the Experience at Hofstra, Southern Methodist and Michigan', *Council on Legal Education for Professional Responsibility, Inc, Newsletter* (1978) 10(4) 43, 47.

<sup>48</sup> See Council on Legal Education for Professional Responsibility, Inc, Newsletter (n 47).

<sup>49</sup> Nancy S Abramowitz, 'Thinking About Conflicting Gravitational Pulls LITCS: The Academy and the IRS' (2007) 56(5) *American University Law Review* 1127; Keith Fogg 'Taxation with Representation: The Creation and Development of Low-Income Taxpayer Clinics' (2013) 67(1) *The Tax Lawyer* 3.

### 3.2 | Canada's Community Volunteer Income Tax Program

Introduced in 1971, the Community Volunteer Income Tax Program (CVITP) represents a partnership between the Canada Revenue Agency (CRA) and the community to ensure equal access to the tax system for all taxpayers.

Participating community organisations arrange and organise volunteers, who are provided with sufficient training, guidance and software by the CRA, to assist in completing tax returns for vulnerable taxpayers. With over 700,000 Canadians assisted in 2017 by over 2,800 participating organisations,<sup>50</sup> the CVITP demonstrates a continued commitment by the government to delivery of an efficient benefit administration system that can be trusted and relied upon by the most vulnerable taxpayers.

As the CVITP relies on the dedication of volunteers and limited government support, it is evident that there exists a restriction on the number of clients that can be seen and the type of work that can be carried out.

To be eligible for the CVITP, a taxpayer must have a 'modest income' and a simple tax situation. Taxpayers qualify as having a 'modest income' if their total family income is less than the amount specified depending on the size of their family. For example, the maximum family income for a two person household is \$45,000.<sup>51</sup> These income figures do however serve only as a guideline, as different local community organisations may set different thresholds. Simple tax situations are limited to taxpayers who have income from generally common sources, such as employment, pensions or social benefit payments.<sup>52</sup> Unlike the US and Australian programs these situations do not include business or self-employment income

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<sup>50</sup> Department of Finance Canada, *Equality + Growth, A Strong Middle Class* (Report, 27 February 2018) 188-189 <<https://www.budget.gc.ca/2018/docs/plan/budget-2018-en.pdf>> accessed 9 January 2020.

<sup>51</sup> 'Get your taxes done at a free tax clinic', *Government of Canada* (Web Page, 22 October 2019) <<https://www.canada.ca/en/revenue-agency/services/tax/individuals/community-volunteer-income-tax-program/need-a-hand-complete-your-tax-return.html>> accessed 9 January 2020.

<sup>52</sup> See Government of Canada (n 51).

and expenses, capital gains or losses and bankruptcy.<sup>53</sup> However, the Canada Revenue Agency Departmental Plan for 2019-20 signals a commitment to expanding services including visits and seminars that include how to run a business.<sup>54</sup>

Although eligibility criteria for the CVITP centres around income levels and the type of tax work, the taxpayers that are normally served by the CVITP also include Aboriginal people, newcomers to Canada, seniors and students.<sup>55</sup> It does not appear that the CVITP has ever been run through any academic institutions as a part of a student learning experience. Though there appear to have been instances of universities in Canada partnering with local community organisations to provide student volunteers,<sup>56</sup> there still remains no dedicated academically run CVITP program which simultaneously provides a focus on enhancing student learning experiences. The scope of services offered under the CVITP is also limited to income tax returns which can be easily administered by volunteers without the need for extensive requisite knowledge of the underlying tax principles.

The Canadian government continues to show strong ongoing support for the scale and reach of the CVITP. In its 2018 Federal Budget it indicated an ongoing \$13 million investment (the same amount having been invested in Budget 2016) in an attempt to double the size of the program.<sup>57</sup> Such funding aims to include ‘year-round’ clinics and more outreach activities to the most vulnerable segments of the population,<sup>58</sup> with the CRA indicating an aim by March

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<sup>53</sup> See generally Government of Canada (n 51).

<sup>54</sup> ‘Departmental Plan 2019-2020’, *Canada Revenue Agency* (Web Page, 11 April 2019) <<https://www.canada.ca/en/revenue-agency/corporate/about-canada-revenue-agency-cra/departmental-plan/departmentalplan2019-20.html>> accessed 9 January 2020.

<sup>55</sup> ‘Community Volunteer Income Tax Program, A Guide for Community Organizations’, *Canada Revenue Agency* (Guide) 4-5 <[https://www.cchwebsites.com/content/pdf/tax\\_forms/ca/en/rc266.pdf](https://www.cchwebsites.com/content/pdf/tax_forms/ca/en/rc266.pdf)> accessed 9 January 2020.

<sup>56</sup> Jelena Damjanovic, ‘Helping others face their worst fears: filing taxes’, *University of Toronto* (Article, 8 May 2014) <<https://www.utoronto.ca/news/helping-others-face-their-worst-fears-filing-taxes>> accessed 9 January 2020; ‘Volunteer Tax Program’, *Students’ Union University of Calgary* (Web Page, 2018) <<https://www.su.ucalgary.ca/about/more/volunteer-tax-program/>> accessed 9 January 2020.

<sup>57</sup> See Department of Finance Canada (n 50).

<sup>58</sup> See Department of Finance Canada (n 50).

2020 to increase the number of individuals helped by the CVITP by 14% and to increase the number of outreach activities by 15%.

### **3.3 | United Kingdom's TaxAid and Tax Help for Older People**

A number of charities in the United Kingdom (UK) offer help on a wide range of tax and tax credit issues. Some also specialise in supporting people who need help to deal with debt related problems. The charity normally expects the taxpayer to have attempted to sort the issue out with the tax authorities before contacting them.

Probably the most relevant charity for comparison purposes is TaxAid. This organisation offers free, independent and confidential advice to UK taxpayers on a low income who have some form of issue or dispute with the UK tax authorities and who are aged under 60 years, or who are self-employed. The definition of low income is a current individual income of £20,000 per annum or below.<sup>59</sup> All their advice is provided by qualified tax professionals so there does not appear to be any opportunity for participation by students. TaxAid offers in-person appointments in London, Birmingham, Newcastle and Manchester as well as by correspondence to other areas through volunteers from accountancy firms.<sup>60</sup> The time taken to set up these surgeries with accountancy firms has been significantly shorter, due to the existing relationship built with different accountancy firms, as well as the fact that little need for extensive training was required. The appointments are filled by calls to the central hotline, which is not separately advertised but sees substantial exposure through a network of citizens' advice offices.

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<sup>59</sup> 'TaxAid Helpline', *TaxAid* (Web Page) <<https://taxaid.org.uk/pages/taxaid-helpline>> accessed 9 January 2020.

<sup>60</sup> 'About TaxAid', *TaxAid* (Web Page) <<https://taxaid.org.uk/about>> accessed 9 January 2020; See generally *TaxAid* (n 59).

If a taxpayer is over 60 and on a low income they can ask for assistance from Tax Help for Older People. This organisation is a charity service providing free, independent and expert help and advice for older people on lower incomes who cannot afford to pay for professional tax advice.<sup>61</sup>

Both these two charities are managed and operated independently from Her Majesty's Revenue and Customs (HMRC), and have largely operated separately from one another over the last 20 years. In the last few years they have looked to work more collaboratively to develop a new advice model that incorporates the experience of the existing models, the changing needs of vulnerable taxpayers and the services provided by the HMRC.

HMRC provides support to vulnerable taxpayers either through a helpline or face-to-face appointments. The HMRC identifies a number of 'drivers of need' by those vulnerable taxpayers experiencing particular issues, including difficulty accessing HMRC's first tier support, a lack of personal confidence or capability, mental or emotional problems and previous issues with accessing HMRC services. However, in cases of support where independent representation is required (such as disputes) or the HMRC provided support is insufficient, HMRC is likely to refer the taxpayer to a tax charity such as Tax Volunteers and TaxAid.

The HMRC strongly supports both Tax Volunteers and TaxAid, providing funding to both charities to be able to carry out the pro-bono advice services they offer to vulnerable taxpayers.<sup>62</sup> Apart from HMRC support, both charities also operate on donations received from the corporate sector, trusts and foundations as well as a number of other professional bodies.<sup>63</sup>

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<sup>61</sup> 'Tax Help For Older People', *TaxVol* (Web Page) accessed 9 January 2020.

<sup>62</sup> TaxAid UK, *Annual Report and Financial Statements for the Year Ended 31 March 2018* (Report, October 2018) <<https://taxaid.org.uk/wp-content/uploads/2018/11/TaxAid-accounts-2017-2018-Dry-signatures.pdf>> accessed 9 January 2020.

<sup>63</sup> See generally TaxAid Uk (n 62).

Further, in January 2020, Lancaster University and University of Central Lancashire commenced piloting the first university-based tax clinic in the UK.<sup>64</sup> The North West Tax Clinic operates in collaboration with TaxAid and, at time of writing, is the only university-based tax clinic in existence in the UK.

#### **4 | LESSONS FROM THE US AND THE IMPORTANCE OF DEVELOPING AN EVALUATION FRAMEWORK**

With the Australian National Tax Clinic Program possessing a similar service offering and therefore likely to progress on a similar trajectory to what we have seen in the US, it is useful to evaluate the issues that have arisen in the establishment and development of LITCs. Though the tax systems and societal pressures are inherently different between these jurisdictions, it is highly likely that the benefit of 40 years of Program experience will be valuable in determining how Australia's National Tax Clinics program is likely to fare now and in the future.

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<sup>64</sup> “*The University of Central Lancashire (UCLan), Lancaster University and national charity TaxAid, which provides free, confidential tax advice to people on low incomes, will run the ten-week-long pilot project from 13 January on Mondays (9.00am to 12.00pm) and Fridays (9.00am to 4.00pm). The clinic will run until 20 March 2020.*”: University of Central Lancashire, ‘Lancashire universities to run first UK student-run tax helpline’ <<https://www.uclan.ac.uk/news/lancs-universities-first-uk-student-run-tax-helpline.php>> accessed 9 January 2020; see also, @TinaRiches1 (Tina Riches) (Twitter, 13 September 2019, 2:16am AEDT) <<https://twitter.com/TinaRiches1/status/1172438792109576192>> accessed 9 January 2020.

## **4.1 | Lessons learnt from the US LITC experience**

Through its rapid expansion, the LITC Program has come across a number of ‘growing pains’. These ‘growing pains’ are not and have not proven to be fatal to the operation and success of LITCs, but rather focus on issues of policy and administration, which are more long-term concerns. These are likely to have been the result of inadequate structural measures in place to cater for the explosive growth which LITCs experienced through the 1990s and early 2000s and are likely to continue to affect the LITC Program. Three themes emerge as major areas of concerns as a result of the program expansion; first, a widening gap between different types of LITCs; second, the need for visionary leaders; and, third, the need for goal setting and challenges associated with cost and evaluation. Each are detailed below.

### **1. Widening gap between different types of LITCs**

Expansion to more LITCs in the US has seen a significant gap in experience level of the attorneys managing different LITCs. Some have decades of tax experience, whilst others are staffed with relatively new attorneys and lack experienced mentors for these new practitioners.<sup>65</sup> Though attempts have been made in the past with annual training programs and assistance centres, the lack of a centralised training or resource centre for tax in the US means that there is difficulty in providing sufficient resources to provide ongoing training for attorneys.<sup>66</sup>

### **2. Visionary Leaders**

As Filler was in starting the very first tax clinic, and as Spragens and Olson were in the 1990s, which saw arguably the most revolutionary period of growth for LITCs, the ‘LITC community

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<sup>65</sup> Fogg (n 49).

<sup>66</sup> Fogg (n 49).

needs visionary leaders to keep pushing it forward'.<sup>67</sup> The history of the program has gone to show that the direction, vision and drive of leaders within the LITC community have been paramount in the increased prevalence of the clinics. As Fogg argues, the community needs new leaders of this type to move the current state of LITCs into a new chapter.<sup>68</sup>

### **3. Goal setting, Cost and Evaluation**

The LITC Program 'needs to set goals so it can achieve those goals'.<sup>69</sup> As mentioned previously, the administration of the program under the Internal Revenue Code s 7526 has not changed since its inception and consequently there is no guarantee that LITCs continue to serve the changing needs of the most vulnerable taxpayers.

The Taxpayer Advocate Service has published grant application guidelines for 2020 applications which detail the requirements for grants of a maximum of \$100,000 per annum.<sup>70</sup>

The US grants are open to applications by universities and NFPs. There are certain criteria that are important for gaining a grant. These include the amount of time devoted to the program by clinic staff, the comprehensiveness of services to be provided and the dates and hours of clinic operation.<sup>71</sup> With the need for an emphasis on teaching and education as well as providing appropriate services, academic based clinics are inherently disadvantaged from a productivity perspective in comparison to non-academic based clinics. It would be undesirable if the current grants administration scheme were to face administrators with the choice of prioritising the importance of the student learning experience or of emphasising LITC efficiency based on throughput of clients.

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<sup>67</sup> Fogg (n 49) 62.

<sup>68</sup> Fogg (n 49).

<sup>69</sup> Fogg (n 49) 62.

<sup>70</sup> See Olson (n 36).

<sup>71</sup> See Olson (n 36).

Legal clinics generally and tax clinics in particular are labour intensive and therefore expensive. The demand on academics to share their experience with practitioners who may not have the practical or substantive tax background of academics means that a large amount of their time is taken in mentoring these colleagues. Supervising students is also labour intensive, and as Book states ‘it is much cheaper for law schools to fill an 80-person classroom than to have one faculty member supervising at most ten tax clinic students’.<sup>72</sup>

#### 4.2 | Recommendations for Australia

These major areas of ‘growing pains’ identified in the US LITC Program serve as a point of reference to the future growth of the Australian National Tax Clinic Program.

Given the learnings from the US experience outlined above, the remainder of this Section 4 proposes a number of recommendations which anticipate and hopefully prevent issues associated with the expansion and development of Australia’s National Tax Clinics program. These recommendations are highlighted in the Table 2 and elaborated on in turn.

**TABLE 2** Policy recommendations for Australia’s National Tax Clinics program

<b>Policy recommendations</b>
Recommendation 1: There is a need for a centralised organisation with more closely aligned objectives and purpose which assists particularly in the administration of a tax clinic program
Recommendation 2: There is a need for ongoing Federal Government support to ensure the longevity of a tax clinic program
Recommendation 3: There is a need for a robust evaluation mechanism that measures the impact of tax clinics on all stakeholders
Recommendation 4: Evaluation through the Tax Clinics Program Logic

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<sup>72</sup> Book (n 29) 453.

**Recommendation 1: There is a need for a centralised organisation with more closely aligned objectives and purpose which assists particularly in the administration of a tax clinic program**

As the Taxpayer Advocate Service (and National Taxpayer Advocate) operates within the IRS,<sup>73</sup> Australia needs a similar organisation that advocates for and assists low-income taxpayers in all areas from representation to advocacy. Such an organisation (e.g. Inspector-General of Taxation or Taxation Ombudsman) would be able to highlight and identify problem areas with the operation of the Tax Clinic Program and provide suggestions to the ATO and the Federal Government for appropriate change. Further, this arrangement should also allow for better collaboration and information sharing between different tax clinics across the nation to ensure that the maximum number of taxpayers are represented and brought into compliance.

**Recommendation 2: There is a need for ongoing Federal Government support to ensure the longevity of a tax clinic program**

Using not only the US LITC Program as an example, continued government support in both Canada and the UK have seen increasing numbers of vulnerable taxpayers served and represented. Comparable jurisdictions have shown that by being able to equip the right people with resources, they are able to create widespread change for under-represented taxpayers, and Australia should be no different.

**Recommendation 3: There is a need for a robust evaluation mechanism that measures the impact of tax clinics on all stakeholders**

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<sup>73</sup> 'Our History', *Taxpayer Advocate Service* (Web Page), <<https://taxpayeradvocate.irs.gov/about/our-history>> accessed 9 January 2020.

The lack of robust evaluation criteria in the US has created a potential disconnect between the grant administrators and the clinics themselves, with the true extent of impact not properly conveyed. By being able to develop a set of evaluation criteria that not only centres around quantitative elements of a tax clinic, such as number of clients served or represented, but incorporating elements around student and tax professional engagement, the program itself would benefit greatly in the short term. Given that Australia's National Tax Clinics program has a similar starting point rooted in academic institutions, in the event that it was to scale and expand to non-academic institutions, this would allow for a separate set of evaluation criteria to be created for assessment by grant administrators.

#### **Recommendation 4: Evaluation through the Tax Clinics Program Logic**

The use of logic models and theory of change is utilised in the evaluation of investments by government departments and programs and even some community legal centres. However, such evidence-based models have not yet been adopted in the tax clinics literature either domestically or internationally. Accordingly, the following section 4.3 contextualises the use of program logic models as a best-practice approach to initiating and conducting a robust program evaluation, and proposes the Tax Clinics Program Logic.

#### **4.3 | Tax Clinics Program Logic**

Despite being commonly adopted as a standard approach to initiating and conducting robust program evaluations in both the program evaluation and social impact literatures, program logic models are rarely referred to in the tax literature. As such, this paper presents a novel contribution in this context through the development of the Tax Clinics Program Logic.

By presenting the Tax Clinics Program Logic, this paper seeks to; first, assist policymakers by presenting a novel evidence-based framework for designing and conducting a robust evaluation

of a nation-wide university-based tax clinics program; second, assist individual clinics to understand how well they are functioning, identify delivery challenges, and how and where improvements can be made; and third, assist researchers by highlighting the research opportunities across multiple stakeholder groups (namely, clients, students, the tax profession, the ATO and society) with reference to anticipated short-, medium- and long-term outcomes. Generally, program logic models articulate how an initiative's inputs (resources) are expected to translate into long-term benefits for clients and other stakeholders.<sup>74</sup> Overall, they can be understood as a testable hypothesis to be interrogated through evaluation and adjusted if appropriate. A program logic states what activities are to be undertaken (eg, advice, representation, education and advocacy for the tax clinics) and the outputs that are expected to be produced (eg number of clients receiving advice). Outputs are the direct products or services resulting from the program or interventions activities.<sup>75</sup> For example, with a Tax Clinic it might be the number of people advised, the amount of tax dollars taxpayers have saved or the number of educational seminars offered. Outcomes are alterations in attitudes, values, behaviours or conditions. They can be measured as occurring between a baseline and subsequent points of measurement. These changes can be immediate, intermediate or long-term.<sup>76</sup> Impact is also important and can be viewed as the longer-term outcomes from a program.<sup>77</sup>

In theory, the outputs that an activity produces should lead to outcomes in the short-, medium- and long-term, though there is no agreed-upon definition for these time frames. In the case of the Tax Clinics, short term for clients is seen as the period where a client is receiving assistance from a tax practitioner. For the other stakeholders, short-term may range over several years, depending on what the outcome is. Our model also assumes that outcomes for the tax

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<sup>74</sup> Kristy Muir and Stephen Bennett, *The Compass: Your Guide to Social Impact Measurement* (Report Centre for Social Impact, November 2014).

<sup>75</sup> See Muir and Bennett (n 74).

<sup>76</sup> See Muir and Bennett (n 74).

<sup>77</sup> See Muir and Bennett (n 74).

profession, the ATO and society will occur after outcomes are achieved for clients and the profession. However, this remains an empirical question until data is gathered. Our program logic also assumes a linear direction, but as more is learnt from the tax clinics, it is likely that the model will be adapted to account for complexity of outcomes. Finally, it should also be noted that as the model moves away from short term outcomes for clients and students it becomes progressively more difficult to attribute any change to the tax clinics, due to the influence of external factors. As such, we focus on contribution rather than attribution to understand the broader social impact of the tax clinics.<sup>78</sup> This approach focuses on techniques such as propensity matching and the triangulation of information from multiple data sources from multiple parties rather than determining cause and effect.<sup>79</sup> However, pending the success of the pilot study we expect to run control trials with clients to test the client and student short-term outcomes more rigorously.

These logic models are important from a program design perspective because they encourage designers to challenge their program's capacity to produce the intended long-term outcomes. Put another way, the viability of a program depends on having clear and ideally evidence-based outcomes in short and medium terms that will drive longer term outcomes. In the absence of an evidence base, we drew on our experience knowing that the model may change as evidence is generated and the model's assumptions developed and tested.

From an evaluation perspective, program logic shows what outcomes will get measured. Client outcome data will be captured through administrative data and via a longitudinal client survey implemented over several years. This will allow us an opportunity to reconnect with our clients to identify whether they are on track to lodge their future returns. Student outcome data will

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<sup>78</sup> S Morton, 'Progressing research impact assessment: A 'contributions' approach' (2015) 24(4) *Research Evaluation* 405.

<sup>79</sup> Rajeev H Dehejia and Sadek Wahba 'Propensity score-matching methods for nonexperimental casual studies' (2002) 84(1) *Review of Economics and Statistics* 151

also be captured through a longitudinal survey and by tracking career trajectories. The population of tax professionals will also be surveyed. The collection of outcome data for the ATO is still in development but could range from one-on-one interviews with key staff to the tracking of tax revenue. Finally, societal outcomes will be assessed through a combination of geographical location tracking to assess accessibility to services, population surveying and monitoring of government spending.

As has been mentioned in the introduction to this article, the University of New South Wales Business School hosted an ATO-funded conference on 19-20 June 2019. At this conference the directors of the tax clinics met to discuss and develop approaches to operating the clinics and their evaluation. The conference delegates discussed the manner in which the clinics should be evaluated and identified, by means of a working party process, the benefits or outcomes for various stakeholders of the Tax Clinic Program. This discussion ultimately led to the production of the Tax Clinic Program Logic.<sup>80</sup>

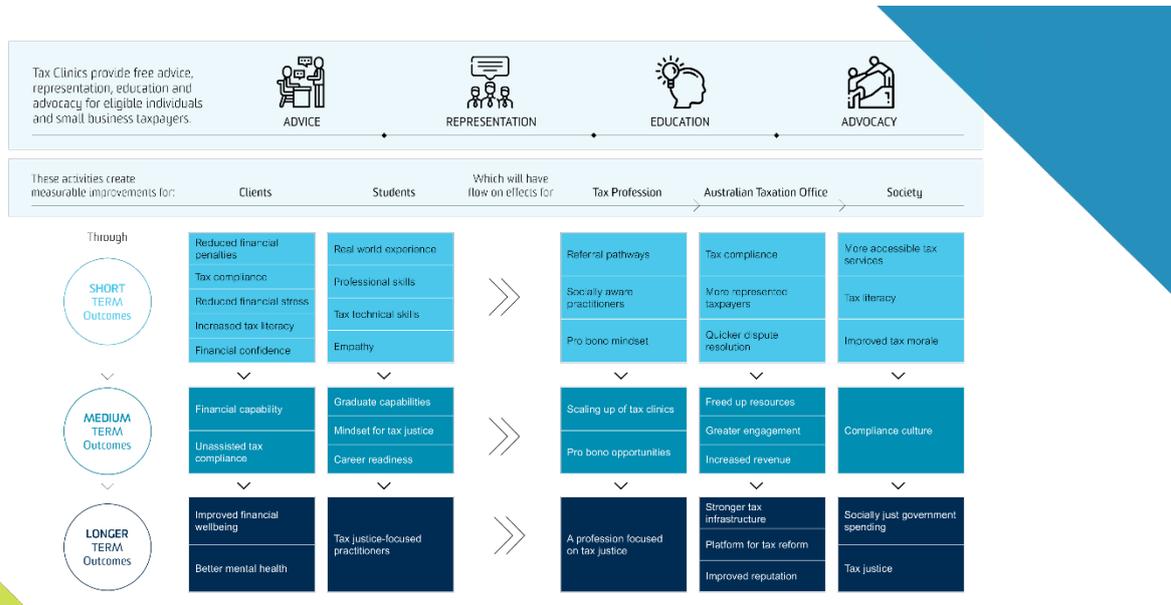
The co-creation of the Tax Clinics Program Logic involved a five-step process. First, the conference participants (comprising clinic directors and other academics involved in the establishment and operations of their respective clinics) were given a briefing on evaluation, outcomes and program logic design concepts. Second, participants were asked to map the anticipated outcomes for the five key stakeholders; namely, clients, students, tax professionals, the ATO and society. Third, participants were asked to review and select which of the other nine tax clinics' outcomes resonated with the outcomes for their own tax clinic. Fourth, subsequent to the conference, the anticipated outcomes were aggregated across each participant's preferences for each of the other nine universities, with the most popular themes

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<sup>80</sup> Ann Kayis-Kumar and Jack Noone, 'Measuring the Social Impact of University-Based Pro Bono Tax Clinics: Co-Creating a Framework for Evidence-Based Evaluation', *Aus Tax Policy* (Article, 3 October 2019) <<https://www.austaxpolicy.com/measuring-the-social-impact-of-university-based-pro-bono-tax-clinics-co-creating-a-framework-for-evidence-based-evaluation/>> accessed 9 January 2020.

extracted. Finally, the draft program logic was circulated for approval and comment across the cohort of ten universities – culminating in the Tax Clinics Program Logic illustrated in Figure 2.

**FIGURE 2 Tax Clinics Program Logic**



As shown in Figure 2, the stakeholders in the Tax Clinic Program are many. They range from the clients themselves, who are faced with the difficulty and stress of dealing with the issue on which they have found themselves in a dispute or other relationship with the ATO, through students who assist them (learning in the process) to the tax professionals who contribute through skills-based volunteering, to the ATO itself and ultimately the wider Australian community.

The benefits achieved for each set of stakeholders differs according to their perspective but these benefits overlap, with a common thread of tax justice. Significant in the narrower range of benefits are improvements to the financial literacy (in relation to tax), ability to cope with compliance obligations and mental health of clients. Significant amongst the wider benefits to the community are improved tax morale, education and an improved compliance culture. There are sundry benefits to others too. Notably the improved tax education and improved compliance

culture also benefit the ATO and its objectives. Expected outcomes for each stakeholder group are outlined in turn below.

## **Clients**

Beyond the short-term outcome of tax compliance, it is expected that clients will benefit from pro bono tax clinics through reduced financial stress, improvements to financial capability and in the longer-term an improvement in their financial wellbeing.

A range of special interest groups have already shown considerable interest in clinic services across Australia,<sup>81</sup> including the elderly, new migrants, people living with mental health illnesses, victims of financially abusive relationships, small businesses (including sole traders) at risk of bankruptcy, and disaster-affected taxpayers. This may be a broader range of taxpayers than might be anticipated at first blush. It is important to note that this is in part because there are many unintended consequences and frictions arising from the interaction of the tax and transfer system, which has profound implications for special interest groups including victims of financially abusive relationships and people facing bankruptcy. Regarding victims of financially abusive relationships, tax refunds may be the only significant lump sum of money that women experiencing financial abuse can independently access. Yet, government departments assume that a couple will share control of finances so make decisions like taking childcare rebate overpayments from the mother's tax refund. Regarding people facing bankruptcy, often it is not possible to submit a Centrelink application if there are overdue tax returns. Often these clients need social security support to pay for basic costs of living including food, and are unable to afford tax advice and support.<sup>82</sup>

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<sup>81</sup> See Kayis-Kumar and Noone (n 80).

<sup>82</sup> See for example, Wesley Mission, 'Changing lives, one tax return at a time' <<https://www.wesleymission.org.au/news-and-publications/latest-news/wesley-mission-news/changing-lives-one-tax-return-at-a-time/>> accessed 9 January 2020.

## **Students**

It is expected that students will immediately benefit from their involvement in tax clinics (either as volunteers and/or for course credit) by further developing their tax technical skills, obtaining real-world experience and professional skills, and expanding their emotional intelligence by assisting clients with mental health issues, language barriers and significant social and economic disadvantage.<sup>83</sup> It is anticipated that this will translate into a longer-term mindset for tax justice for the next generation of the tax profession. For completeness, a nation-wide Student Survey is currently underway among the National Tax Clinics cohort in order to track some of these outcomes.

## **Tax Professionals**

Unlike their counterparts in the legal profession, apart from tax clinics, tax professionals do not otherwise have a platform for skills-based volunteering. Yet, there are many benefits at both an individual-level, firm-level and community-level of encouraging a pro bono culture among tax professionals – not least of which is the reputational benefit by improving the public's perception not just of the firm but also of the profession. As illustrated in the Tax Clinics Program Logic, it is expected that the National Tax Clinics program will provide such a platform for skills-based volunteering. This would in turn assist with the scaling up of the National Tax Clinics program and ultimately foster a pro bono culture focussed on tax justice within the profession.

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<sup>83</sup> See Wesley Mission (n 82).

## **ATO**

As explored in the above section 2, the ATO has multiple avenues for engaging with taxpayers, including the ATO's Tax Help Program and Dispute Assist. ATO's Tax Help serves a genuine need for community assistance. However, it is merely complementary to the role and value of pro bono tax clinics which is in supporting marginalised taxpayers with more complex issues who do not have the resources to pay for professional tax advice. There is a genuine – and otherwise unmet – need for this type of assistance which university-based pro bono clinics are uniquely positioned to fill.

For example, the advent of both the casualisation of the workforce and the gig economy gives rise to unintended consequences for low-income taxpayers who are increasingly conceptualised as earning business income. This disqualifies them from accessing the ATO's Tax Help Program. So, in just the short-term at a societal level, tax clinics can assist in providing more accessible tax services, bolster tax literacy and improve tax morale. This in turn assists the ATO's mission of fostering a culture of voluntary compliance in the medium-term, and likely lead to improved outcomes for tax justice in the long-term.

## **Society**

As anticipated by the Tax Clinics Program Logic, the impact of tax clinics goes to the core of delivering positive social impact and achieving social justice. As observed by Afield:

*“Tax justice, however, is in fact a social justice issue. The most illustrative example of the social justice gains that can occur when tax justice is prioritized as an area of need can be found in the work of low-income taxpayer clinics (“LITCs”) ... Appreciating the social justice components of tax justice is not solely an academic issue of definitional precision — failing to understand the*

*connection between tax work and social justice has negative societal consequences as well.”<sup>84</sup>*

Ultimately, it is hoped that the Tax Clinics Program Logic will assist both researchers and policymakers in Australia and overseas in their implementation and evaluation of university-based pro bono tax clinics. By providing an agreed framework for designing and conducting a robust evaluation, the Tax Clinic Program Logic will help policymakers and researchers understand how well university-based pro bono tax clinics are functioning, delivery challenges, and how and where improvements can be made.

## **5 | CONCLUSION**

The history of LITCs can be seen to be a long one in the US. Although this initiative has not been replicated in either Canada, or the UK, the need for tax advice for low income taxpayers is clearly necessary in each country, as is demonstrated by the limited services made available there. The Australian Federal Government has taken the initiative and adopted a model of granting funds to universities that represent all regions of Australia in order to establish tax clinics that will assist low income taxpayers and small businesses. This is both forward thinking and innovative, and has attracted and maintained bipartisan support.

This paper has demonstrated the effectiveness of the LITCs in the US and also highlighted key themes and lessons learnt from overseas experiences. In order to anticipate and overcome challenges, and evaluate the Australian clinics appropriately, the authors, with the concurrence of all clinical directors, have developed the Tax Clinics Program Logic. This is a novel, evidence-based framework for the evaluation of pro bono tax clinics both over time and across the five key stakeholder groups of clients, student, the tax professional, the ATO and society.

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<sup>84</sup> Walter Edward Afield, ‘Social justice and the low-income taxpayer’, (2019) 64(3) *Villanova Law Review* 347, 347.

Further, this paper conceptualises pro bono clinics as a platform for attaining tax justice by identifying systemic injustices and advocating for tax reform. This is a unique contribution given the historical tendency in the tax literature of not conceptualising tax clinics as a platform for grassroots academic research. As such, the Tax Clinics Program Logic presents a useful framework for scaffolding further research focussed on attaining tax justice.