

INTERPROFESSIONAL COLLABORATIVE PRACTICE IN PRO BONO TAX CLINICS: A CASE STUDY APPROACH

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ABSTRACT

As one of the initial universities in the Federal Government's National Tax Clinic Pilot Program, the University of New South Wales ('UNSW') Tax Clinic provides free, independent and confidential tax advice and support to financially vulnerable individuals and small businesses across New South Wales ('NSW').

One of the greatest challenges in establishing a free tax clinic is in ensuring that only those who are genuinely in need have access to the service. Further, tax law is a unique area of law whereby access to the transfer system (that is, welfare benefits) is often predicated on the requirement for individuals to be up-to-date with their tax affairs. This itself presents an additional barrier in access to justice.

So, by adopting an interprofessional collaborative approach, UNSW Tax Clinic offers vulnerable taxpayers – who meet criteria that are both transparent and nuanced – the ability to obtain free tax advice and support.

Keywords: tax clinics, free tax advice, access to justice

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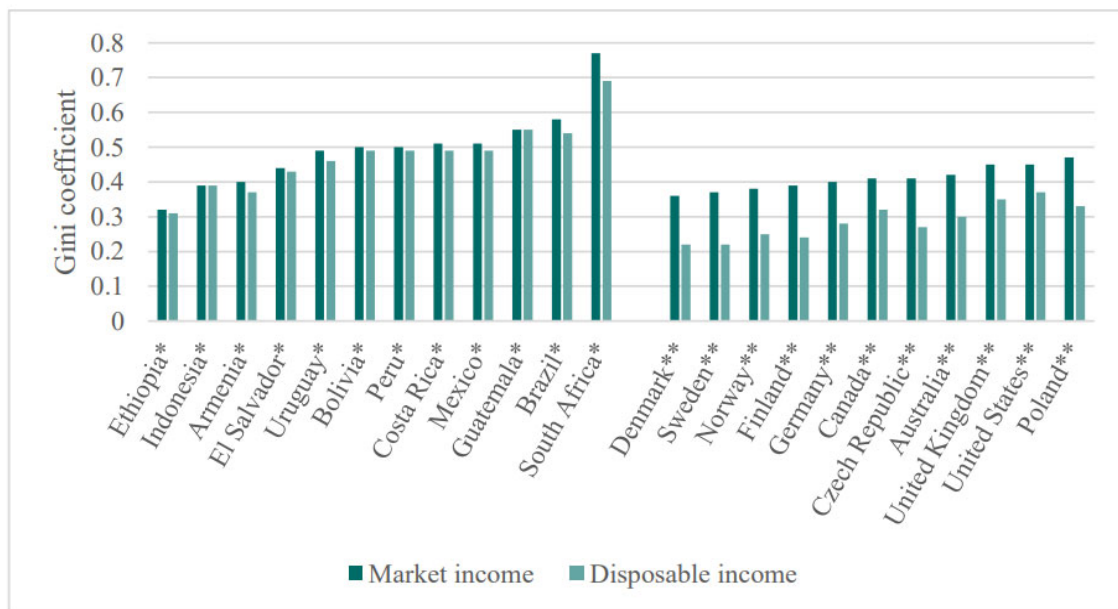
I INTRODUCTION

The study and practice of taxation law has a public relations problem. Despite one of the central tenets of taxation policy and design being ‘equity’, tax problems are often perceived as being the domain of the wealthy. Indeed, tax justice is often conceptualised in the context of the taxation of multinationals.

It is surprising that not more has been done in the context of assisting financially vulnerable taxpayers – both domestically and internationally.

The tax literature is often focused on only one side of the equation; that is, tax law only, without also considering the tax and transfer system as a whole. Even when the tax and transfer system is conceptualised holistically, the analysis is often focused on the distributional impact of taxes and transfers. While high income countries generally achieve significant social impact through direct taxes and transfers (as shown in Figure 1 below), this macro-level analysis does not focus on identifying systemic issues in the tax and transfer system faced by financially vulnerable groups.

FIGURE 1 – MARKET AND DISPOSABLE INCOME OF VARIOUS COUNTRIES



Source: Countries ranked in increasing order of market income Gini. Armenia (Younger et al., 2014), Bolivia (Paz-Arauco et al., 2014), Brazil (Higgins and Pereira, 2014), Costa Rica (Sauma and Trejos, 2014), El Salvador (Beneke et al., 2015), Ethiopia (Hill et al., 2014), Guatemala (Cabrera et al., 2014), Indonesia (Jellema et al., 2014), Mexico (Scott, 2014), Peru (Jaramillo, 2013), South Africa (Inchauste et al., 2014) and Uruguay (Bucheli et al., 2014) in World Bank (2014), OECD (2011); * annual observation for year between 2009-2012; ** OECD data mid-2000s.

Yet, there is an increasing emphasis in the international literature that tax policies should not be solely concerned with revenue generation but should also ‘stress the necessity of the consideration of social function[s] when imposing and collecting taxes’.¹ Most notably, in the early 2000s, Sammartino and Toder emphasised that it is important for policymakers to continually seek new ways of using the tax system to assist low-income families, and to widen their access to free/subsidised health care, paid child care and labour market opportunities.² More recently, McPhail has suggested tax policies should be centred around maximising revenue while minimising costs to economic health and social wellbeing.³ This has been reaffirmed by Taite who highlights that tax policies should be implemented in a balanced way that provides benefits to taxpayers across the income spectrum.⁴ Furthermore, Musaeva et al emphasise that tax policies, particularly *income* tax policies, are not only effective fiscal tools, but also tools for implementing social policies and for guaranteeing justice in taxation.⁵

Thus, the advent of tax clinics goes to the core of delivering positive social impact and achieving social justice by overcoming barriers to tax 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 ... 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.⁶

The structure of this paper is as follows. Section 1 is an introduction. Section 2 provides some background material on the existing social impact ecosystem and the potential role of

¹ Vladimíra Žofčinová, Zuzana Horváthová and Andrea Čajková, ‘Selected Social Policy Instruments in Relation to Tax Policy’ (2018) 7(11) *Social Sciences* 241, 242.

² Frank Sammartino and Eric Toder, ‘Social Policy and the Tax System’ (Research Report, Urban Institute, 1 January 2002) 21.

³ Joseph Eugene McPhail, ‘The Cost of Government: How Taxes Affect Economic Health and Social Well-Being’ (MS Thesis, Iowa State University, 2008) 75.

⁴ Phyllis C Taite, ‘Exploding Wealth Inequalities: Does Tax Policy Promote Social Justice or Social Injustice?’ (2014) 36(3) *Western New England Review* 201, 218.

⁵ Khaibat Magomedtagirovna Musaeva et al, ‘Problems of Implementation of Principles of Social Justice and Economic Efficiency in the Mechanism of Charging Personal Income Tax in the Russian Federation’ (2015) 5(3) *International Journal of Economics and Financial Issues* 105, 106.

⁶ Walter Edward Afield, ‘Social justice and the low-income taxpayer’ (2019) 64(3) *Villanova Law Review* 347, 347.

Australia’s National Tax Clinic Program in this setting. Section 3 makes observations from a pilot year of integration into the social impact ecosystem, including challenges and key findings. Section 4 is the conclusion.

II THE SOCIAL IMPACT ECOSYSTEM

In our view, the ‘missing piece of the puzzle’ that tax clinics are ideally positioned to fill is the gap between free *tax assistance* (including the Australian Taxation Office’s (‘ATO’) Tax Help Program,⁷ which does not give tax advice) and independent, professional *tax advice*. While the ATO’s Tax Help Program serves a genuine need for community assistance, it has limited scope because it can only assist in preparing simple, mostly current-year returns for low income people – and it therefore does not provide tax advice. Moreover, small businesses (including sole traders) are not eligible. Low income individuals, with Australian Business Numbers, engaged in the ‘gig’ economy are also not eligible.

UNSW Tax Clinic is the first tax clinic nation-wide to be integrated into the financial counselling sector. Almost all clients are obtained via ‘warm referrals’ from the financial counselling profession. For completeness, financial counsellors work in not-for-profit community organisations providing free, independent and confidential advice and support to people experiencing financial stress.⁸

However, financial counsellors are unable to lodge tax returns. Yet, outstanding tax returns prevent taxpayers’ access to the full range of Centrelink benefits. This leaves many clients who see financial counsellors unable to afford the necessities including food, accommodation and transport. This may present an access to tax justice issue because those with late tax returns are more likely to come from socio-economically disadvantaged communities.⁹

⁷ Melinda Jone, ‘A Preliminary Evaluation of Australia’s Tax Dispute Resolution System in the Context of the ATO’s Reinvention Program’ (2019) 34(3) *Australian Tax Forum*; Michael D’Ascenzo, ‘Successful Experimentation in ATO policy and execution-the importance of stakeholders: Nurturing a culture of innovation’ (Address by Alison Lendon First Assistant Commissioner on behalf of Michael D’Ascenzo, Commissioner of Taxation to the Annual L21 Public Sector Leadership Series, Sydney, October 2012); Michael D’Ascenzo, ‘Modernising the Australian Tax office (ATO)’ (Indaba, South Africa, 11 June 2014).

⁸ Paul Ali, Lucinda O’Brien and Ian Ramsay, ‘Perspectives of Financial Counsellors and Consumer Solicitors on Personal Insolvency’ (Report, Centre for Corporate Law and Securities Regulation, 15 September 2015).

⁹ Ann Kayis-Kumar et al., ‘Accounting for financial wellbeing: Quantifying the unmet need for pro bono tax advice’ (forthcoming).

Further, many clients need assistance with serious hardship applications, debt relief and waivers. This is not considered ‘work’ in paid practice.¹⁰ However, it is incredibly difficult for financially vulnerable clients (who are often struggling with many other issues)¹¹ to make such applications without the knowledge and expertise of a tax professional. Indeed, many would not even know that such options exist.

Only registered tax agents are authorised to professionally lodge tax returns as part of a tax agent service (pursuant to section 90-5 of the *Tax Agent Services Act 2009* (Cth)). So, we provide our clients – all of whom are financially vulnerable – with a pro bono tax agent service. That is, our team of registered tax agents provide free and independent tax advice to financially vulnerable taxpayers who otherwise would not have access to tax advice across NSW. This service is year-round and we specifically target vulnerable taxpayers in genuine financial distress.

A Defining ‘Financially Vulnerable’

Identifying – and engaging with – vulnerable taxpayers is critically important for the integrity of the clinic’s work. Further, such an emphasis is vital in managing both expectations and perceptions of the value of this program within the tax profession and the wider community

The importance of helping vulnerable taxpayers has also been identified by government, including in Recommendation 34 of the House of Representatives Standing Committee on Tax and Revenue’s List of Recommendations in relation to the 2016-17 Annual Report of the Australian Taxation Office (extracted below):

Recommendation 34

The Committee recommends that the Government establish a fully independent low cost external support mechanism which provides vulnerable taxpayers (who meet transparent criteria) the ability to provide funded, or part funded legal representation.

¹⁰ Ann Kayis-Kumar, ‘Tax justice as social justice: Are financially vulnerable people and small businesses falling through the cracks?’, *Accountants Daily* (Web Article, 26 June 2020) <<https://www.accountantsdaily.com.au/columns/14542-tax-justice-as-social-justice-are-financially-vulnerable-people-and-small-businesses-falling-through-the-cracks>>.

¹¹ Ann Kayis-Kumar, Jack Noone, Fiona Martin and Michael Walpole, ‘Performers and sole traders find it hard to get JobKeeper in part because they get behind on their paperwork’, *The Conversation* (Web Article, 25 May 2020) <<https://theconversation.com/performers-and-sole-traders-find-it-hard-to-get-jobkeeper-in-part-because-they-get-behind-on-their-paperwork-137997>>.

The design and operation of the US Low Income Taxpayer Clinics program could be considered as a model for an Australian initiative.¹²

Thus, transparent and nuanced criteria are vital.

Means tests in the pro bono tax/legal domain are typically centred around income levels. This is demonstrated in the eligibility tests for Legal Aid, which include a means test as one of its four-prong eligibility criteria:

1. The Jurisdiction Test looks at whether legal aid is available in that jurisdiction and area of law.
2. The Means Test looks at your income and assets. If you are eligible, we look at how much contribution you will pay towards the cost of the service. Our means test indicator is a guide to help you assess whether you may be financially eligible for legal aid in those matters where Legal Aid has a means test.
3. The Merit Test looks at whether it is reasonable in all the circumstances to grant aid taking into account, among other criteria, whether the your matter has a reasonable prospect of success and whether providing legal assistance will benefit you.
4. The Availability of Funds Test means that aid will only be granted if Legal Aid NSW considers that there are sufficient funds available.¹³

In the US context, the Low Income Tax Clinics utilise an income-based means test, with income ceilings at 250% of Poverty Guidelines and weighted for size of the taxpayer's family.¹⁴ Each clinic decides whether a prospective client meets the income guidelines and other criteria before agreeing to represent a taxpayer.

There are advantages and disadvantages with using an income/assets-based means test approach. A significant disadvantage is that vulnerability is more nuanced than income/asset levels alone. For example, women experiencing domestic and family violence (including

¹² House of Representatives Standing Committee on Tax and Revenue, *2017 Annual Report of the Australian Taxation Office: Fairness, Functions and Frameworks - Performance Review* (Report, February 2019) xxv, 180-181.

¹³ Legal Aid NSW, 'Legal aid eligibility tests' (Web Page, 26 March 2019) <<https://www.legalaid.nsw.gov.au/get-legal-help/applying-for-legal-aid/policy-easy-guide/legal-aid-tests>>.

¹⁴ Internal Revenue Services, 'Information for Taxpayers Seeking LITC Services' (Web Page, 2020) <<https://www.irs.gov/advocate/low-income-taxpayer-clinics/low-income-taxpayer-clinic-income-eligibility-guidelines>>.

financial abuse) can often be temporarily financially disadvantaged as well as emotionally distressed.

So, it is important not to conflate ‘low income’ and ‘financial vulnerability’. An unintended consequence of applying an income/assets-based means test is that some prospective clients may satisfy the criteria but not be financially vulnerable, and others may be financially vulnerable but not fit the strict criteria.

Other literature conceptualises ‘financial vulnerability’ as people who are experiencing severe or high financial stress. This is a more sophisticated framework by which to determine financial vulnerability.

The Centre for Social Impact defines financial resilience as ‘the ability to access and draw on internal capabilities and appropriate, acceptable and accessible external resources and supports in times of financial adversity’.¹⁵ The four components identified through the literature as being crucial to being able to bounce back from financial shocks are:

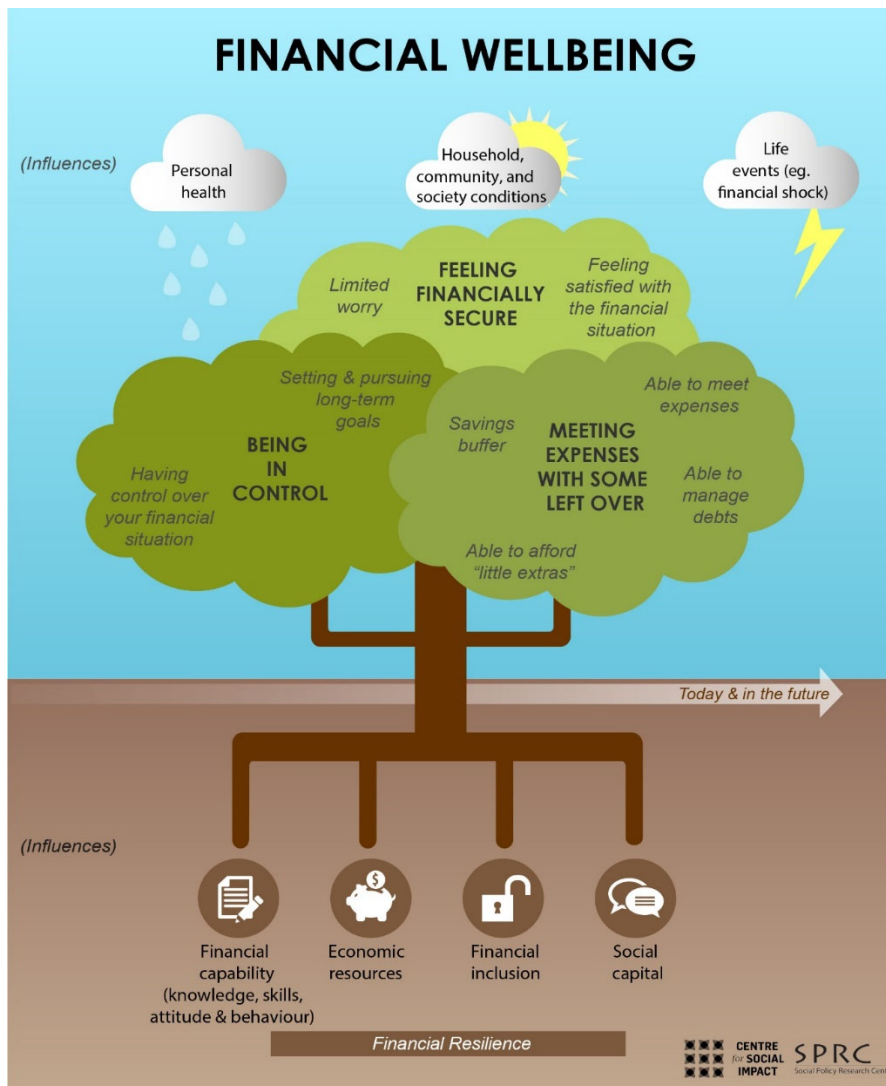
1. Economic resources: income; savings; debt management; capacity to raise \$2,000 in an emergency; and ability to meet cost of living expenses.
2. Financial products and services: access to, and demand for bank accounts; credit; and insurance.
3. Financial knowledge and behaviour: knowledge of, and confidence using financial products and services; use and willingness to use financial advice; and proactive financial behaviours.
4. Social capital: level of social connections; likelihood of getting financial support from social connections in times of crisis; and the need for and access to community and government support.¹⁶

This financial resilience framework encourages considering a more complete picture of a person’s background, experiences and needs. It can also be conceptualised within the broader context of financial wellbeing, which is illustrated in Figure 2 below.

¹⁵ Centre for Social Impact, ‘Financial security and the influence of economic resources: Financial Resilience in Australia’ (Report, December 2018) 10.

¹⁶ Ibid.

FIGURE 2 – OVERVIEW OF FINANCIAL WELLBEING¹⁷



Similarly, the eligibility criteria used by the financial counselling profession is expansive and includes questions such as the following:

How do I know if I need financial counselling?

- Are you having difficulties managing your money?
- Are you spending more than you earn?
- Are you experiencing financial difficulties due to unemployment, illness or personal problems?
- Are you struggling with managing debt and ongoing expenses?
- Is your vehicle about to be repossessed?

¹⁷ Centre for Social Impact, ‘New report reveals financial wellbeing is about more than the finances’ (Media Release, 26 September 2017) <<https://www.csi.edu.au/news/media-release-new-report-reveals-financial-wellbeing-about-more-finances/>>.

- Are you behind on your rent or mortgage repayments?
- Have you received a legal notice regarding your debts or unsure about your legal responsibilities?¹⁸

This offers considerable benefits over a simple assets/income-based means test. Accordingly, by ‘piggybacking’ off the existing clients assisted – and vetted – by the financial counselling sector, UNSW Tax Clinic offers an eligibility pathway that is unique by both international and domestic standards in the context of pro bono tax clinics.

An additional benefit of working with the existing social impact ecosystem is that it encourages a unique opportunity for interprofessional collaborative practice.

B *Identifying Opportunities for Interprofessional Collaborative Practice*

Widely used in relation to the healthcare system, interprofessional teams can target vulnerable populations who face ongoing health disparities. Patients from vulnerable populations often present in community settings with multiple comorbidities, which benefit from a team approach focusing on prevention and enhancing their quality of life.¹⁹ This is of relevance in the tax clinic setting, however an even more pressing need is interprofessional collaboration between tax clinics and the financial counselling profession.

While there is considerable literature on financial literacy and tax literacy (and their inter-relationship),²⁰ there is a relative dearth of literature in relation to financial counselling. The remainder of this section outlines this existing literature and, in doing so, highlights existing gaps in this literature.

Financial counselling is uniquely positioned to engage with otherwise marginalised and vulnerable populations. This includes culturally and linguistically diverse clients, Indigenous

¹⁸ Wesley Mission, ‘Financial counselling’ (Web Page, 2019) <<https://www.wesleymission.org.au/find-a-service/mental-health-and-hospitals/counselling/financial-counselling/>>.

¹⁹ Terry Eggenberger et al., ‘Interprofessional education and practice guide: developing interprofessional community-based clinical experiences’ (2019) 6(1) *Cogent Medicine*.

²⁰ A detailed analysis of this is beyond the scope of this paper. See further: Toni Chardon, Brett Freudenberg, Mark Brimble, ‘Tax Literacy in Australia: Not Knowing Your Deduction from Your Offset’ (2016) 31 *Australian Tax Forum* 321; Brett Freudenberg et al., ‘Tax literacy of Australian Small Business’ (2017) 18(2) *Journal of Australian Taxation* 21-61; Toni Chardon, Mark Brimble and Brett Freudenberg, ‘Tax and superannuation literacy: Australian and New Zealand perspectives’ (2016) 22(4) *New Zealand Journal of Tax Law and Policy* 327.

Australians, people experiencing mental health problems, women experiencing financial abuse, and people in regional and remote communities, among others.

Beyond a focus on financial issues, there is literature suggesting a clear need to take into account emotional and social issues which extend beyond the financial domain.²¹

Publications by Financial Counselling Australia indicate that financial counsellors have been able to help their clients achieve financial independence,²² improve their overall wellbeing,²³ and negotiate debt waivers and more feasible repayment plans.²⁴

Of most relevance in the tax context, financial counsellors can also briefly explain the tax consequences of certain types of payments, how they may affect Centrelink payments and how they interact with existing debts. This ensures that in the short-term, recipients will be able to understand and assess the options available to them.²⁵

Meanwhile, by helping recipients develop practical strategies to safeguard their money and encouraging them to consider investment options, financial counsellors can also help their clients build long-term financial resilience and improve their overall wellbeing.²⁶

Evidence of these outcomes is also explored in the existing literature.

Table 1 below, summarises the short-, medium- and long-term effects of financial counselling on the financially vulnerable groups they serve.

²¹ Shirley Morrissey and Joseph Reser, 'Natural disasters, climate change and mental health considerations for rural Australia' (2007) 15(2) *The Australian Journal of Rural Health* 120.

²² Financial Counselling Australia, 'Assisting clients affected by Family violence: the results of a survey of financial counsellors and financial capability workers' (Report, October 2016) 5, 19, 36.

²³ *Ibid* 6, 17, 19, 26, 32.

²⁴ *Ibid* 6, 12, 15–16, 21, 27, 33–4.

²⁵ Financial Counselling Australia, Submission No 2 to Senate Standing Committees on Economics, Parliament of Australia, *Inquiry into Credit and Financial Services Targeted at People in Financial Hardship* (November 2018).

²⁶ *Ibid*.

TABLE 1 – EFFECTS OF FINANCIAL COUNSELLING ON FINANCIALLY VULNERABLE

AUTHORS	SHORT-TERM EFFECTS	MEDIUM-TERM EFFECTS	LONG-TERM EFFECTS
Brackertz (2013) ²⁷	<ul style="list-style-type: none"> ▪ Resolution or alleviation of debt issues ▪ Relieves financial stress ▪ Helps those in need avoid bankruptcy/legal action 	<ul style="list-style-type: none"> ▪ Financial literacy (how to prioritise debt, how to budget and how to choose appropriate financial products to suit their individual needs) 	<ul style="list-style-type: none"> ▪ Develop longer-term financial management strategies ▪ Improve physical and mental wellbeing ▪ Strengthen relationships with family and friends
University of Adelaide’s ‘Paying it Forward’ study (2014) ²⁸	<ul style="list-style-type: none"> ▪ Successfully negotiated debt reductions ▪ Moratoriums, waivers and grants 		<ul style="list-style-type: none"> ▪ Financial literacy ▪ Stabilised housing ▪ Improved health and wellbeing
Financial and Consumer Rights Council ²⁹	<ul style="list-style-type: none"> ▪ Basic IT literacy ▪ Financial literacy 	<ul style="list-style-type: none"> ▪ Obtain services, support benefits, government concessions and hardship provisions ▪ Reduced stress and anxiety 	
Ali, O’Brien and Ramsay (2015) ³⁰	<ul style="list-style-type: none"> ▪ Financial literacy (making more informed decisions regarding their financial problems) 	<ul style="list-style-type: none"> ▪ Reduce unnecessary delay ▪ More efficient court processes resulting in less wastage of court resources 	

III CASE STUDY OF UNSW TAX CLINIC

This section provides an overview of the clinical operation of UNSW Tax Clinic and highlights its pilot year observations.

²⁷ Nicola Brackertz, ‘The impact of financial counselling on alleviating stress in low income households: A national Australian empirical study’ (2014) 13(3) *Social Policy and Society* 389-407.

²⁸ Parvin Mahmoudi, Ann-Louise Hordacre and John Spoehr, ‘Paying it forward-Cost benefit analysis of the Wyatt Trust funded financial counselling services’ (Report, Australian Workplace Innovation and Social Research Centre, 2014).

²⁹ Financial Counselling Victoria Inc, ‘How a financial counsellor can help’ (Web Page, 2020) <<https://fcvic.org.au/about-financial-counselling/>>.

³⁰ Paul Ali, Lucinda O’Brien and Ian Ramsay, ‘Perspectives of Financial Counsellors and Consumer Solicitors on Personal Insolvency’ (Report, Centre for Corporate Law and Securities Regulation, 15 September 2015).

A Overview of Operations

UNSW Tax Clinic provides free tax advice, representation and education to people in financial distress. It is operated by UNSW Business School’s School of Taxation & Business Law (the ‘School’).

Open 48 weeks in the year, UNSW Tax Clinic offers a range of appointment types depending on client circumstances and location. Specifically:

- Telephone appointments (across NSW including rural and remote communities as far as 800 kilometres north, 390 kilometres south and 685 kilometres west);
- Outreach locations (in Sydney CBD, Bondi Junction and Eastlakes); and,
- On-campus (at UNSW’s ‘Nucleus: Student Hub’).

In terms of personnel, the School employs three registered tax agents as Clinic Supervisors, each for only one day per week, to guide and mentor students involved in the UNSW Tax Clinic. Clinic Supervisors are paid at university sessional rates – as such, substantially lower than professional fees. Clinic Supervisors are the only people who give tax advice to clients (as part of a tax agent service).

Our students are an integral part of our clinic. UNSW Tax Clinic students are UNSW Business School and/or UNSW Faculty of Law students at either undergraduate or postgraduate level. Their role is to take instructions, attend client interviews, draft correspondence, assist with education seminars and conduct relevant research. These activities are completed in either their capacity as Enrolled Students (course codes are TABL3033/TABL5933)³¹ or as Student Volunteers (for AHEGS recognition on their academic transcripts).

To ensure continuity of service, the School employs an Administrative Assistant as Clinic Officer who makes client appointments and assists with general clinic operations. Our Clinic Officer works part-time flexibly, thereby ensuring that clients hear from UNSW Tax Clinic within 1-2 business days at most.

³¹ Launching in June 2019, UNSW Tax Clinic was the first tax clinic nation-wide to offer a specialist tax clinic course.

The School also engages pro bono tax professionals – including from the Big 4 (PwC and KPMG) to assist our Clinic Supervisors with client matters (but not providing tax advice).

B *Pilot Year Observations*

UNSW Tax Clinic’s pilot year gave rise to a number of surprising findings. Many of these have been the subject of government submissions, and are summarised below.

1 *Barriers to Tax Justice for Financially Vulnerable People*

There are widespread community perceptions that if someone has a tax problem then they are sufficiently wealthy to be able to afford paid professional advice. However, UNSW Tax Clinic’s observations indicate that long-term outstanding tax returns prevent access to the full range of Centrelink benefits in financially vulnerable clients. Yet, those with late tax returns are more likely to be from socio-economically disadvantaged communities.³²

Further, financially vulnerable clients may have complex and historical tax issues (including unsustainable company/trust structures set up by their former tax agents), and be at risk of bankruptcy. This is in addition to other financial and mental health issues.³³

2 *Issues Faced by Small Business Clients*

Around 40% of the UNSW Tax Clinic’s clients run small businesses (often as sole traders). At the end of the pilot year (following just 6 months of operation), our small business clients had substantial tax debts (averaging approximately \$115,000) that arose from multiple years of overdue tax returns and Business Activity Statements (‘BAS’). On average, we see around 36 outstanding BAS returns per client (ranging from 1-80).

If a client’s business is not profitable, they cannot afford to pay for an accountant to finalise their income tax returns and BAS. Further compounding this is the notion that the client often does not understand their tax and legal obligations as a company director. This is evident from our research into insolvent trading cases, which have a disproportionate impact on directors of proprietary companies, compared to those of public companies, resulting in personal liability

³² Ann Kayis-Kumar et al, ‘Accounting for financial wellbeing: Quantifying the unmet need for pro bono tax advice’ (forthcoming).

³³ Ann Kayis-Kumar et al, ‘Pro Bono Tax Clinics: An international comparison and framework for evidence-based evaluation’ *Australian Tax Review* (forthcoming).

of the director for the corporate debts, and which often ends in the director’s bankruptcy. In addition, our experience at UNSW Tax Clinic also shows that many small business clients cannot afford to pay their accountant to complete their tax returns and BAS and/or finalise their tax position before filing for bankruptcy.

As a result, amongst other things, these clients have multiple years of overdue BAS returns (and, consequently, have outstanding GST payment obligations) – indeed, we have seen several going back to when GST started in 2000. These clients continue to incur significant penalties on these outstanding amounts.

From what we have observed within our small business clients, we would suggest that there is a need for clear, unemotional advice on what the implications are for directors who become insolvent. This advice should, or would likely, extend to implications concerning cost, effect on personal and family assets, and opportunities for financial rehabilitation.³⁴

3 *Regulatory Barriers to Engaging Tax Professionals*

One of the key barriers for tax practitioners who wish to engage in pro bono tax advice is that they currently need to intermingle their non-clinic clients with their clinic clients. The compliance profiles of these two groups are understandably very different and, in our experience, agents are apprehensive that their reputation with the ATO may be affected by the often poorer compliance records of their tax clinic clients. It is relatively straightforward to overcome this hurdle.

Specifically, a separate tax agent registration for university-based clinics would remove the need for professional indemnity (‘PI’) insurance to cover pro bono tax agents for any civil claims arising from their pro bono tax advice. The insurance burden would shift to the clinic itself. UNSW Tax Clinic has already expressed this view to Federal Treasury in the form of a submission to its Review of the Tax Practitioners Board (August 2019).³⁵

³⁴ Michael Walpole, Ann Kayis-Kumar and Gordon Mackenzie, Submission to Australian Small Business and Family Enterprise Ombudsman, *Inquiry into Insolvency Practices* (24 January 2020) <<https://www.asbfeo.gov.au/sites/default/files/documents/II010%20UNSW%20Tax%20Clinic%20redacted.pdf>>.

³⁵ Michael Walpole, Ann Kayis-Kumar and Gordon Mackenzie, Submission to Treasury, *Review of the Tax Practitioners Board* (29 August 2019) <https://treasury.gov.au/sites/default/files/2019-09/c2019-t398920_-_unsw_tax_clinic.pdf>.

IV CONCLUSION

The National Tax Clinic Project is an opportunity to address some of the longstanding problems associated with the lack of access to justice for vulnerable groups. A remedy for this lack of access is valuable for tax morale and contributes to an enhanced compliance culture. Facilitating a healthy compliance culture is valuable to the ATO, and to the nation generally. Education and representation of clients also assist the ATO in dealing with problem clients and sets the path for a better relationship with such clients. In addition, the facility to address their tax compliance problems reduces stress and improves the mental health of taxpayers who have put themselves on the wrong side of the tax administration table. The UNSW Tax Clinic has made it a principal objective to assist such taxpayers.

Anything that can assist tax clinics to operate more easily (such as the registration of clinics generally to reduce regulatory professional barriers) would be of benefit to the program of assisting problem clients and would, in the long run, benefit the nation. Similarly, the preponderance of small business taxpayers amongst the population of clients in need of free independent tax advice accentuates the value of the clinics given the important role of small business in the Australian economy. The UNSW Tax Clinic aims to be a significant part of the solutions that the National Tax Clinic initiative intends to deliver.