

# Internationalising the Australian law curriculum for enhanced global legal practice

*Final Report 2012*

*Curtin University*

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The project team acknowledges the input from Anne McNaughton of the Australian National University in regard to the development of an internationalised curriculum for a *Contracts* law subject.

## List of acronyms used

ALRC	Australian Law Reform Commission
ALTC	Australian Learning and Teaching Council Ltd.
AQF	Australian Qualifications Framework
AUTC	Australian Universities Teaching Committee
CALD	Council of Australian Law Deans
ILSAC	International Legal Services Advisory Council
JD	Juris Doctor
LACC	Law Admissions Consultative Committee
LCA	Law Council of Australia
LPO	Legal process outsourcing
LTAS	Learning and Teaching Academic Standards
OECD	Organisation for Economic Co-operation and Development
OLT	Office for Learning and Teaching
TEQSA	Tertiary Education Quality and Standards Agency
USA	United States of America

## Executive summary

Globalisation has impacted on many aspects of society and business, particularly trade, investment and finance, but also in areas such as the environment and human rights. Lawyers working in the private sector or for government or non-government organisations increasingly work in and across different jurisdictions to deal with matters that have an international focus and dimension. Globalisation of the legal services sector has given rise to the 'global law firm'.

There is broad consensus among legal academics and practitioners that law schools need to deliver law programs that take cognisance of global developments and the increasing emphasis on internationalisation. The challenge to law schools is to rethink their law programs – their curriculum, approaches to teaching, student support and the student experience in general.

The project authors undertook a review of significant literature, which describes both the theory and practice of internationalising the law curriculum. Based on findings from the literature, the project team collected data from employers using round-tables and interviews. The summary findings from the data were tested at a national symposium involving representatives of the legal profession in high-level discussion.

From the data and discussions, the project authors developed a framework for internationalising the Australian law curriculum. The purpose is to better equip graduates to work in a global, international context and across multiple jurisdictions; and to enable graduates to contribute in an international setting to the articulation, nurturing and transmission of values.

### Conclusions

The conclusions which this project draws are –

- Internationalisation is having a significant impact on legal practice in Australia.
- Law schools recognise that legal education must change to reflect this new reality.
- Developments in regard to the internationalisation of the law curriculum are not static and there are further developments.
- A multi-faceted approach is required for internationalising the law curriculum.
- There is a range of knowledge, skills and attributes which are essential for law graduates working in a global multi-jurisdictional environment, and for law graduates generally.
- Therefore, the internationalised law curriculum needs to focus on the knowledge, skills and attributes identified as essential for global practice.
- Law schools recognise that their role is to prepare law graduates for both domestic and

international legal practice.

- There are some hurdles to achieving an internationalised law curriculum and it is important these hurdles be overcome.

It is important to emphasise that an internationalised curriculum enriches learning for *all* law students – whether they be working in the future in international or domestic contexts. All law students’ thinking and learning is enriched by a curriculum which requires them to consider diverse approaches to common problems; to learn from difference but be alert for universals; to strive for best practice; to avoid parochialism, ignorance, and narrow-mindedness; to cultivate the spirit and habit of open-mindedness and tolerance; and ultimately to make a contribution to advancing the common good.

## **Recommendation**

A law school making a commitment to the internationalisation of its curriculum has four complementary options –

- It can offer a number of separate ‘internationalised’ or global subjects or units, usually as electives. This is known as the *Aggregation* approach.  
This model is the simplest and most common approach. Typically stand-alone international units of study are included as electives in the law program.
- It can establish one or more separate institutes or centres devoted to internationalised or global aspects. This is known as the *Segregation* approach.  
This model is more about how a law school structures itself rather than the curriculum itself.
- It can incorporate internationalised or global elements across the whole curriculum, and beyond into research and student services. This is known as the *Integration* approach.  
The integration model incorporates international and intercultural dimensions across the whole curriculum, including of course core subjects.
- It can provide opportunities for its students to go elsewhere to study in a different jurisdiction. This is known as the *Immersion* approach.  
This model aims to deliver a high level of international competence and experience, which may allow law graduates to practise in multiple jurisdictions.

The implementation process will most likely be an incremental and accumulative one. A more detailed discussion appears in Chapter 6.

## **Findings**

An internationalised law curriculum has four elements, all of which must be aligned:

### **1 Objectives or learning outcomes**

An internationalised curriculum articulates specific learning outcomes relating to the international and multi-jurisdictional context and dimensions of law.

## **2 Content**

- Knowledge  
The law curriculum includes international legal content and materials. Students acquire an appropriate level and depth of knowledge of ‘international law’ and law with an international or comparative perspective.
- Skills  
The law curriculum enables law students to develop relevant legal (‘lawyering’) skills.
- Attributes  
The law curriculum enables law students to develop international and intercultural perspectives and ways of thinking that prepare them as global citizens.

## **3 Pedagogy**

- Teaching/learning methods  
A diverse range of teaching and learning strategies are employed to convey international content, materials, and experiences.
- Materials and resources  
Students are given access to materials and other resources from both the domestic and the relevant overseas jurisdiction/s.
- Student experience  
Students engage in a range of other, including overseas, activities that promote international engagement and interaction with overseas students.

## **4 Assessment**

Assessment tasks incorporate international dimensions.

## **Dissemination**

Dissemination of the framework is designed to influence key stakeholders both in Australia and internationally. The Report and discussion will be made available, in particular, on the International Legal Services Advisory Council and Council of Australian Law Deans websites. The latter, in particular, will be developed to provide resources and links to resources of interest to law schools internationalising their curriculum.

The Report and a summary booklet will be disseminated to all Australian and many international law schools; accrediting bodies; and international organisations with links to legal education and law schools. In addition, the project team will continue to present and publish in areas related to the content and findings of this report.

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# Chapter 1                      Background to the project

## Introduction

This research project, funded by the Australian Government Office for Teaching and Learning (formerly the Australian Learning and Teaching Council), on *Internationalising the Australian Law Curriculum for Enhanced Global Legal Education and Practice* was undertaken by Professor Duncan Bentley (Project Leader and Deputy Vice-Chancellor, Victoria University and Chair of the ILSAC International Legal Education and Training Committee), Associate Professor Joan Squelch (School of Business Law and Taxation, Curtin University), Professor Michael Coper, Dean of the ANU College of Law, Australian National University and Associate Professor Anthony Connolly of the ANU College of Law, Australian National University, Professor Gillian Triggs, Dean of the Faculty of Law, University of Sydney. (See Appendix A for a list of the project team).

The project was undertaken in association with the International Legal Services Advisory Council (ILSAC). ILSAC is an advisory council established by the Australian Government with a mission to enhance the international presence and improve the international performance of Australia's legal and related services. One of its main areas is the promotion of international legal education and training, hence its keen interest and participation in this research project, including hosting a national symposium as part of the project.

## Purpose and rationale

The primary purpose of this research project was to develop a framework for an internationalised law curriculum to prepare law graduates for practice in a global context and to enhance the wider recognition of Australian law degrees. By framework is meant the:

- identification of relevant knowledge, skills and attributes required by graduates
- identification of the particular needs and views of employers of graduates of Australian law schools
- identification of delivery frameworks from the international education literature
- articulation of how these elements can be brought together for inclusion in the Australian curriculum while recognising the different and diverse missions of Australian law schools
- identification of any consequent changes required in the regulation of the curriculum.

The Australian law curriculum has undergone much reform over the past few decades. A number of law schools have already introduced elements which internationalise their curricula. A small sample by way of example is in Appendix B. Although there has been a

number of significant studies addressing various aspects of the Australian law curriculum, there has been less research on curriculum development in the area of internationalisation. The focus of this research project is thus on the internationalisation of the law curriculum within the broader context of globalisation and its impact on legal services and legal education.

Globalisation has impacted on many aspects of society and business, particularly trade and finance, but also in areas such as the environment and human rights. Globalisation of the legal services sector has given impetus to the growth of the 'global law firm', and legal activities and services requiring law firms and practitioners to work in and across different jurisdictions to deal with matters that have a greater international focus and dimension. This has necessitated a shift from law firms, including many small local law firms, working within the parochial confines of national law and single jurisdictions, to working across multiple jurisdictions and within a much broader international legal context and framework. There is also a recognition that there are deeper underlying drivers for, and justifications of internationalisation, particularly those relating to values and, ultimately, fostering of the rule of law and a more peaceful and harmonious world. As has recently been said by Michael Coper<sup>1</sup> –

It scarcely needs to be said how narrow and constraining [the articulation, nurturing and transmission of values] would be in a purely local or domestic context. Internationalisation not only opens our minds to alternative solutions; it connects us with principles and values that transcend the local context. [I]t moves us from merely learning from each other's differences to understanding what we have in common and uncovering some universal truths. The more we go down this path, the more our graduates will have the potential to make a contribution to the spread of the rule of law, and all its associated values and manifestations, throughout the world.

Internationally there is broad consensus among legal academics and practitioners that law schools need to deliver law programs that take cognisance of global developments and the increasing emphasis on internationalisation. The proposition is that 'in a globalising world, lawyers will need to be educated in such a way as to make it easy to move across jurisdictions, across specialisations, and to move across employment opportunities'.<sup>2</sup> Law graduates need to be 'comfortable in multiple jurisdictions, often simultaneously'<sup>3</sup> and 'almost every lawyer must be prepared to face some transnational issues, regardless of that lawyers field of practice'.<sup>4</sup>

Law graduates should therefore be equipped with the necessary skills and knowledge to deal with transnational issues, diversity and change, and be equipped to 'operate within the

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<sup>1</sup> Michael Coper, 'Law Schools and Legal Education: What is Really Important', Keynote Address at the Australasian Law Teachers Association Conference, July 2012.

<sup>2</sup> Jan Klabbbers, 'Reflections on Globalisation and University Life' in Jan Klabbbers & Mortimer Sellers (eds), *The Internationalisation of the Law and Legal Education*, (Springer, 2008) 17.

<sup>3</sup> Tan Cheng Han cited in Simon Chesterman, 'The Evolution of Legal Education: Internationalization, Transnationalization, Globalization' (2009) 10 *German Law Journal* (07) 883.

<sup>4</sup> Michael Bogdan, 'Is There a Curricular Core of the Transnational Lawyer?' (2005) 55(4) *Journal of Legal Education* 484.

context of increasingly multilateral legal regulation, even over areas of law that have been regarded as within the exclusive domain of the sovereign state'.<sup>5</sup> So too it has been argued the global lawyer must not only be able to work with material from different jurisdictions, but that being a good lawyer also means understanding global processes that affect national law and hence the need to address this as an integral part of legal education.<sup>6</sup>

Employers of law graduates, at the least those who work in a global, multi-jurisdictional context, are particularly concerned that legal graduates need to be educated and trained for practice in that context. For example, it has become a focus for ILSAC, both in that its members represent a broad cross-section of employers, especially those practising in this context, but also in its work to grow the export of legal and legal education services. An inevitable consequence of more globalised practice is that to 'prepare law graduates to practice law in the new world conditions, legal education programs will have to be revised'.<sup>7</sup> Indeed it has been argued that 'law schools that fail to conform their educational mission to the realities of law and the practices of the great global legal education actors ... will find themselves playing a limited role in the future development of law and the production of law and lawyers for the global marketplace'.<sup>8</sup>

This challenges law schools to rethink their law programs – their curriculum, approaches to teaching, student support and the student experience in general. Hence the focus of this project was on helping Australian law schools meet this challenge by providing a comprehensive but flexible curriculum framework to guide the internationalisation of law programs. The lessons learned and recommendations are relevant to stakeholders in the formulation and delivery of law curricula in other jurisdictions, so that dissemination of the outcomes beyond the immediate stakeholders in Australian legal education is a significant ancillary purpose of the project.

## Links to related research projects

Curriculum development in Australian law schools should be informed by continuous review and improvement. Over the past decade a number of large projects have addressed various aspects of Australian legal education. In 2003, the Australian Universities Teaching Committee (AUTC) project produced a report entitled *Learning Outcomes and Curriculum*

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<sup>5</sup> Steven Freeland, 'Educating Lawyers for Transnational Challenges – The Globalisation of Legal Regulation' (2005) 55(4) *Journal of Legal Education* 501.

<sup>6</sup> Adam Czarnota and Scott Veitch, 'Globalisation and Challenges for Legal Education' (1996) 14(2) *Journal of Professional Legal Education* 160.

<sup>7</sup> Alberto Bernabe-Riefkohl, 'Tomorrow's Law Schools: Globalisation and Legal Education' (1995) 32 *San Diego Law Review* (137), 152.

<sup>8</sup> Larry Catá Backer, 'Global Law in American Law Schools: Prospects and Difficulties of Incorporating a Transnational Element in Legal Education' (2007) <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=969870](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=969870)>, digested in 15 (2) *Legal Education Digest* 23.

*Development in Law*.<sup>9</sup> Building upon this in 2009, the Council of Australian Law Deans (CALD), the peak body of Australian law schools, completed an ALTC project, *Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment*.<sup>10</sup> On 17 November 2009 CALD adopted *The CALD Standards for Australian Law Schools*.<sup>11</sup>

Curriculum renewal continues, informed by ALTC projects such as the *Curriculum Renewal in Legal Education: Articulating Final Year Curriculum Design Principles and a Final Year Program*<sup>12</sup> and, most important, the ALTC Learning and Teaching Academic Standards (LTAS) for the Bachelor of Laws program.<sup>13</sup> These projects provided an important context and body of research for this project.

As noted in the CALD/ALTC project, CALD works closely with key stakeholders including: the Law Admissions Consultative Committee (LACC), which oversees the law curriculum requirements leading to admission to practice; the Law Council of Australia (LCA), the peak law professional representative body; and ILSAC in its role as advisor to the Commonwealth Attorney-General on the internationalisation of legal services, including trade negotiations related to legal services. ILSAC provides a critical co-ordinating role for stakeholders engaged in internationalisation and promotion of the export of legal services, including legal education. For example, it is through ILSAC that much of the work occurs to ensure the recognition of Australian law degrees in other jurisdictions, and to facilitate recognition in Australia of legal qualifications from other jurisdictions.

ILSAC has identified the quality of Australian legal education as underpinning the growing export of Australian legal services, including legal education. ILSAC's Legal Education Committee is therefore driving further research on curriculum renewal through internationalisation, based on the input of its key stakeholders: the LCA, the Commonwealth Attorney-General, the Large Law Firm Group, representatives of in-house counsel, and CALD. The aim is to contribute to a systematic review of internationalisation of the law curriculum as one aspect of the overall law curriculum and thereby to build on earlier work.

## Project aims and objectives

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<sup>9</sup> Richard Johnstone & Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law* (Australian Universities Teaching Committee, 2003) 206

<[www.cald.asn.au/docs/AUTC\\_2003\\_Johnstone-Vignaendra.pdf](http://www.cald.asn.au/docs/AUTC_2003_Johnstone-Vignaendra.pdf)>

<sup>10</sup> Gary Davis, Susanne Owen, Michael Coper, William Ford, Jill McKeough, *Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment* (Council of Law Deans, 2009) <[www.olt.gov.au/project-learning-teaching-law-flinders-2006](http://www.olt.gov.au/project-learning-teaching-law-flinders-2006)>.

<sup>11</sup> Council of Australian Law Deans, *The CALD Standards for Australian Law Schools* (17 November 2009) <[www.cald.asn.au/resources](http://www.cald.asn.au/resources)>.

<sup>12</sup> Sally Kift, Rachael Field and Natalie Gamble, *Curriculum Renewal in Legal Education: Articulating Final Year Curriculum Design Principles and a Final Year Program* <[www.olt.gov.au/project-curriculum-renewal-legal-education-gut-2009](http://www.olt.gov.au/project-curriculum-renewal-legal-education-gut-2009)>.

<sup>13</sup> Sally Kift, Mark Israel and Rachael Field, *Bachelor of Laws Learning and Teaching Academic Standards Statement* <[www.olt.gov.au/resources/1710%2C3899%2C5990?solsort=score%20desc](http://www.olt.gov.au/resources/1710%2C3899%2C5990?solsort=score%20desc)>.

The primary goal of the project was to develop and model the effective integration of international and intercultural dimensions into legal education practice so that it will equip Australian legal graduates with the international and intercultural competencies, and the necessary intellectual skills, to work in a global legal context.<sup>14</sup> The aim, therefore, was to develop a curriculum framework that will facilitate the implementation of an internationalised legal curriculum that meets student and employer priorities for the capacity to practise international commercial, private, public and governmental law in an international environment; match developing international professional requirements; and provide the basis for ongoing personal and professional development in a rapidly changing world.

In addition to the practice of law, other career options which might benefit from an internationalised curriculum include policy development, project management, and leadership within a range of domestic and international organisations and non-government organisations.

Therefore, to achieve this aim, the objectives of this project were to:

- Identify particular areas of knowledge, skills and attributes required by Australian law graduates to prepare them for a career involving international practice and to recommend features of elective or compulsory curricula which may assist law schools in providing appropriate learning environments and learning outcomes;
- Provide a comprehensive analysis of the literature, particularly taking account of relevant research across disciplines, to inform the development of Australian law curricula to meet the needs of global practice;
- Provide a clear analysis of relevant developments in international legal education and global legal practice that will inform the development of Australian law curricula;
- Recommend strategies to internationalise the compulsory curriculum leading to admission to practice in all Australian jurisdictions;
- Recommend strategies applicable to the non-compulsory curriculum for those law schools concentrating on preparing law graduates for the varied aspects of global practice; and
- Ensure that domestic and international stakeholders are engaged in the process to effect change in Australian education practice and professional perceptions.

## Project approach and methodology

The project was conducted over a period of 18 months (January 2011 to June 2012), which included an extension of six months during which time a national symposium was held.

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<sup>14</sup> These skills are the deeply entrenched intellectual skills (critical analysis, research, etc) which enable a lawyer to 'rise to the occasion' in any new environment or context. These are skills Australian law schools already seek to achieve but the global dimension requires a sharpened focus on their achievement. As has been said, the law graduate with the sharp, inquisitive, critical mind is equally needed in Shepparton as in Shanghai.

The project adopted the following approach and methodology:

- Phase 1: Scoping the project and preliminary literature review

A preliminary literature review was conducted and the scope of the project was defined.

- Phase 2: Literature review and curriculum analysis

A comprehensive literature review was undertaken with the focus on curriculum internationalisation, the knowledge, skills and attributes required for working in an international and global context, graduate attributes by which the law curriculum is shaped, approaches to internationalisation and examples of internationalisation in law curricula.

- Phase 3: Regional employer roundtables

Employer roundtables were held in Sydney, Canberra, Perth and Hong Kong. The aim of the roundtables was to consult with and seek input from key employers on their perceptions and views on the core knowledge, skills and other attributes required for law graduates to work in the global environment. The data was used to inform the curriculum framework. An example of the program for the roundtables is in Appendix C.

- Phase 4: Develop a draft curriculum framework

A draft curriculum framework for a law curriculum suited to practice in a globalised world was developed based on the literature review and preliminary roundtable data. This also formed the basis for the program for the national symposium.

- Phase 5: A national symposium

The aim of the national symposium was to engage key stakeholders in high level discussions on various aspects of internationalising the law curriculum, and to provide feedback on the interim findings of the project.

- Phase 6: Amend and finalise curriculum framework.

The final framework for an internationalised law curriculum to prepare law graduates for practice in a global context was developed based on the input from the symposium and the ongoing literature review of curriculum design and development.

- Phase 7: Dissemination of results and outcomes

The project aims to disseminate the research findings and outcomes mainly through

project reports, seminars and scholarly reports (see below). The result will be to improve the Australian law curriculum as taught in Australian law schools; increase the mobility of both in-bound and out-bound law students across jurisdictions and significantly enhance the recognition of Australian law degrees.

## Dissemination of information

The OLT advocates 'an engaged-focused approach to dissemination, involving consultation, collaboration and support for ongoing dissemination both during the project and after the project is completed' (ALTC Dissemination Framework). In keeping with this framework, this project has disseminated and will continue to disseminate information in a variety of ways to all key stakeholders to ensure active and extensive engagement during and after the project:

- Interim findings reported to the main stakeholder groups at their scheduled business meetings during the course of the project (ILSAC and CALD).
- Regional employer roundtables (Sydney, Canberra, Perth and Hong Kong) held during the course of the project in order to engage in consultations with stakeholders and to gather information, with subsequent feedback on the results. (Appendix C)
- A seminar held in Perth to disseminate the provisional findings of the regional employer roundtables to employer and university stakeholders, including representative authors of other projects.
- A symposium held during the course of the project to provide a forum to engage key stakeholders in discussion and consultation based on interim findings to consolidate views on proposals and form the basis of the final project report. Papers from the symposium have been published on the ILSAC website and will be consolidated into an edited online version to provide a resource to inform Australian and international curriculum development. (Appendices D and E)
- Comprehensive project reports, tailored to reflect the interests of the recipients, together with a briefing on the proposals for the law curriculum, to be provided to key national and international stakeholders.
- Key findings in summary and full to be published on ILSAC, CALD and OLT websites.
- Project members will present papers at appropriate conferences and seminars including at: the Australian Law Teachers' Association (ALTA) annual conference; an international seminar on internationalising the curriculum at Bond University; the International Bar Association annual meeting; the International Association of Law Schools annual meeting; the Association of American Law Schools annual meeting and at CALD meetings with Chinese and Indian Law Deans.
- Project members will also brief the practising profession, the judiciary and the admitting authorities by seeking opportunities to publish in law society and bar journals, speak at law conventions and conferences, and the opportunity to make a presentation at a meeting of LACC.
- Publication of research in refereed journal articles both in Australia and internationally to become an international resource.

Dissemination activities will continue during the remainder of 2012 and in 2013.

## Project management

The project was managed using an established project management approach adapted to the context of this project. The project manager, Mr Andrew McLean, is a trained project manager in Prince 2 Methodology. There were regular meetings of the project team by video-link and face-to-face at each stage of the project. A final full-day workshop in Canberra allowed the development of the project report outline and proposed content prior to its write-up.

The project was staged with clear milestones. Administrative support was provided by all universities involved in the project and the ILSAC Secretariat. Curtin University, under the direction of the project manager ensured, inter alia, coordination of meetings, travel, accommodation, finance and report writing and dissemination.

Relevant ethics clearances were obtained and managed in respect of data collection. Milestones were met until it became impossible, due to the availability of key stakeholders, including the Chief Justice, to schedule the symposium in 2011. An extension was granted by the OLT with the submission of the final report due by 28 September 2012. The symposium was held and the required project evaluation, reporting and dissemination were completed during this time.

## Project funding

Project funding is reconciled in a separate report to the OLT.

## Project evaluation

A formative evaluation was undertaken after the symposium and prior to finalising the project and the report. It is contained in Appendix F. In summary, it found:

- The planned processes were almost fully put in place, with only minor variations.
- The project largely proceeded as planned.
- There was some scope for some further involvement in the project by the law admitting authorities and by law deans.
- The consultations in the project were almost wholly with those who were most likely to support its aims; there may have been some scope to engage more with those who may possibly have been sceptical or doubtful of its aims.
- The symposium, which formed an important element of the project, was universally seen as very successful and useful from all perspectives.
- The implementation of the project's aims remains a formidable task as it will require, for some, a quantum leap of understanding of the scope of the law degree.
- Structures are in place for the longer term sustainability of the implementation of the project's aims, but they will not in themselves guarantee success without careful management of the

process.

The implementation of the project cannot ignore that domestic work will continue to be the staple of many lawyers, and the more highly trained law graduate undertaking the internationalised law curriculum must be able to continue to provide these services to the Australian community.

## Chapter 2

## Literature review

### Globalisation

The term 'globalisation' is often used in terms of the economy and 'borderless societies' made possible by advancements in travel, communication and technology. In fact, globalisation 'is not a single phenomenon but inferred from various phenomena, processes, or outcomes which are multidimensional'.<sup>15</sup>

Sugarman and Sherr note that globalisation is a contested concept but consider that at its simplest 'globalisation denotes the process whereby actions, circumstances and occurrences in one part of the world may have a major impact on the peoples and institutions of a quite different part of the globe'.<sup>16</sup>

The flow of people and intercultural exchange is also emphasised by Van Rossum<sup>17</sup> who describes globalisation as the 'increasing migration of people with its cultural assimilation and concomitant multiculturalism, the growing international flow of capital and economic exchange, and the increasing interdependence of states, social groups and networks of people and organisations'. The international flow of people, trade and knowledge is evident in all sectors of society and business.

The phenomenon of globalisation has given rise to a new world order economically, politically and socially. Fuelled by rapid advancements in technology and communications, globalisation has seen unparalleled growth in cross-border trade, the free movement of capital and labour, increased immigration, the collapse and rise of political regimes and the transfer of ideas and knowledge at an ever expanding rate. Globalisation has impacted on many aspects of society and business not least of which being trade, banking and finance.

### Globalisation and global legal practice

Globalisation has also impacted on the legal services sector. Globalisation has given impetus

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<sup>15</sup> Yoko Tsuruta, 'The Globalisation, Regionalisation and Internationalisation of Higher Education with Special Reference to Japan – A Theoretical Consideration'. A paper presented at the British Educational Research Association Annual Conference, 2003 <[www.leeds.ac.uk/educol/documents/00003432.htm](http://www.leeds.ac.uk/educol/documents/00003432.htm)>

<sup>16</sup> David Sugarman & Avrom Sherr, 'Globalisation and Legal Education' (2001) *International Journal of the Legal Profession* 8(1): 5-10.

<sup>17</sup> Wibo M. van Rossum, 'Resolving Multicultural Legal Cases: A Bottom Up Perspective on the Internationalisation of Law', in Jan Klabbers & Mortimer Sellers (eds), *The Internationalisation of the Law and Legal Education*, (Springer, 2008) 113.

to the growth of the 'global law firm', and legal activities and services requiring law firms and practitioners to work in and across different jurisdictions, and deal with matters that have a greater international focus and dimension. This has necessitated a shift from law firms, including many small local law firms, working within the parochial confines of national law and single jurisdictions, to working across multiple jurisdictions and within a much broader international legal context and framework.

Globalisation has seen a shift in the market place with the growth of 'global law' firms, an increase in international trade in legal services and legal practice operating in a 'borderless environment'. Law firms, including the local firm, now increasingly compete in a global market place. Australian and foreign companies expect the best firms to have the 'ability to address legal issues no matter the jurisdiction in which they arise'.<sup>18</sup> Thus the challenge to 'big firms is not just to continue to perform at a high level but to do so while grappling with the threats and opportunities presented by the globalisation of the legal services market'.<sup>19</sup>

Local firms in Australia 'are increasingly measured against global ones, in terms of experience, the spread of offices and depth of legal knowledge',<sup>20</sup> which is further fuelled by the establishment of such firms as Allen & Overy, Ashurst, Clifford Chance, DLA Piper, King & Wood Mallesons and Norton Rose.<sup>21</sup> Legal process outsourcing (LPO) support services are also increasing, for example, between King & Wood Mallesons and Integreon, a major global provider of integrated legal, business and research solutions, and these services are sometimes sourced from another country.<sup>22</sup>

The growth in global legal services and economic benefits are evident in many countries including Australia. In Australia, the export of legal services is a major contributor to the Australian economy. A report by ILSAC indicates that the total income from exports and international legal services activity in Australia for 2008-2009 was \$709.1m. It was also reported that the market increased by 5% (\$34m) in exports and international activity from the 2006-2007 survey report. The United States and Canada remained Australia's largest export market for legal services (\$184.2m); they accounted for 26% of the market. China and Hong Kong were the second largest market (\$100.8m) with a 14% market share, and Europe (excluding UK) was third (\$72.8m) with a 10% market share.<sup>23</sup>

Asia was Australia's largest regional market (\$225.2m) accounting for 32% of the entire market. Although there was an 8% decrease from 2006-07, there were notable increases in export income in the Japanese and Singaporean markets. The Japanese market increased by

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<sup>18</sup> Alex Boxell, 'Global Challenge' *CFO Financial Review*, November 2011, 53.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid 53-54.

<sup>21</sup> Ibid 54.

<sup>22</sup> Ibid 53

<sup>23</sup> Australian Government. International Legal Services Advisory Council. ILSAC's Third International Legal and Related Services Statistical Survey 2008-09 FY. The survey covers the financial year from 1 July 2008 to 30 June 2009.

<[www.ilsac.gov.au/GlobalLegalServicesandMarketAccess/ILSACStatisticsSurvey/Documents/Third-International-Survey-2008-09.pdf](http://www.ilsac.gov.au/GlobalLegalServicesandMarketAccess/ILSACStatisticsSurvey/Documents/Third-International-Survey-2008-09.pdf)>.

\$14m (a 60% increase since 2006-07) and the Singaporean market increased by \$6m (16% increase since 2006-07).<sup>24</sup>

In terms of the service areas, ILSAC reports that the top four areas of work undertaken by Australian legal and related service providers were Intellectual Property, Information Technology and Telecommunications (28% of all work done, \$197.1m), Corporate (25% of all work done, \$178.9), Litigation (10.7% of all work done, \$76m) and Banking and Finance (7.1% of all work done, \$50.2m).<sup>25</sup> A further report is due for release later in 2012. Although legal services export markets will be shown to follow downward trends reflecting the period of the global financial crisis, it is noted that the underlying trend remains strongly positive and that the report covers only firms with individually significant percentages of the export market. The broadening of export activity across small and medium sized firms means that the survey is indicative only of activity and does not reflect its full extent.

The success internationally of Australian law firms and Australian-educated lawyers can be attributed, in part, to the consistent Government policy to support and encourage the export of legal services in their broadest sense.

With the growth and diversity of global law firms and international legal trade, comes greater mobility of people and the opportunity to work in different countries and across different jurisdictions. Law graduates today do not expect to have one job or one career: 'We now deal with students who expect to move countries a few times, seeing themselves as part of a global elite in a worldwide market for talent'.<sup>26</sup>

Globalisation and the growth of global law firms and internationalised legal services, whether provided in-country or from the home-base, has in turn generated much legal and scholarly debate about the implications of this for legal education and the internationalisation of law curricula. Law schools cannot stand still holding on to academic tradition and mindsets while being outpaced by global events that have significant implications for the development of law and legal services. The internationalisation of the legal services market and potential demand for graduates qualified to work on international commercial, public and private law matters raises challenging questions about how law schools can best prepare law graduates for global legal practice and the implications for curriculum reform.

To this end, as has already been said, an aim of this project was to examine the impact of the globalisation of legal practice on legal education, the implications for law schools, and the kind of law curriculum that is needed to prepare law graduates for global legal practice. Additionally, a fundamental question that is addressed in this research is what employers want and expect of law graduates. For Australian law schools satisfying these expectations should be a priority in the area of curriculum development and renewal.

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<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Simon Chesterman, 'The Evolution of Legal Education: Internationalization, Transnationalization, Globalisation' (2009) 10(7) *German Law Journal* 883.

## Globalisation and higher education

The new world order and legal environment in which graduates will live and work has produced greater pressure on educational institutions to become more 'internationalised' and prepare their graduates for the changing global realities.

Writing on global challenges for higher education and internationalisation in general, Brustein argues that education institutions have to face shifting economic, national security and political realities and that it is essential to educate graduate students with, what he calls, global competence. He argues that without global competence students 'will be ill-prepared for global citizenship' and 'unable to compete successfully in the global market place'.<sup>27</sup> He further argues that to achieve global competence 'curricula will have to be redesigned to ensure that outcome' and, moreover, that 'we are obliged to internationalise the educational experience no matter the discipline'.<sup>28</sup>

Similarly, Leask notes that 'universities have a responsibility to prepare all graduates to live and work in a global society' and in preparing graduates for 'global citizenship it is important that our universities are outward looking and incorporate international and intercultural perspectives into the curriculum in a planned and systematic way'.<sup>29</sup>

There is thus a connection between the process of globalisation and internationalisation. Internationalisation 'is often confused with globalisation' but it is argued that they are 'different but interrelated processes'.<sup>30</sup> Globalisation is viewed as a 'multifaceted phenomenon, and one of its major components is the internationalisation of education' that has in turn challenged universities to 'modify policies and programs to reflect the changing global reality through a process known as internationalisation'.<sup>31</sup>

Distinguishing between globalisation and internationalisation, Altbach and Knight describe globalisation as 'the economic, political, and societal forces pushing 21<sup>st</sup> century higher education toward greater international involvement'.<sup>32</sup> Globalisation may be viewed as the context for internationalisation and a catalyst for change and for 'rethinking' legal education in a global context. Internationalisation is a response to globalisation.

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<sup>27</sup> William I. Brustein, 'The Global Campus: Challenges and Opportunities for Higher Education in North America' (2007) 11(3/4) *Journal of Studies in International Education* 382.

<sup>28</sup> Ibid 383, 385.

<sup>29</sup> Betty Leask, 'Internationalisation the Buzz Yet Again' (2011) *Campus Review*, 10.

<sup>30</sup> Jane Knight, 'Updating the Definition of Internationalisation', (2003) 33 *International Higher Education* 2-3.

<sup>31</sup> Lori Hanson, 'Global Citizenship, Global Health and the Internationalisation of Curriculum: A Study of Transformative Potential' (2010) 14(1) *Journal of Studies in International Education* 70.

<sup>32</sup> Philip Altbach & Jane Knight, 'The Internationalisation of Higher Education: Motivations and Realities' (2007) 11 *Journal of Studies in International Education* 290.

The question is: what is internationalisation and, more specifically, what is an 'internationalised curriculum'?

The concept of 'internationalisation' is not a new or novel concept. A cursory view of the literature reveals academic debate and research on internationalisation reaching back to the 1970s and 1980s. There has also been an increase in research on internationalisation in higher education; however what constitutes 'internationalisation', its goals and purposes, and how it is achieved remains varied and some would argue confusing. Although 'internationalisation' is a much researched topic and a core element of a university's activities, a cursory survey of literature on internationalisation nonetheless reveals that there is no single definition or conceptualisation of the concept 'internationalisation'. Leask in fact suggest that '[i]nternationalisation defies orderly, organised and rational analysis, and observes that '[a]ll over the world people are still talking about internationalisation and its various components'.<sup>33</sup>

Nonetheless, a useful and oft-cited definition is provided by Knight<sup>34</sup> who defines internationalisation at a national, sector and institutional level as 'the process of integrating an international, intercultural, or global dimension into the purpose, functions or delivery of postsecondary education'. Ellingboe also defines internationalisation as 'the process of integrating an international perspective into a college or university system'.<sup>35</sup> By defining internationalisation as a 'process', he frames it as an activity that is ongoing, developmental, changing and continuing.

The permeating, inclusive and comprehensive nature of internationalisation is also conveyed in these definitions. The idea that it is an 'integrating' process means that internationalisation becomes infused or embedded into policies and programs such that it becomes sustainable and not marginal or ad hoc.<sup>36</sup>

For many decades, universities world-wide have been engaged in international processes and activities that, according to Altbach and Knight, have 'dramatically expanded in volume, scope and complexity in the past two decades'.<sup>37</sup> International activities have included the establishment of campuses in foreign countries, cross-border partnerships, study-abroad programs, student and staff exchange programs, recruitment of international students, collaborative research projects and the internationalisation of study programs.<sup>38</sup>

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<sup>33</sup> Betty Leask, 'Internationalisation of the Curriculum and Intercultural Engagement – A Variety of Perspectives and Possibilities' <[www.aiec.idp.com/pdf/Leask,%20Betty.pdf](http://www.aiec.idp.com/pdf/Leask,%20Betty.pdf)>.

<sup>34</sup> Knight, above n 30. See also, Anthony Welch, 'Going global? Internationalizing Australian Universities in a Time of Global Crisis' (2002) 46(4) *Comparative Education Review* 433-473.

<sup>35</sup> Cited in Marvin Bartell, n39 below.

<sup>36</sup> Jane Knight, 'Internationalization Remodelled: Definition, Approaches, and Rationales' (2004) 8 *Journal of Studies in International Education* 12.

<sup>37</sup> Altbach & Knight, above n 32, 290.

<sup>38</sup> See International Education Advisory Council, *Discussion Paper for the Development of an International Education Strategy for Australia* April 2012, <[https://aei.gov.au/IEAC2/Consultation\(IEAC\)/Documents/InternationalEducationAdvisoryCouncilDiscussionPaper.pdf](https://aei.gov.au/IEAC2/Consultation(IEAC)/Documents/InternationalEducationAdvisoryCouncilDiscussionPaper.pdf)>.

The scope and complexity of international activities however varies amongst institutions and Bartell notes that on a continuum internationalisation on the one end is 'limited and essentially symbolic' and on the other end it is a 'synergistic, transformative process involving the curriculum and the research programs that influences the role and activities of all stakeholders'.<sup>39</sup> Bartell, offers the following encompassing perspective on internationalisation:

Internationalisation conveys a variety of understandings, interpretations and applications anywhere from a minimalist, instrumental and static view, such as securing doctoral funding for study abroad programs, through international exchange of students, conducting research internationally to a view of internationalisation as a complex, all encompassing and policy-driven process, integral to and permeating the life, culture, curriculum and institution as well as research activity of the university and its members.<sup>40</sup>

Looking beyond the limiting economic perspectives on internationalisation, a core element, and arguably the most important, is internationalisation through the curriculum. However, as Clifford argues, although world-wide universities have claimed to be 'international' this has 'largely been interpreted to mean the recruitment and support of international students' and 'little attention has been paid to what this means for curriculum development'.<sup>41</sup>

In their research on internationalising the curriculum in Sweden, Svensson and Wihlborg similarly observe that the 'internationalisation of higher education is to a large extent accidental rather than clearly intended when it comes to education content' and that curricula objects concerning internationalisation tend to be vague and unclear' and hence also argue for a stronger emphasis on the development of a curriculum approach to internationalisation besides the more typical economic, political and organisational approaches.<sup>42</sup>

The need to develop more holistic and integrated international strategies was highlighted in the 2008 *Review of Australian Higher Education Report* (the 'Bradley Report') which cautions that the 'higher education sector [in Australia] needs to capitalize on its considerable strengths in international education and focus on developing a long-term sustainable strategy for global engagement'.<sup>43</sup> The Bradley Report further advises that the sector will need to 'broaden the focus of its international activities if it is to remain globally competitive'.<sup>44</sup> To this end the Bradley Report recommends, inter alia, that a more holistic

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<sup>39</sup> Marvin Bartell, 'Internationalization of Universities: A University Culture-Based Framework' (2003) 45 *Higher Education* 46.

<sup>40</sup> Ibid 51.

<sup>41</sup> Valerie Anne Clifford, 'Engaging Disciplines in Internationalising the Curriculum' (2009) 14(2) *International Journal for Academic Development* 133.

<sup>42</sup> Lennart Svensson & Monne Wihlborg, 'Internationalising the Content of Higher Education: The Need for A Curriculum Perspective' (2010) 60 *High Education* 595.

<sup>43</sup> Australian Government, *Review of Australian Higher Education: Final Report*, 2008, 87.

<sup>44</sup> Ibid.

approach is required that would include providing more support to students to improve their 'experience on campus and ensure their work readiness in the global environment'.<sup>45</sup> This will require a far greater emphasis on internationalised curriculum development and resources to support staff and students. There needs to be a shift away from internationalisation being on the margin and largely limited to international students and mobility, to a greater emphasis on developing internationalised curricula for all disciplines, not only law.

## Internationalisation of the curriculum in higher education

Internationalisation of the curriculum is content and culturally specific, and 'means different things to different people'.<sup>46</sup>

Leask offers the following definition:

The incorporation of an international and intercultural dimension into the content of the curriculum as well as the teaching and learning process and support services provided to students, [which] is essential for the contemporary graduate, given the international/intercultural context in which they work.<sup>47</sup>

Another succinct definition is provided by the Organisation for Economic Co-operation and Development (OECD) that describes internationalised curricula as:

Curricula with an international orientation in content aimed at preparing students for performing (professionally/socially) in an international and multicultural context and designed for domestic students as well as foreign students.<sup>48</sup>

Common to definitions and conceptualisations of internationalised curricula is the emphasis on international content, multicultural and intercultural perspectives and competencies, and cultural inclusivity. Internationalisation therefore involves the integration of international and intercultural perspectives across all aspects of the design, development, delivery and implementation of the curriculum, as well as support services. This is an important advancement of earlier notions of internationalisation focused more on teaching international students rather than on pedagogy and content.

Leask for example notes that 'internationalisation of the curriculum in the disciplines has been of secondary importance to other aspects of internationalisation for far too long'.<sup>49</sup> Efforts at internationalisation of the curriculum have tended to focus narrowly on 'immediate matters associated with the pedagogy of teaching international students' rather

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<sup>45</sup>

Ibid.

<sup>46</sup>

Betty Leask, above n 29, 10.

<sup>47</sup>

Ibid.

<sup>48</sup>

OECD, *Education in a New International Setting: Curriculum Development for Internationalisation — Guidelines for Country Case Study* (Paris, 1994 OECD (CERI)).

<sup>49</sup>

Leask, above n 29, 10.

than on 'the deeper issues of what internationalisation of the curriculum means for all students in an increasingly globalised world'.<sup>50</sup>

Clifford also notes from the literature and her research that 'most efforts to internationalise the curriculum refer to inducting international students in the expectations of western teaching' and that 'broader conceptualisations of the internationalised curriculum for all students, to prepare them for living and working in an internationalised, multi-cultural world, are less frequently discussed'.<sup>51</sup>

Whilst 'internationalisation' has tended to focus on recruiting international students and establishing international partnerships to enhance financial sustainability, there has been a growing awareness of the role and importance of the curriculum in the internationalisation of education. There has also been a growth in research on the development of a curriculum approach to internationalisation<sup>52</sup> and greater emphasis on the nuts and bolts of designing and implementing an internationalised curriculum.

The notion of an internationalised curriculum is well entrenched in Australian higher education.<sup>53</sup> A study conducted in 1995 showed that at that time 37 out of 38 universities had already 'included a policy of internationalisation in their corporate plans'<sup>54</sup> whilst another study showed 'over 70 per cent of universities had strategies for the internationalisation of form and content of their curricula'.<sup>55</sup> Today, every university in Australia now professes the need to transform its curriculum to reflect the goals of internationalisation.<sup>56</sup> This applies across all disciplines, including law.

However, Rizvi and Walsh suggest that the findings of these reports say little about what is understood by internationalisation and recognise that there are many different meanings. Since these reports, there have been further advances in internationalising curricula, including law curricula.

As with other disciplines, there has been much debate in legal education on approaches to internationalising the law curriculum and how best to prepare graduates for working in a globalised world. Over several decades, different approaches have emerged and are considered below.

## Globalisation and legal education

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<sup>50</sup> Ibid.

<sup>51</sup> Clifford, above n 41, 134.

<sup>52</sup> Lennart Svensson & Monne Wihlborg, above, n 42.

<sup>53</sup> Fazal Rizvi & Lucas Walsh, 'Difference, Globalisation and the Internationalisation of Curriculum', (1998) 2 *Australian University Review* 7-11.

<sup>54</sup> Ibid 7.

<sup>55</sup> Ibid.

<sup>56</sup> See, eg, the vision and mission statements of Curtin University; Sydney University; Australia National University.

Globalisation has long been recognised as a major driver for education reform in general as well as legal education. The review of the literature so far has provided a background context to the ensuing discussion on internationalising the law curriculum.<sup>57</sup>

For several decades there has been research and scholarly debate on preparing law graduates to work in a globalised world, across multiple jurisdictions and with a much deeper understanding of the increasingly complex international contexts in which law operates. As the trend moves towards increasing globalised legal services and mobility of people and ideas, facilitated by unprecedented advancements in communications technology, law schools face the challenge of transforming traditional, domestic law curricula into a more internationalised law curriculum.<sup>58</sup>

However, what constitutes an ‘internationalised curriculum’ and, more importantly, how this is achieved in the discipline of law is still often unclear and untested. Generally, descriptions, interpretations and understanding of an ‘internationalised curriculum’ are as varied and contested as concepts such as ‘globalisation’ and ‘internationalisation’.<sup>59</sup>

As a phenomenon, there is little doubt of the impact of globalisation on the legal environment and its impact on legal education.<sup>60</sup> It has been part of the academic debate on legal education reform for several decades.<sup>61</sup>

According to DeJarnett and Rahdert<sup>62</sup> the case for globalisation of American legal education is well established and they note the marked increase in academic commentary since the 1990s on the rapid globalisation of law and the need to globalise legal education.<sup>63</sup> This, however, is not only a United States phenomenon. Globalisation has also influenced legal developments and education in Europe, Asia and Australia; countries that have seen a significant growth in transborder legal services and activities especially with the opening up of international markets and trade.

Weber, for instance, examined transnational legal education at the Hanse Law School<sup>64</sup> in response to the creation of the European Economic Community and European Union and

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<sup>57</sup> See, eg, Kenichi Ohmae, *The Borderless World. Power and Strategy in the Interlinked Economy* (Harper Business, 1999); John Ralston Saul, *The Collapse of Globalism and the Reinvention of the World* (Penguin Books, 2005).

<sup>58</sup> Some authors refer to a ‘globalised curriculum’ as distinct from an ‘internationalised curriculum’. For the purpose of this report ‘internationalisation’ is used in preference to globalisation. Following Knight, above n 30, globalisation reflects a changing world order and a ‘process impacting internationalisation’.

<sup>59</sup> Leask, above n 29, 10. See also A-Khavari, below n 80.

<sup>60</sup> See, Harry W. Arthurs, ‘Law and Learning in an Era of Globalisation’ (2009) 10(7) *German Law Journal* 629, footnote 6.

<sup>61</sup> See, eg, Teresa Stanton, ‘Globalisation and Internationalisation of Legal Education in the United States: An Annotated Bibliography’ (2010) 29 *Legal Reference Services Quarterly*, 23 – 49.

<sup>62</sup> Susan DeJarnett & Mark Rahdert, ‘Preparing for Global Legal Practice: The Need to include International and Comparative Law in the Legal Writing Curriculum’ (2010) Legal Studies Research Paper Series, Research Paper No. 2010-10.

<sup>63</sup> Ibid footnote 2.

<sup>64</sup> Hanse Law School is an international law study programme, organised by three co-operating universities, Carl von Ossietzky University of Oldenburg, Bremen University and Rijksuniversiteit Groningen Netherlands.

cogently argues that as ‘borders are largely disappearing and people are free to travel to other Member States and stay, study and work’, the legal order is changing and ‘transnational legal education is indispensable for the attainment of the skills to engage in successful legal comparison and in the making and application of European Law’.<sup>65</sup>

The Hanse Law Program is an international law school program offered in cooperation by the Carl von Ossietzky University Oldenburg, the University of Bremen and Rijksuniversiteit Groningen. The aim of the program is to provide an integrated and multilingual law program that makes use of legal comparisons, with a strong emphasis on comparative law. Students are required to study part of the program abroad.<sup>66</sup>

In assessing the program, Weber notes that the advantages of the program for graduates include, the knowledge they acquire of different legal systems, familiarity with techniques of legal comparison and the broad cultural experienced they gain: ‘[t]he fact that students study different legal orders and the multilevel system of EC and national law at the same time in several different languages speaks for itself’.<sup>67</sup>

The impact of globalisation on legal education is particularly evident from the proliferation of international cross-border legal issues and the changing market place. Chesterman describes globalisation as the ‘the third phase of evolution of legal education’ having moved from internationalisation to transnationalisation to globalisation.<sup>68</sup> He says the flow of people, knowledge and ideas is core to globalisation and hence core to the underlying approach to legal education.

Goldsmith, in considering the impact on the legal profession, calls this flow of ideas the ‘globalisation of ideas’, noting that changes to the European legal profession relate to the globalisation of ideas: ‘we live in a globalised world. This means easier crossing of borders. And what crosses borders are not just goods, and not just services like those of a lawyer, but also ideas’.<sup>69</sup>

Likewise, Grossman notes that ‘[to]day we are witnessing dramatic global transformations that call into question both the content and methodology of legal education’.<sup>70</sup> He cites changes in relation to global trade, foreign investment, the presence of new international entities, the emergence of new nations and the breakdown of authoritarian structures, and the proliferation of transboundary issues as part of the global transformation that requires the need for ‘greater international cooperation’ and a consideration of how this ‘new world

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<sup>65</sup> Franziska Weber, ‘Hanse Law School’ – A Promising Example of Transnational Legal Education: An Alumna’s Perspective’ (2009) 10 (7) *German Law Journal* 969. See also, Goldsmith, note 49 below; Chesterman, above n 26.

<sup>66</sup> Ibid. See also, Hanse Law School <[www.hanse-law-school.de/about\\_hls.htm](http://www.hanse-law-school.de/about_hls.htm)>.

<sup>67</sup> Ibid 979.

<sup>68</sup> Simon Chesterman, above n 26.

<sup>69</sup> Jonathan Goldsmith, ‘The Core Values of the Legal Profession for Lawyers Today and Tomorrow’ (2008) 28 *Northwestern Journal of International Law and Business*, 442.

<sup>70</sup> Claudio Grossman, ‘Building the World Community through Legal Education’ in Jan Klabbbers & Mortimer Sellers (eds), *The Internationalisation of the Law and Legal Education*, (Springer, 2008) 21.

reality' affects legal education.<sup>71</sup>

Similarly, Freeland notes the incorporation of international human rights standards into domestic law and issues relating to the environment, global governance and international justice as further examples of the increasingly 'global nature of legal principles'.<sup>72</sup> Such global transformations have seen nation states becoming more deeply involved in international affairs and interdependent in dealing with converging legal issues that are no longer 'state-centric': 'No one State is capable of addressing some of the twenty-first century challenges that face us. With an increasing interdependence of States, an imperative arises to develop cooperative and multilateral solutions to these issues'.<sup>73</sup>

In passing it can be noted that two recent major reports on legal education in the United States make only slight reference to globalisation and its impact on the law curriculum. In 1992 the MacCrate Report was published by the American Bar Association.<sup>74</sup> It noted that multinational law practice was the latest avenue of expansion for the large corporate law firms, and that this portended 'the need for expert legal counsel equipped to advise both government and private enterprise regarding an emerging new international regime'.<sup>75</sup> However, when the MacCrate Committee considered the law school stage in the educational continuum, there is no further reference to this development. It should be noted, though, that the report strongly urges a heightened focus on a range of skills which, as became apparent in the roundtables and the symposium, are seen as essential for international practice.

Later in 2007 the Carnegie Foundation's report, *Educating Lawyers: Preparation of the Profession of Law*, was published.<sup>76</sup> Although more than a decade had passed, it makes no reference to the effect of globalisation on the law curriculum and makes no recommendations in regard to its internationalisation. It should be acknowledged that its focus was not on the content of the curriculum in this respect, but it is interesting that it did not apparently consider globalisation might have any impact on how law schools prepare their graduates for work.

Given the proliferation in global challenges and global mobility, Klabbers<sup>77</sup> argues that 'in a globalising world, lawyers will need to be educated in such a way as to make it easy to move across jurisdictions, across specialisations, and to move across employment opportunities'. Law graduates need to be 'comfortable in multiple jurisdictions, often simultaneously'<sup>78</sup> and

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<sup>71</sup> Ibid 21-22.

<sup>72</sup> Steven Freeland, above n 5.

<sup>73</sup> Ibid 502.

<sup>74</sup> American Bar Association, 'An Educational Continuum Report of The Task Force on Law Schools and the Profession: Narrowing the Gap' (1992) <[www.americanbar.org/groups/legal\\_education/publications/maccrate.html](http://www.americanbar.org/groups/legal_education/publications/maccrate.html)>.

<sup>75</sup> Ibid, 85.

<sup>76</sup> William Sullivan, Anne Colby, Judith Wegner, Lloyd Bond & Lee Shulman, *Educating Lawyers: Preparation for the Profession of Law* (2007) (the Carnegie Report), Carnegie Foundation for the Advancement of Teaching.

<sup>77</sup> Jan Klabbers, above n 2.

<sup>78</sup> Tan Cheng Han cited in Chesterman, above n 26, 883.

‘almost every lawyer must be prepared to face some transnational issues, regardless of that lawyer’s field of practice’.<sup>79</sup> Law graduates should be equipped with the necessary skills and knowledge to deal with transnational issues, diversity and change, and be equipped to ‘operate within the context of increasingly multilateral legal regulation, even over areas of law that have been regarded as within the exclusive domain of the sovereign state’.<sup>80</sup>

However, as A-Khavari<sup>81</sup> states, this does not necessarily mean that law graduates get admission to practice in any jurisdiction they want, but rather that they are equipped with skills that will enable them to be globally mobile and work in multinational companies. Likewise, Friel<sup>82</sup> states that the aim is not to ‘create individuals who can *practice* law in a number of diverse jurisdictions’ but to ‘create lawyers who are comfortable and skilled in dealing with the differing legal systems and cultures that make up our global community’.

Czarnota and Veitch write about the ‘global lawyer’ who must not only be able to work with material for different jurisdictions but, as a good lawyer, also understand global processes that affect national law: and hence the need to address this as an integral part of legal education.<sup>83</sup>

That legal graduates need to be educated and trained for practice in a global, multi-jurisdictional context is a reality. An inevitable consequence is that to ‘prepare law graduates to practice law in the new world conditions, legal education programs will have to be revised’.<sup>84</sup>

Backer is of the view that ‘law schools that fail to conform their educational mission to the realities of law and the practices of the great global legal actors ... will find themselves playing a limited role in the future development of law and the production of law and lawyers for the global marketplace’.<sup>85</sup> This challenges law school to rethink their law programs – their curriculum, approaches to teaching, student support and the student experience in general.

The challenge then is to develop programs that do prepare law graduates for working across borders in a global context and also continue to prepare them for the vast array of traditional domestic work. In this regard, Grossman describes two schools of thought on the implications of global changes on legal education.

The first school holds the view that such global transformation is of little concern for lawyers because they are mostly concerned with domestic law and issues within one’s own

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<sup>79</sup> Bogdan, above n 4, 484.

<sup>80</sup> Freeland, above n 5, 503.

<sup>81</sup> Afshin-A-Khavari, ‘The Opportunities and Possibilities for Internationalising the Curriculum for Law Schools in Australia’ (2006) 16 (1 & 2) *Legal Education Review*, 75.

<sup>82</sup> Raymond Friel, ‘Special Methods for Educating the Transnational Lawyer’ (2005) 55(4) *Journal of Legal Education*, 507-508.

<sup>83</sup> Czarnota and Veitch, above n 6, 160.

<sup>84</sup> Bernabe-Riefkohl, above n 7, 152.

<sup>85</sup> Catá Backer, above n 8.

border. Grossman notes that the proponents of this view allege that ‘modifications to legal education are unnecessary because the global questions are “merely a matter of translation”.<sup>86</sup> However, as the research suggests, irrespective of whether lawyers are working in a global law firm or a small local firm, they may still be required to work on matters that have an international and multi-jurisdictional dimension.

The second school of thought holds that much ‘more is required to prepare lawyers for the seismic changes currently taking place’ and that ‘legal education needs to be modified by increasing global exposure, achieved by adding courses, hiring more international faculty, sponsoring more international academic programs and opening research centres with global connections’.<sup>87</sup>

Grossman is, however, critical of both positions as the first merely maintains the status quo and the second advocates making ‘only surface changes to legal education’.<sup>88</sup> He advocates for a more holistic, integrated and qualitative change to law curricula and concludes that:

the law school curriculum should embrace the emerging transnational legal order to create a more open and forward looking legal education that truly participates in the wider world with which law graduates will have to engage, to pursue successful legal careers.<sup>89</sup>

This approach reflects the broader debate in Australia on the development of meaningful internationalisation of education. The International Education Advisory Council’s *Discussion Paper for the Development of an International Education Strategy for Australia*<sup>90</sup> for example, argues that both Australian and international students who are studying in Australia benefit by studying an internationally-relevant curriculum.<sup>91</sup>

The section that follows examines the internationalisation of curricula as a possible way forward to bringing about more fundamental changes to the law curriculum. The section first provides a brief overview of the meaning of internationalisation within the context of globalisation and education, followed by a discussion on broad approaches to internationalising law curricula and developments in internationalising the law curriculum in Australia.

## Approaches to internationalising the law curriculum

Approaches to internationalising law curricula have varied in nature and extent of

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<sup>85</sup> Grossman, above n 70, 22.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid 35.

<sup>90</sup> International Education Advisory Council, above n 38.

<sup>91</sup> Ibid 5.

incorporation. Drawing largely on developments in the United States, Backer<sup>92</sup> identifies three traditional models that characterise approaches to developing internationalised law curricula, from which lessons can be learned: the aggregation model; the segregation model and the integration model. There is also a fourth, known as the immersion model, which offers another approach to incorporating international elements.

## Aggregation model

The *aggregation model* is probably the most common approach by which international and transnational issues in a range of areas of law are brought together into a separate subject or course.<sup>93</sup> Under this model, international and transnational law is consolidated into one or a number of distinct courses, depending on availability of resources, and faculty appointed to teach those specific courses. Thus, a stand-alone, add-on course such as 'Transnational Law' might be offered. The University of Michigan Law School is cited as an example of the use of the aggregation model. Similarly, at Pennsylvania State Law School an elective in 'Transnational Law and Legal Issues' is offered as an elective.<sup>94</sup> There are many such courses in Australian law schools.

However, although this is a popular model, especially for schools with limited resources, Backer cautions that the risk of this approach is that it may reinforce conventional practice that 'privileges a strictly delimited approach to legal education' such that there may be no changes to the structure of the law program. Backer argues that this add-on approach may create the appearance that there is a move to incorporate transnational or international components into the curriculum but without actually doing so.<sup>95</sup> A-Khavari notes that the aggregation model in Australia is more often used in conjunction with other models.<sup>96</sup>

## Segregation model

Under the *segregation model*, the institution establishes a separate administrative area that serves as an institutional base to deliver all international programs. A version of this model is found in the University of Pittsburgh's Centre for International Legal Education. The current website states that 'the Centre for International Legal Education provides a global approach to legal education. Serving both American and foreign students, Pitt Law alumni, and the local legal community, CILE adds international substance to the study and practice of law in Pittsburgh'.<sup>97</sup> Another version is found at the Cornell Law School.<sup>98</sup> Cornell Law

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<sup>92</sup> Larry Catá Backer. 'Internationalizing the American Law School Curriculum (in light of the Carnegie Foundation's Report)' in Jan Klabbbers & Mortimer Sellers (eds), *The Internationalisation of the Law and Legal Education*, (Springer, 2008) 76.

<sup>93</sup> Backer, *ibid.*

<sup>94</sup> *Ibid* 80.

<sup>95</sup> *Ibid* 80.

<sup>96</sup> A-Khavari, above n 81, 97

<sup>97</sup> University of Pittsburgh's Centre for International Legal Education <[www.law.pitt.edu/academics/cile](http://www.law.pitt.edu/academics/cile)>.at 29 March 2011.

<sup>98</sup> Backer, above n 92.

School's mission has been international in scope and purpose since 1887. There are a number of international centres offering a variety of programs. Cornell Law School provides that

graduates are trained to succeed in a rapidly evolving transnational environment. Faculty members' teaching and research is internationally respected, and the cosmopolitan student body is drawn from around the globe. J.D. students can participate in unique international joint- and dual-degree programs, as well as in semester exchanges at leading world universities, and in summer institutes in Paris and China.<sup>99</sup>

Backer notes that the segregation model is a 'powerful approach' because all activities and programs can be consolidated under a single sub-unit in which it is easy to monitor resources and the performance of programs.<sup>100</sup>

## Integration model

The *integration model* seeks to provide the most extensive and comprehensive incorporation of international elements into the law curriculum, research and services.<sup>101</sup> Theoretically, according to Backer, this model aims to shift the 'education and research hub of the law school from the national to the transnational to the greatest possible extent' with the primary 'object to produce generalists'.<sup>102</sup>

An example provided by Backer is that of the Harvard Law School in which 'more than half of the Harvard Law faculty incorporate international and comparative perspectives in their teaching, scholarship and public service'.<sup>103</sup> Georgetown University Law School is also cited as an example of offering a comprehensive integrated model and a range of courses and seminars in global law.<sup>104</sup> The current website for the Georgetown University Law School testifies to this in its promotion of its global outlook:

[The] former U.S. Supreme Court Justice Sandra Day O'Connor, in her speech at the dedication of the Georgetown's Hotung International Law Center in 2004, recognized that the "law school already has one of the world's most comprehensive international and comparative law programs," and that "Georgetown University Law Center is now situated to be the leading global law center in this country and perhaps the world."<sup>105</sup>

As evidenced by the examples cited, this model is more typically found in the top end law schools in the United States. As Backer notes, this model offers a comprehensive approach but it is more complicated and requires significant institutional commitment and resources

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<sup>99</sup> Cornell Law School < <http://www.lawschool.cornell.edu/international/index.cfm> > at 29 March 2011.

<sup>100</sup> Backer, above n 92, 81.

<sup>101</sup> Ibid 76-77.

<sup>102</sup> Ibid 77.

<sup>103</sup> Ibid 77.

<sup>104</sup> Ibid 77.

<sup>105</sup> Georgetown University Law School < [www.law.georgetown.edu/gls/](http://www.law.georgetown.edu/gls/) > 29 March 2011.

and, significantly, ‘a willingness to change traditional academic culture’.<sup>106</sup> However, Backer notes that other schools have tried similar approaches on an ad hoc basis, and that full integration can be achieved at a slower pace.<sup>107</sup>

A-Khavari noted in 2006 that this is the most common approach by Australian law schools to internationalise their curriculum.<sup>108</sup> However, he observes from the Griffith Law School experience that it is not easy to achieve unless it is ‘conceptualised within an overall framework that rationalises graduate capabilities relating to internationalisation’.<sup>109</sup> This emphasises the importance, identified below by employers, of linking core knowledge with skills and attributes. A-Khavari reports that at Griffith Law School it was found that ‘a coherent and systematic approach to embedding skills, attitudes and content into a curriculum is important to develop graduate capabilities’.<sup>110</sup>

A-Khavari<sup>111</sup> describes the experience of the Griffith Law School in its efforts to incorporate the aggregation and integration models into its curriculum. He also identifies the many Australian examples of each model and variants, which demonstrate that curricula are seldom limited to a single approach to internationalisation.<sup>112</sup>

## Immersion model

The emerging *immersion model* of global legal education is based on the premise that ‘law of other jurisdictions is best learned in those jurisdictions’.<sup>113</sup> To be a truly transnational program requires ‘the participation of educational institutions in multiple jurisdictions’ and it requires ‘the ability to learn in the language in which law is written’.<sup>114</sup> Under this model, immersion in one or more jurisdictions might lead to licensing in the multiple jurisdictions studied, or a level of expertise cultivated sufficiently to be a ‘careful observer’ of the law of the foreign jurisdiction.<sup>115</sup>

In terms of this model, Backer also notes that law school resources are not used to modify programs or require faculty to learn new law outside the jurisdiction for which they are licensed. Rather, the education would be delivered ‘*in situ* abroad to the extent it is not attainable within the domestic institution’.<sup>116</sup> Therefore, the expense is not in creating new programs or altering existing programs to incorporate international elements, but in

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<sup>106</sup> Backer, above n 92, 83.

<sup>107</sup> Ibid 83.

<sup>108</sup> A-Khavari, above n 81, 96.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

<sup>111</sup> A-Khavari, above n 81.

<sup>112</sup> Ibid 80. For further elaboration of the range of curriculum offerings across Australian law schools see the 2004 ILSAC Report: International Legal Services Advisory Council (2004) *Internationalisation of the Australia Law Degree* <[www.ilsac.gov.au/www](http://www.ilsac.gov.au/www)> at 10 July 2010.

<sup>113</sup> Backer, above n 92, 83.

<sup>114</sup> Ibid 83.

<sup>115</sup> Ibid 83.

<sup>116</sup> Ibid 84.

establishing a network of relationships with other institutions in other states. This requires arrangements that would give students reciprocal rights in the host institution.<sup>117</sup>

An example cited of such an initiative is the North American Consortium on Legal Education (NACLE) that acts as a means of promoting and facilitating faculty and student exchanges among law schools in the United States, Canada and Mexico.<sup>118</sup> In this regard the NACLE website states that

the need for increased understanding of legal and social issues in North America transcends national boundaries, and today more than ever we must commit ourselves to comparative understanding of the legal systems of our neighbours. We strongly believe that programs like NACLE can prevent future misunderstandings and legal problems that could be avoided by increased understanding of neighbouring legal systems.<sup>119</sup>

Another example cited is the joint law degree program between Michigan State University College of Law and the University of Ottawa's Faculty of Law. Students may choose where to start the program and can earn their degree by completing the mandatory course requirements by being resident at each institution for two years.<sup>120</sup>

A more recent initiative which could be said to be illustrative of the immersion model on a large scale is the Center for Transnational Legal Studies that has been established as a partnership of 10 founding leading law schools, led by Georgetown University Law Center. Melbourne University Law School is part of the program. The Center is located near Chancery Lane in the heart of London's legal quarter. The curriculum was developed under the direction of an Academic Council comprised of leading faculty from all the Founding Partner schools. The Center's program is described on its website in these terms

Many of the participating law schools send faculty to teach at the Center. Each class will have students from a diverse set of legal and national backgrounds. Several classes are co-taught by professors from different countries, to facilitate comparative analysis and discussion. The program includes a core course focused on transnational legal theory, a weekly workshop featuring leading scholars and practitioners of international, transnational, and comparative law, and a participatory exercise to introduce students to each other and to the different perspectives that they bring to the Center.<sup>121</sup>

Although the immersion model offers many benefits and the opportunity to become a truly global lawyer who is able to practise in a foreign jurisdiction as a 'resident' and not a 'tourist', the model requires more administrative than academic resources and language may be a barrier to studying in another language.

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<sup>117</sup> Ibid 84.

<sup>118</sup> Ibid 84.

<sup>119</sup> The North American Consortium on Legal Education (NACLE) comprises 12 participating law schools in Canada, Mexico and the United States <[www.nacle.org/about-nacle.html](http://www.nacle.org/about-nacle.html)> 29 March 2011.

<sup>120</sup> Backer, above n 92, 85.

<sup>121</sup> Georgetown University Law Centre, Center for Transnational Legal Studies <<http://ctls.georgetown.edu/info/index.html#Newctrtranslegal>>.

## Towards internationalising the Australian law curriculum

Over several decades a number of reports have addressed various aspects of Australian legal education reform and the discussion has included the need for a more internationalised law curriculum. However, a common theme in legal education reviews is the lack of a systematic treatment of curriculum development in the area of law. This is particularly relevant to the impact of globalisation on the law curriculum. The discussion that follows provides an overview of the key issues and findings of several major reports on legal education reform and draws together common themes that emerge which continue to inform debate in this discipline, and which provide context for this research project.

A useful starting point is the 1987 Pearce Report.<sup>122</sup> Although the Pearce Report did not focus on issues of internationalisation or globalisation per se it did provide a 'climate of debate, discussion, critical thinking, self-evaluation and continuous improvement'<sup>123</sup> and provided a context for reform initiatives. The Pearce Report did emphasise that 'all law schools should examine the adequacy of their attention to theoretical and critical perspectives, including the study of law in operation and the study of relations between law and other social forces'.<sup>124</sup> The Pearce Report further argued for undergraduate courses that

expose students to an understanding of the processes and functions in society of law and legal institutions, to the variety of modes of social control, to the moral and political outlooks embedded in law and conceptions of professional roles, to questions of justice, to the relevance of social, political and moral theories and forces to law, legal institutions and their change and development, and to the information and understanding to be drawn from the social sciences and social science research for the purpose of evaluating law.<sup>125</sup>

Knowledge of different legal systems and an understanding of the social, cultural, economic and political environment in which law operates, is fundamental for law graduates working in a global context.

The Australian Law Reform Commission (ALRC) *Review of the Federal Civil Justice System* in 2000 had, as one of its terms of reference, to consider 'the significance of legal education and professional training to the legal process'.<sup>126</sup> Although this ALRC Report also did not specifically address the issue of internationalisation it did note the need for greater inclusion of professional skills in the curriculum and training, and the complementary nature of substantive knowledge and professional skills rather than a polarisation of these two dimensions.<sup>127</sup> Of relevance, the ALRC Report commented on the 'Priestley Committee's

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<sup>122</sup> Dennis Pearce, Enid Campbell & Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission: A Summary* (Canberra: Australian Government Publishing Service, 1987)

<sup>123</sup> Craig McInnis & Simon Marginson, *Australian Law Schools after the 1987 Pearce Report* (1994) vii-viii.

<sup>124</sup> Pearce, above n 122, 149.

<sup>125</sup> Ibid.

<sup>126</sup> Australia Law Reform Commission, *Review of the Federal Civil Justice System* (ALRC Report 89).

<sup>127</sup> Australia Law Reform Commission, *Review of the Federal Civil Justice System* (Discussion Paper 89), 3.24.

failure to consider the changing nature of the legal profession and legal practice for which law students were being prepared, noting that contemporary legal practice was much more internationalised'.<sup>128</sup> It recommended that 'in addition to the study of core areas of substantive law, university legal education in Australia should involve the development of high level professional skills and a deep appreciation of ethical standards and professional responsibility'.<sup>129</sup> The ALRC Report concluded that 'legal education should now increasingly focus on what lawyers need 'to be able to do', rather than on what lawyers 'need to know'.<sup>130</sup> Preparing law graduates for working in a global environment will of necessity require a change to the substantive material and the inclusion of other units in 'an already over-crowded curriculum', as well as more time being given to developing skills that employers expect and demand.

In 2003 the significant research by Johnstone and Vignaendra for the Australian Universities Teaching Committee (the 'AUTC' Report') that examined learning outcomes and curriculum development in law with reference to issues raised by globalisation, indicated that law schools 'had not developed coherent strategies to address demands that globalisation will impose on lawyers in the twenty-first century'.<sup>131</sup> The study concluded that in terms of the global impact 'law schools simply do not see the issue as a major priority' and that 'some law schools even chose not to have any strategy to respond to the issues raised by globalisation'.<sup>132</sup>

The challenge of reforming legal education and internationalising the law curriculum was also the subject of a 2004 study undertaken by ILSAC<sup>133</sup> which lends additional support to the AUTC findings. The main aims of the ILSAC report were to consider the effect of globalisation on legal services and, informally, survey existing curricula and pedagogy in Australian law schools. This study concluded that 'most law schools do not consider internationalisation of the curriculum to be a priority'<sup>134</sup> and that 'many Australian (and overseas) law schools give only a nodding response to the need for an international approach to legal education'.<sup>135</sup> It further noted that the 'Priestley Eleven' subjects tend to limit the capacity of law schools to include international and transnational materials. The report also concluded that law schools 'have not adopted co-ordinated strategies to respond to the impact of globalisation of legal services'.<sup>136</sup> The report therefore, inter alia, recommended that 'strategies be adopted to promote the development of an internationalised legal education that prepares Australian and overseas graduates for the

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<sup>128</sup> Ibid.

<sup>129</sup> Australia Law Commission, above n 126, 2.89.

<sup>130</sup> Ibid 2.85.

<sup>131</sup> Richard Johnstone & Sumitra Vignaendra, above n 9, 206.

<sup>132</sup> Ibid.

<sup>133</sup> International Legal Services Advisory Council (2004) Internationalisation of the Australia Law Degree <[www.ilsac.gov.au/www/ilsac/RWPAttach.nsf/VAP/\(712B446AA84F124A6F0833A09BD304C8\)~Internationalisation+of+the+Australian+law+degree.pdf/\\$file/Internationalisation+of+the+Australian+law+degree.pdf](http://www.ilsac.gov.au/www/ilsac/RWPAttach.nsf/VAP/(712B446AA84F124A6F0833A09BD304C8)~Internationalisation+of+the+Australian+law+degree.pdf/$file/Internationalisation+of+the+Australian+law+degree.pdf)> at 10 July 2010.

<sup>134</sup> Ibid 3.

<sup>135</sup> Ibid 6.

<sup>136</sup> Ibid.

provision of legal services in a global market'.<sup>137</sup> This included providing a 'genuinely internationalised legal education to both ensure law graduates can compete effectively in a global market and to attract overseas students to study law in this country'.

To this end, the report articulated the following key aspects of an internationalised law curriculum:<sup>138</sup>

- the curriculum and pedagogy should prepare students to apply legal skills in trans-national and international transactions;
- students should be able to understand and apply fundamental principles of law and legal reasoning in all international, regional and trans-national contexts: with these skills students can act as facilitators in international transactions, liaising between differing legal systems and practices;
- international materials should be integrated into the whole legal curriculum, fundamentally extending the reach of legal study and analysis; and
- students from other countries with different legal systems and cultures should be able to gain a law degree from an Australian university that is genuinely internationally focused, rather than parochial or domestic in approach.

Since the 2004 ILSAC Report<sup>139</sup> there has been substantial expansion of internationalisation across Australian law schools. One of the most ambitious has been the specific focus of the Law School of the University of Sydney on preparing graduates for national, transnational and international legal careers using elements of each of the models identified here.<sup>140</sup>

Building upon the AUTC Report, in 2009 the Council of Australian Law Deans (CALD), the peak body of Australian law schools, completed an Australian Learning and Teaching Council (ALTC) project, *Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment*.<sup>141</sup> The scope of the project was to examine

a number of areas associated with ensuring the provision of high quality legal education to achieve quality outcomes for a diverse range of students entering upon a course of study in law. These include Graduate Attributes; Ethics, professionalism and service, Standards for Australian Law Schools; building sustainability for the long term through improved links with relevant professional and regulatory bodies, and exploring issues of law student mental health. The key purpose has been to enhance and sustain excellence in teaching and learning in the discipline of law, through developing concrete and practical innovations which acknowledge diversity while also establishing an infrastructure to support sustainable change.

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<sup>137</sup> Ibid 3.

<sup>138</sup> Ibid.

<sup>139</sup> Ibid.

<sup>140</sup> See <http://sydney.edu.au/law/>.

<sup>141</sup> Gary Davis, Susanne Owen, Michael Coper, William Ford, Jill McKeough, *Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment* (Council of Law Deans, 2009) above n 10.

The ALTC project assisted and reinforced the establishment of a set of 'Standards for Australian Law Schools'. Internationalisation of law curricula does not feature in the CALD report, *Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment*, but is cursorily identified in the Standards as a particular component of the law school curriculum, namely to develop knowledge and understanding of 'international and comparative perspectives on Australian law and of international developments in law' (Standard 2.3.3.a).<sup>142</sup> The Standards were written at a high level of generality, and most topics were only briefly adverted to. In this respect, internationalisation is no different from other comparable standards.

Although the CALD Standards are limited when it comes to internationalisation, there are nonetheless many examples of 'internationalisation' in law programs albeit in the form of an additive approach. Most Australian law programs go beyond the Standards and offer some units with an international dimension.

A cursory review of law programs provides the following examples of units with an international focus: A Survey of United States Law, International Human Rights Law, International Trade Law, Celtic Law and Society, Chinese Law and Society, Globalisation and the Rule of Law, European Union Law, International Financial Crime, China Trade and Investment Law, International Environment Law, International Commercial Arbitration, International/Comparative Jurisprudence, International Intellectual Property Law and Comparative Law. However, these units are mostly, if not all, offered as electives. The approach is akin to the aggregation model whereby international units are added to the law program and are merely optional. Therefore, the extent to which law programs have become 'internationalised' seems less compelling.

Turning from what has been said in several reports to which is actually happening in practice, Australian law schools have different approaches to incorporating international elements into the curriculum. Some include compulsory units in private and public international law; others offer a compulsory unit in Global Law, while others tend to incorporate elements in the core units. There is also an increasing range of international experiences that are now included in the curriculum such as mooting, clinical placements and international exchange.

Some law schools have extended their offering in international law to also include specialised programs or certificates in international law. For instance, Murdoch Law School offers a Postgraduate Certificate in Chinese Law and Macquarie Law School offers a Postgraduate Diploma in International Trade and Commerce Law. Short courses are also offered by law schools; for example, in 2012 the University of Wollongong is offering a two-week International and Comparative Law Program in association with the University of Alberta, Canada and the University of Lucerne, Switzerland.

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<sup>142</sup> Council of Australian Law Deans, *The CALD Standards for Australian Law Schools* (17 November 2009) <[www.cald.asn.au/resources](http://www.cald.asn.au/resources)>.

As discussed above, Griffith and Sydney Law Schools have sought to implement a comprehensive integration model. At Sydney Law School, as well as an extensive exchange program for staff and students, there is a wide range of units in all its programs that integrate international and comparative law as part of the curriculum. The key for Sydney Law School is integration not add-ons, and so the subjects often include international treaties and custom, as well as comparative examples.

However, as already mentioned, the challenge in terms of cultural change, additional resourcing and institutional commitment to 'a coherent and systematic approach to embedding skills, attitudes and content into a curriculum' in order 'to develop graduate capabilities'<sup>143</sup> is substantial. It may be that it is only attainable in a large, well-endowed law school. A-Khavari notes the challenges of comprehensive integration and yet working within the constraints of the Priestley areas of knowledge, which were considered at the National Symposium (see below).<sup>144</sup>

While there seems to be much concern about the limitations of current law curricula and the need to internationalise curricula, some common findings and themes have emerged from the literature review and key reports on legal education in Australia, including those briefly canvassed above. The main findings and themes can be summed up as follows:

- Globalisation, no matter the pro and cons, and contested meanings, is a reality that impacts on legal education and legal services.
- Internationalisation of the law curriculum encompasses knowledge, skills and attributes, which employers increasingly require in graduates and expect law schools to develop during the law degree.
- There is currently little articulation of the specific knowledge, skills and attributes required for practice in an increasingly globalised environment.
- Although most universities have policies and articulated strategies on internationalisation, there still appears to be reluctance amongst at least some law schools to place a high priority on this and to translate aims into actions.
- This reluctance, however, also arises out of constraints within which law schools operate and curricula are delivered, and the real challenge of finding space in a 'crowded curriculum'.
- Curriculum transformation is hindered by workload demands and inadequate or limited skills and training for law teachers in the area of curriculum design, which would include the skills and training required to introduce into the curriculum effective internationalisation based on any of the different models or combinations.
- The approaches to internationalising the law curriculum are still very much a 'patchwork quilt' or 'piecemeal' approach with bits and pieces being added here and there to the curriculum with no coherent or co-ordinated approach.

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<sup>143</sup> A-Khavari, above n 81, 97.

<sup>144</sup> Ibid.

- However, four main approaches have emerged to internationalise the law curriculum: aggregation (most common), integration (rare because of the demand on resources), segregation (particularly effective in undergraduate elective streams and postgraduate education), and immersion (little widespread demand for genuine immersion over a long period but common through short-term study tours and semester exchanges). Integration is seen as the most effective form of internationalisation for first degrees in law, often in combination with aspects of other models.
- Where the skills, knowledge and attributes required by graduates to prepare them to practise law in a globalised world are integrated into the curriculum, there is a clear need to ensure that it is within a coherent and systematic framework in which they are articulated, taught and developed through the program in an integrated and incremental fashion, and assessed to ensure that students reach the requisite standard.

## Skills in the law curriculum

Of particular importance to the discussion throughout this project is the issue of ensuring that the relevant skills necessary in graduates are articulated, taught and developed through the program in an integrated and incremental fashion, and assessed to ensure that students have achieved the requisite level of competency. This has been recognised as important for skills development generally, as identified in the 1992 American Bar Association MacCrate Report<sup>145</sup> and applied in the extensive integrated skills curriculum project at Bond University Law School.<sup>146</sup> However, there is little written specifically on the systematic integration and incremental development and assessment of the intellectual skills and attributes required for global practice.<sup>147</sup> As it has proved challenging integrating and developing wider skills capability so that the outcomes can be assessed, so it is even more challenging doing so for more specifically applicable skills and attributes.

## Conclusion

Globalisation and its impact on legal education and legal services has been the subject of much legal research and debate for several decades. Notwithstanding the competing views on globalisation and its pros and cons, there is wide recognition and agreement that global transformations have given rise to a new world-order, often described as the ‘borderless society’, which has impacted many areas of society. The impact has also been evident in the field of law and has raised challenging questions about legal education and preparing lawyers for global legal practice. Compelling arguments have been made by legal scholars for the need to graduate law students and educate lawyers to be ‘global lawyers’ so that

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<sup>145</sup> American Bar Association, ‘An Educational Continuum Report of The Task Force on Law Schools and the Profession: Narrowing the Gap’ (1992) above n 74.

<sup>146</sup> Bobette Wolski, ‘Why, how and what to practice: Integrating skills teaching and learning in the undergraduate law curriculum’ *Law papers* (2003) <[http://works.bepress.com/bobette\\_wolski/3](http://works.bepress.com/bobette_wolski/3)>.

<sup>147</sup> A-Khavari, above n 81, 97.

they are competent to work across specialisations and jurisdictions, and be able to operate in a complex, changing legal environment.

The internationalisation of law curricula and legal education has been one response to the process of globalisation and the call for producing globally competent lawyers. There has thus been a steady increase in research on what internationalisation actually means and how it is achieved. The notion of internationalisation has been explored from many different perspectives. Of relevance to legal education is the curriculum perspective and how law curricula may be internationalised to incorporate international perspectives, skills and competences that equip graduates and lawyers for global practice, irrespective of whether they are operating in a small local firm dealing with cross-jurisdictional issues, or a large global firm operating in multiple jurisdictions.

Although there has been much research on internationalisation in the context of education in general, there has been less research on the curriculum dimension and discipline-specific research. However, this is an area that is gaining increasing attention with the recognition that students can no longer merely learn 'black-letter law' within the confines of a local, national jurisdiction but have to develop knowledge, skills and attributes that equip them for the realities of a globalised world.

In 2008, at an address to the Continuing Legal Education Association of Australasia, Steve Mark, the New South Wales Legal Services Commissioner, in effect summed up what had been said in these reports, when he put the case that focusing on the 'core areas of substantive law only in today's law schools is not meeting the needs of the law graduate of the 21<sup>st</sup> century'.<sup>148</sup> He noted that the 'effects of globalisation and a strong growth in trade of transnational legal services have created a competitive legal services market place' and that the 'requirements for people to be able to communicate in a multidisciplinary market is increasing'.<sup>149</sup> Mark concludes that 'the nature of legal practice in today's marketplace requires law graduates to have not only substantive knowledge in a practice area but also a range of other generic skills'.<sup>150</sup>

Law schools world-wide have grappled with the issues of globalisation and transforming law curricula. Research and practice provide examples of different approaches that law schools have adopted to internationalise the law program and student experience. In this literature review four models for incorporating international elements into the law curriculum were discussed. In Australia, law curricula have undoubtedly undergone much transformation since the 1980s and a number of examples can be cited of law schools embracing new law programs and internationalising the curriculum.

However, although developing an international perspective is held to be an important graduate attribute, the development and delivery of a comprehensive and integrated

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<sup>148</sup> Steve Mark, 'Legal Education and the 21<sup>st</sup> Century Law Graduate' Continuing Legal Education Association of Australasia', Thursday 16 October 2008  
< [http://www.lawlink.nsw.gov.au/lawlink/olsc/ll\\_olsc.nsf/pages/OLSC\\_speeches](http://www.lawlink.nsw.gov.au/lawlink/olsc/ll_olsc.nsf/pages/OLSC_speeches) >.

<sup>149</sup> Ibid 4.

<sup>150</sup> Ibid.

internationalised law curriculum remains a challenge. Notwithstanding the extensive body of research and literature on internationalisation and internationalising the curriculum, there is scope for and the need to translate the strategies and findings on internationalisation into practice.

# Chapter 3      Employers' perspectives on essential knowledge, skills and attributes for law graduates to work in a global context

## Introduction

The primary purpose of the research project was to develop a framework for internationalising the Australian law curriculum so that law graduates are better equipped to work in a global, international context and across multiple jurisdictions. Therefore, the study has first and foremost focused the research on a literature review to examine the impact of globalisation on legal education, the meaning and scope of internationalisation, and pedagogical approaches to internationalising the curriculum, in particular the law curriculum. However, in terms of preparing law graduates for global legal practice, it is important to understand employers' perspectives on what they expect from graduates. The information sought from employers of law graduates should inform the development of a law curriculum that prepares graduates for the workplace.

## Research approach

The research project involved a small-scale investigation using roundtables and interviews as a means of collecting data from employers. The purpose of these roundtables and interviews was to obtain input from employers of law graduates on their perspectives on internationalising the law curriculum, in particular, their views on the knowledge, skills and attributes that are essential for law graduates working in a global, multi-jurisdictional environment. Ethics approval for the project was obtained by all participating institutions.<sup>151</sup>

## Sample and participants

Roundtables were conducted in Perth, Sydney, Canberra and Hong Kong (Table 1). In addition to the roundtables, two interviews were conducted in Hong Kong and one

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<sup>151</sup> Similar input was also obtained at the Symposium, although that was not its primary purpose.

interview in Singapore.<sup>152</sup> The roundtables included participants from different parts of private legal practice, professional associations and accrediting bodies, government organisations, human resources experts engaged in legal recruitment, the corporate sector and academia.

Participants were specifically identified from various organisations and were invited to participate in the roundtables and interviews. Participants were provided with an Information Sheet. This purposeful sampling<sup>153</sup> was undertaken to ensure that the roundtables included key stakeholders that were representative of employer perspectives and who would be able to provide rich and relevant input. The roundtables were kept to a manageable number to ensure that all participants had the opportunity to participate and it was easier to facilitate the discussion. Although the number of roundtables and participants were limited, the project team was satisfied that for a small-scale exploratory component of the study, the roundtables were adequate for the purpose of the study.

**Table 3.1: Schedule of roundtables**

Roundtables	Date	Number of Participants
Hong Kong	27 May 2011	4
Perth	21 June 2011	13
Perth	22 June 2011	7
Perth	23 June 2011	13
Canberra	25 July 2011	13
Sydney	28 February 2012	20

## Data collection

The roundtables were one and a half to two hours in duration. Individual interviews were 30 – 45 minutes. The roundtables and individual interviews were by no means considered to be in-depth qualitative research focus group interviews; but they nonetheless generated rich discussion and meaningful data that gave rise to consistent views and expectations about the knowledge and skills expected of law graduates.

Following a preliminary literature review on the research topic, a semi-structured interview schedule was developed that was used to facilitate the roundtable discussions and

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<sup>152</sup> The interviews in Hong Kong served as a follow up to the roundtable. Although it was only possible to secure one interview in Singapore, the information gathered proved very valuable and reinforced data gathered in the other jurisdictions and therefore was included in the study.

<sup>153</sup> John W. Creswell, Educational Research. *Planning, Conducting, and Evaluation Quantitative and Qualitative Research* (Pearson Education Inc, 2008).

interviews. It was intended that the discussions should be free-flowing and as interactive as possible; with opportunity to explore and discuss issues as they emerged. Extensive notes were taken during and immediately following the roundtable discussions and interviews.

The following questions formed the basis for the roundtable discussions:

- To what extent are recent law graduates equipped to work in a global environment?
- What generic and specific skills and attributes do law graduates require in order to work in multiple jurisdictions and do they have them? (What do employers and legal practitioners expect of graduates?)
- What core areas of legal knowledge are essential for developing an integrated internationalised law curriculum that will equip law graduates to work in a global environment and is their knowledge sufficient?

## Data analysis

The data gathered from the roundtables and interviews were analysed using the qualitative analysis technique of category construction as described by Merriam.<sup>154</sup> Qualitative analysis is concerned with gaining a deep understanding of the phenomenon being researched from the participants' perspectives through words rather than statistics.

Data analysis is described as the 'process of making sense out of data' which involves 'consolidating, reducing and interpreting what people have said and what the researcher has seen and read'.<sup>155</sup> It is an iterative process of moving back and forth between 'concrete bits of data and abstract concepts, between inductive and deductive reasoning and between description and interpretation'.<sup>156</sup>

Category construction is a process of constructing meaningful categories or themes that capture and describe the recurring patterns of data that cut across the various data.<sup>157</sup> Devising categories is an 'intuitive process, but it is also systematic and informed by the study's purpose, the investigator's orientation and knowledge, and the meanings made explicit by participants themselves'.<sup>158</sup> It is a means of deconstructing data and reorganising, classifying and grouping data into a meaningful whole.

The process of categorisation involves firstly coding the data by which the text is dissected into meaningful units of data or segments and assigned a code, and secondly grouping together similar coded data to form a category or theme. Units of data, which are any meaningful segments of information, are sorted into groups that have something in common and are assigned a category.<sup>159</sup> A unit of data can be as small as a word or

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<sup>154</sup> Sharan Merriam, *Qualitative Research and Case Study Applications in Education* (Jossey-Bass, 1998).

<sup>155</sup> Ibid 178.

<sup>156</sup> Ibid 178.

<sup>157</sup> Ibid 179.

<sup>158</sup> Ibid 179.

<sup>159</sup> Ibid 179.

comprising several pages of information that a participant has used to describe or explain a feeling or phenomenon.<sup>160</sup>

As categories are constructed, they may be merged or subdivided as the data is consolidated, classified and refined. The names of the categories reflect the focus of the research and the data analysed but ‘they are abstractions derived from the data, not the data themselves’.<sup>161</sup> The names of categories can come from the researcher, the participants or the literature but importantly they ‘reflect the purpose of the research’.<sup>162</sup> There is no hard and fast rule on the number of categories as this will be influenced largely by the nature of the study; however, Merriam recommends that the ‘fewer the categories, the greater level of abstraction, and the greater ease with which you can communicate your findings’.<sup>163</sup>

The data from the roundtables and interviews were analysed and categorised. Seven categories (or themes) emerged from the questions and data, and were named as follows:

- Foundational Knowledge
- International-Specific Knowledge
- Communication and Presentation
- Problem Solving
- Legal Research
- Relationship Building
- Adaptability

These categories represent the most common themes or ‘recurring patterns’ with regards to the participants’ views and perspectives on the *knowledge, skills and attributes* that they considered essential for law graduates working in a global, multi-jurisdictional environment, but also for law graduates in general. The first two categories deal with the substantive legal knowledge; the first deals generally with core knowledge and the second more specifically with international legal knowledge. The remaining five categories to emerge centred on professional and cognitive skills and attributes. Although it was anticipated that there would be more in-depth and robust discussion on the ‘knowledge’ component, the discussion in all the roundtables very soon turned to and focused on graduate skills and attributes.

## Findings and discussion

It is axiomatic that in an increasingly globalised, multi-jurisdictional and diverse legal environment in which legal practitioners may be expected to work within and across jurisdictions, law graduates need to have the knowledge and skills to work in such a global, international context. This then raises the question of how a law curriculum might be

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<sup>160</sup> Ibid 179.

<sup>161</sup> Ibid 181.

<sup>162</sup> Ibid 182, 183.

<sup>163</sup> Ibid 185.

developed to reflect this changing reality. The categories articulate the key findings in relation to employers' perceptions that emerged from the roundtable data.

## Substantive knowledge

The first two categories that emerged from the questions and data on legal knowledge relate to foundational knowledge and international-specific knowledge. Both these categories are concerned with substantive law. However, the first category concerns itself with participants' views on core areas of legal knowledge, while the second category deals with the specific issues that were raised in relation to teaching international and comparative perspectives.

## Foundational knowledge

Traditionally the Australian law syllabus is made up of mandatory core units, that cover the so-called 'Priestley Eleven'<sup>164</sup> areas of knowledge, and electives that students may choose from a list of unit/course offerings, which can be very diverse and extensive. Over the years, and especially in more recent times, there has been much debate about the appropriateness and currency of the 'Priestley Eleven' in preparing today's law graduates. One argument for instance is that the prescriptive nature of the 'Priestley Eleven' does not allow for sufficient innovation and development in the curriculum to meet changing realities.

Whilst this may be an issue amongst some legal practitioners and scholars, participants did not express much concern about the Priestley Eleven, with many having forgotten what areas of law made up the 'Priestley Eleven'. Instead, the participants as a whole were far more concerned about graduates receiving a very solid and thorough grounding in what they regarded as core subjects, such as torts law and contract law (the two most frequently mentioned subjects): 'core subjects are what international commercial law firms require', 'absolutely essential is contracts and torts', 'absolute core units such as advanced contracts and torts', 'there needs to be the basic contracts, torts and trusts'.

Participants also emphasised very strongly that graduates need to have a deep 'understanding of the basic principles' and a 'broad understanding of basic legal concepts'. As some participants stated, 'we expect graduates to have the basics when they graduate'. However, a number of participants expressed concern that even though 'basic content [has] not changed for centuries [graduates] do not know basic legal principles', they are not 'able to talk about basic first principles' and they should [but can't] 'talk knowledgeably about

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<sup>164</sup> The Priestley Eleven areas of knowledge are: Criminal Law and Procedure, Torts, Contracts, Property, Equity, Company Law, Administrative Law, Federal and State Constitutional Law, Civil Procedure, Evidence and Professional Conduct. They are named after the Law Admissions Consultative Committee (LACC, commonly known as the Priestley Committee as it was chaired by Justice Priestley of the New South Wales Supreme Court in 1992) and have been adopted as fulfilling the academic component of the pre-admission requirements in all jurisdictions.

landmark cases'. Several participants drew a distinction between understanding and memorisation. They saw the ability to understand and apply core knowledge as a distinguishing attribute of law graduates able to transition successfully into practice.

Although there was little discussion on the merits or otherwise of the 'Priestley Eleven' per se, the discussion did nonetheless raise pertinent questions not only about what constitutes the most important fundamental units, but importantly what should be taught and how it should be taught. Participants reiterated the need for graduates to have sound knowledge and understanding of general principles coupled with the ability to communicate, research and problem solve (as discussed below).

This view finds support in the research. Jan Klabbers at the University of Helsinki, for example, argues that legal education should be 'fairly general in nature: the lawyer who knows her Finnish criminal code by heart but not much else will have a hard time surviving professionally, and might be better off having an understanding of the principles underlying the criminal code, rather than the details of that code itself'.<sup>165</sup> This approach is more likely to better prepare lawyers who are likely to have more than one employer and move across jurisdictions.

Assuming a more general, 'first principles' approach to teaching law as opposed to a more technical, rules-based approach, particularly where memorisation is important, has implications for curriculum development and teaching and learning practices, and assessment. So, too, does a requirement that students are able to use the knowledge they have acquired and apply it to diverse legal problems. It is important to note, however, that where this was raised in discussion, participants believed that a deep theoretical understanding was helpful, provided it developed thinking and analytical skills, which could then be used to apply core knowledge.

## International-specific knowledge

There is much research and legal scholarship that strongly advocates for the inclusion of international and comparative perspectives in the curriculum and the importance of internationalising the law curriculum to prepare law graduates for working in a global environment, as illustrated in the literature review. However, a particularly interesting and common theme that emerged from the roundtables and interviews was the view that specific subjects focused on international and comparative perspectives would be seen more as a 'curiosity than a necessity' by some employers.

For some participants having specific knowledge of international and comparative perspectives would 'not really make a difference' and some indicated that their law firm would 'not be interested in [graduates having] international law', per se especially as this was seen as an area that graduates may develop in practice. One participant stated that in

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<sup>165</sup> Klabbers, above n 2, 17.

recruiting graduates they would 'not really be concerned about international law – it is not necessary to come with international principles – they will learn on the job' while another participant stated 'having international law would not make a difference - if they perform well in Perth they will have the opportunity to work overseas – especially in corporate'.

Participants agreed that to be a 'good international lawyer, you must first be a good domestic lawyer'. This was supported by other participants who noted that irrespective of where graduates are located the 'corporate lawyer [for example] has to deal with all jurisdictions' and be able 'to manage the legal issues across jurisdictions'. Some participants, however, did acknowledge that 'having international experiences are a bonus for some employers' and they would look for people with an interest in practising globally. This would be evidenced by graduates' participation in international exchanges, internships and moots, such as the Philip C. Jessup International Law Moot Court Competition, which is 'a terrific indicator that the person can focus, has the basic knowledge and can work as part of a team'.

From the discussion on the issue of international-specific knowledge it was evident that, in general, participants were still more concerned that graduates had mastered the basic core subjects and legal principles. They did not necessarily expect that graduates would have specific 'international knowledge' and would not be looking for international law subjects on a resumé. However, participants were interested in such a development and acknowledged that it could be a distinguishing feature for graduates who had studied some international law subjects.

The point was made by some practitioners that comparative perspectives open the mind to alternative ways of thinking and thus deepen understanding of basic principle. So it is not just a matter of knowing about different legal systems, or even having cultural sensitivity – it is also about acquiring fundamental knowledge and skills through the comparative method.

In discussing the inclusion or otherwise of international and comparative perspective subjects, several participants did however list private international law as being an important area of law and it was recommended as an area that offers 'a different way of thinking'. The importance of private international law has also been referred to by other legal scholars. For instance Bogdan argues that private international law – the basic principles of conflicts of laws, should be a compulsory part of legal education, whether as a separate subject or integrated and taught within the context of a particular field of substance law such as family law or contract law.<sup>166</sup>

A unit in Comparative International Law was also mentioned by participants as a useful area of study that would help graduates work across different jurisdictions. It was suggested that introductory units in a course could touch on other laws and that electives could expand on comparative aspects.

However, in exploring further with participants it became clear that many took for granted

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<sup>166</sup> Bogdan, above n 4, 485.

that core knowledge would include an understanding of how domestic law would interact with other jurisdictions, for example, in contract law. They expected that students would understand domestic law in the context of and with an awareness of other jurisdictions, without necessarily having any knowledge of the law of those jurisdictions. The discussions therefore explored the difference between an expectation of detailed knowledge of international and comparative perspectives as developed in a stand-alone subject and awareness of comparative and international perspectives.

Many participants took the view that developing an understanding of comparative and international law 'should be embedded in as many units as far as possible' rather than as a stand-alone subject. It was also noted that some subjects lend themselves to consideration of international and comparative perspectives. Further, generally participants were not particularly supportive of a stand-alone 'transnational module'. This view is certainly consistent with the research literature. Grossman suggests that 'international law concepts should be woven into courses that have traditionally been thought of as "domestic"'. For example, large first year doctrinal subjects can be taught to include aspects of international legal systems from a comparative perspective.<sup>167</sup>

Although there was not much emphasis placed on international and comparative perspective subjects per se as being part of a core curriculum, especially at an undergraduate level, there was wide agreement that graduates working in a global environment and across jurisdictions, would greatly benefit from having a basic understanding and knowledge of different legal systems: 'they need a base level of awareness of how other jurisdictions work'. It was frequently pointed out that only having knowledge of a common law system was no longer adequate, even when working in countries such as Hong Kong and Singapore which are based on a common law tradition.

It was noted that clients and cases are increasingly international, often involving complex transactions across several jurisdictions. Thus working in the Asia region requires an understanding of systems based on Roman-Dutch law, for example in the case of Indonesia.

A number of participants expressed the view that it was more likely for graduates to specialise in international areas of law after some years of experience and possibly pursue this through postgraduate study. In this regard, employers recognised that they share the responsibility of providing ongoing in-service or continuing professional development to facilitate the development of international knowledge, experience and expertise.

Participants spoke strongly in support of graduates having 'cultural awareness' and 'cultural understanding and sensitivity'. Therefore, an understanding of different legal systems would include an understanding of the cultural and political context in which legal business is conducted and legal transactions take place. Freeland, for instance, argues that lawyers, especially those working in a transnational context, will need to be conversant with the other disciplines such as politics, commerce, cultural values and indigenous rights.<sup>168</sup>

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167 Grossman, above n 70, 31.

168 Freeland, above n 5,504.

In this respect it was noted that a good example of developing cultural awareness and knowledge is found in the Murdoch University Law School program that offers the Chinese law program. The Postgraduate Certificate in Chinese Law, for example, aims to build international networks and develop students' skills and knowledge of China's economic and legal development, history and culture.<sup>169</sup> Students study Chinese constitutional law, commercial and contract law, and international intellectual property law. Students also complete three weeks of intensive study at the City University of Hong Kong.<sup>170</sup>

In summary, most roundtable participants concluded that graduates do not need a detailed understanding of international law or the law of different jurisdictions, but a broad understanding that domestic law must interact across jurisdictions and that there is a context to that interaction. This conclusion is supported by the literature. For example, Grossman<sup>171</sup> argues that lawyers practising in a global environment must understand different legal traditions which require not only an understanding of the substance of law but also the legal culture such as common law, civil law or religious law: 'lawyers practising in the global environment must understand the legal traditions that influence other countries'.<sup>172</sup>

Similarly, Bogdan argues that 'communication is difficult if each is a "prisoner" of his own legal systems concepts, terminology and way of reasoning and lacks the counterpart's way of thinking and working'.<sup>173</sup> Bogdan notes that learning about different legal systems 'provides a global insight into the laws of mankind' and helps to develop a greater understanding of legal cultures. However, in advocating for a general course on comparative and foreign law, Bogdan also notes that such a course is not about teaching students the content of foreign substantive law but rather to focus on the 'particular legal systems' general features and working methods – sources of law, role of law in society [and] fundamental legal concepts'.<sup>174</sup> This once again reiterates the importance of law graduates having a very thorough and solid grounding in basic legal concepts, principles and traditions.

## Professional skills and attributes

It is perhaps unsurprising that the skills that were emphasised in all roundtables and interviews covered the basic skills that lawyers need irrespective of the legal context or employment environment. The skills and attributes identified also reaffirmed what has been identified in the literature.

The influential MacCrate Report, for instance, published in 1992 by a task force of both

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<sup>169</sup> There is also a range of Chinese law units available in the undergraduate law program.

<sup>170</sup> Murdoch University, Law School <[www.murdoch.edu.au/Courses/Postgraduate-Certificate-in-Chinese-Law/](http://www.murdoch.edu.au/Courses/Postgraduate-Certificate-in-Chinese-Law/)>.

<sup>171</sup> Grossman, above n 69, 21.

<sup>172</sup> Ibid 33.

<sup>173</sup> Bogdan, above n 3, 485.

<sup>174</sup> Ibid 486.

practising and academic lawyers appointed by the American Bar Association, set out ten 'Fundamental Lawyering Skills' for American lawyers, namely: problem solving; legal analysis; legal research; practical investigation; communication; counselling; negotiation; litigation and alternative dispute resolution; administrative skills and solving ethical dilemmas.<sup>175</sup> They were broadly reflected in the recommendations of the Australian Law Reform Commission Report, *Managing Justice: a review of the federal civil justice system*, in which it considered the importance of legal education and professional training to the justice system.<sup>176</sup>

In a survey of Australian and overseas employers on the key attributes they look for when employing international graduates (not necessarily law graduates), the four most common were English language competency, effective communication skills, the ability to work as part of a team, and effective problem solving skills.<sup>177</sup> These skills are consistently identified in the research as being essential skills and were identified in the roundtable discussions as essential skills for law graduates.

## Communication and presentation

Effective communication, both written and oral, stood out as one of the most essential skills for graduates and one that graduates needed continually to develop. Unsurprisingly, it was also stressed that graduates need to have good technical writing skills and be able to draft documents such as letters and briefs.

There was agreement that it is important for law graduates (and indeed any graduate) to 'have very strong communication skills', and have the 'ability to write and speak English very well'. However, a number of participants in the roundtables expressed concern that many graduates, both Australian and International, had inadequate written and oral communication skills. Some noted graduates' 'poor ability to communicate in writing'.

Although most universities and law programs in Australia include effective communication as a key Graduate Attribute and learning outcome, this is not necessarily supported by the evidence that graduates have actually been specifically taught and assessed on communication. A few participants, who had also taught in law programs, noted with concern that the marking of students' assessments often did not include much emphasis on the grammatical accuracy of the writing. This is supported by the literature that suggests that an articulation of skills and attributes in a curriculum document is not necessarily

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<sup>175</sup> American Bar Association, 'An Educational Continuum Report of The Task Force on Law Schools and the Profession: Narrowing the Gap' (1992) <[www.americanbar.org/groups/legal\\_education/publications/maccrate.html](http://www.americanbar.org/groups/legal_education/publications/maccrate.html)>.at 29 March 2011.

<sup>176</sup> Australian Law Reform Commission, *Managing Justice: a review of the federal civil justice system*, AGPS, 2000. See the discussion of this report and competency-based education in Australia in Geoff Monahan and Bronwyn Oliffe, 'Competency-Based Education and Training For Law Students' [2001] 3 *University of Technology, Sydney Law Review* 14.

<sup>177</sup> Australian Government, *Australian Education International, International Graduate Outcomes and Employer Perceptions* (2010) <[http://www.aei.gov.au/News/Latest/News/Documents/2010\\_International\\_Graduate\\_Outcomes\\_pdf.pdf](http://www.aei.gov.au/News/Latest/News/Documents/2010_International_Graduate_Outcomes_pdf.pdf)>.

supported in practice by a systematic and coherent framework for incremental assessment of those skills.<sup>178</sup>

Related to this was the issue of technology and the ability to communicate face-to-face and to write in complete sentences. A participant voiced a collective view that one 'expects graduates to be technically able but [also] expects them to have constructive conversations'. However, with the extensive use of technology 'they potentially lose the ability to manage a constructive conversation.' The view was expressed that, with so much communication taking place via technology, graduates 'don't know how to talk face to face – it's all Facebook' and they seem to be 'losing the ability to write in complete sentences'.

Participants, in particular in the Hong Kong roundtable, also raised the issue of graduates speaking another language. Participants noted that graduates who could speak another language such as Mandarin definitely had an advantage over those graduates who were monolingual, but it was emphasised that to practise law they would need to be fluent in the language: 'just knowing a little of the language – this could help with client relations but not practising law – they would need to be fluent/bilingual'. Participants in another roundtable suggested that 'a second language is a highly desired skill' and that a 'diploma in languages as part of the law degree would be helpful'. This resonates with the views of Daly (a former dean of a law school) who argued that 'graduates need to be residents not tourists'.<sup>179</sup> She goes as far as saying that to practise in another jurisdiction requires one to be fully immersed in the jurisdiction and able to speak the relevant language. This is not the common view.

In addition to being able to 'read and write well', participants stressed the importance of being 'culturally literate', or as one participant stated in reference to graduates working in China and Hong Kong, 'being China literate'. With globalisation the 'requirement of people to be able to communicate in a multidisciplinary market is increasing'<sup>180</sup> and lawyers operating in a global environment will need to be able to communicate with foreign lawyers. A number of participants observed that many graduates lack 'cultural awareness', which with 'business awareness are all too rare qualities' and that they may have 'academically great grades but not commercial awareness'.

This discussion was very much located in the context of graduates seeking to work in another country but having very little knowledge about the jurisdiction in which they were seeking to work. As a result, although they were unable to communicate effectively within an international context they needed to be literate in the country context and culture, for example, 'China literate'. For those working in a number of jurisdictions, 'literate' might essentially mean, as Magallanes argues, that 'all those in transnational communication must be aware of their own cultural mindsets and patterns of communication' and that it 'helps

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<sup>178</sup> See A-Khavari, above n 81 and Wolski, above n 146.

<sup>179</sup> Mary C Daly, 'Tourist or Resident? Educating Students for Transnational Legal Practice' (20 ) 23(4) *Penn State International Law Review* 785-786.

<sup>180</sup> Steve Mark, 'Legal Education for the 21<sup>st</sup> Century Law Graduate' Address to the Continuing Legal Education Association of Australasia, 16 October 2008, above n 148.

to study other cultures' mindsets and patterns'.<sup>181</sup> Similarly, Grossman argues that lawyers must have an 'understanding of how culture affects the action of individuals and their relationship with a legal system'.<sup>182</sup>

## Problem solving

Problem solving, including analytical thinking skills, interpretation and synthesis, was strongly emphasised by all participants. Participants placed much emphasis on students being able to work through a complex legal issue or problem and draw conclusions. They noted that graduates need to be able to 'think through things from first principles and be able to work through a problem from beginning to end'. From another perspective, several participants commented that graduates 'need to think laterally' and broadly as 'real world problems don't present with a tidy label as to what it is; they cut across practice areas— [so they] have to think outside the narrow confines on area'. 'Clients come with a problem but life is not compartmentalised – problems become involved' and may cover many facets.

Therefore graduates have to be able to contextualise problems and dissect all aspects of the problem or issue. It was noted that graduates need to start by understanding their clients and the context, and that clients don't want to hear about the legal problem, they want solutions to the problems.

In terms of analysing problems and making recommendations, participants also noted that graduates need to be able to weigh up different points of view and 'make judgements' based on the information they have. This in turn requires teaching and learning practices that enable students to develop the ability to consider complex issues from different perspectives, including cultural and international perspectives, and to offer, where appropriate, different solutions to problems – in some cases legal and non-legal. Several participants felt that graduates were often less confident in making their own judgements or choices, and drawing inferences: 'students [may be] good at analysing issues but have difficulty about making a judgement – when faced with a choice using discretion or judgment about a solution'.<sup>183</sup> Interestingly, the Carnegie Report identifies as one the six tasks of any professional development that students 'learn to make judgments under conditions of uncertainty'.<sup>184</sup>

Participants also discussed the issue of managing large volumes of information and graduates needing the 'ability to synthesis a lot of information quickly'. One participant

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<sup>181</sup> Catherine J. Iorns Magallanes, 'Teaching for Transnational Lawyering' (2005) 55(4) *Journal of Legal Education* 520.

<sup>182</sup> Grossman, above n 70, 33.

<sup>183</sup> To be fair to young graduates, this type of judgement really comes with experience. It may expect too much of new graduates.

<sup>184</sup> Cited in Sally Kift, '21<sup>st</sup> Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law' (2008) 18(1) *Legal Education Review* 13. [William Sullivan, Anne Colby, Judith Wegner, Lloyd Bond & Lee Shulman, *Educating Lawyers: Preparation of the Profession of Law* (2007) (the Carnegie Report), above n 76].

commented that the information that graduates have to grapple with in dealing with problems and cases is like a large 'bowl of spaghetti'. Graduates must be able to cope with and unravel 'vast amounts of amorphous information and synthesise massive and complex information' in order to solve legal problems and provide solutions.

Being able to deal with complex legal problems as discussed in the roundtables requires, what is sometimes called, an ability to think 'think like a lawyer'<sup>185</sup> and engage in legal analysis. Legal analysis or 'thinking like a lawyer' combines theory and practice, and requires the use of the 'legal methods' of finding and applying the law.<sup>186</sup> This resonated with the participants who commented that graduates need to be able to dissect the legal problem presented and then be able to find, interpret and apply relevant law. They suggested that this is not an intuitive process; it is a skill that needs to be taught and practised.

## Legal research

There was much consensus amongst the participants that graduates need to have good legal research skills, which are associated with effective communication skills and legal problem solving skills. As one participant stated, '[they] need to produce good research when needed and they need to give it a form that is properly analysed and written'. Several participants expressed the view that some graduates did not have good research skills, and were concerned this was perhaps not receiving enough attention in law programs, and was 'a skill being lost'.

Moreover, some observed that graduates today, with the help of technology, had little difficulty in finding and accessing resources; however, 'they are less savvy in knowing how to use the resources', 'to filter' information or be able to select what is relevant, important and reliable. Some commented that 'students think to Google is to do research' and that they were not necessarily seeking out primary sources and credible sources. They need 'to understand that you don't use Wikipedia or an old case book'. Although participants acknowledged that law students would no doubt be engaged in legal research in their law course, they questioned the strength, quality and extent of their research skills.

In practice, research is often of statutes and rules and hence, coupled with research skills, are also statutory interpretation skills. This was mentioned at the roundtables and emphasised by Chief Justice French.

The importance of teaching research skills is strongly advocated in the literature. Lynch, for example, concludes that 'it is now generally agreed that law schools must impart to new lawyers a certain proficiency in legal research' but he also concedes that there is considered

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<sup>185</sup> James R. Maxeiner, 'Integrating Practical Training and Professional Legal Education' in Jan Klabbers & Mortimer Sellers (eds), *The Internationalisation of the Law and Legal Education*, (Springer, 2008) 42. Maxeiner also notes that this is what the Japanese call the 'legal mind' and the Germans refer to as 'legal thinking'.

<sup>186</sup> Ibid 42, 43.

opinion that new lawyers do not have adequate research skills.<sup>187</sup> Lynch also emphasises that in teaching legal research skills it is necessary to consider the types of legal research, approaches to legal research, and the distinction between scholarly research and client-centered research. Students should learn both forms of research. Likewise, Klabbers, in advocating for a general principles approach to legal education, also emphasises that it is essential for future lawyers to have general skills which include 'to do legal research in an actual library (as opposed to relying on computer search engines)'.<sup>188</sup>

It was also recognised by participants that graduates' research skills need to encompass the ability to research international law and the law and legal issues in different jurisdictions. This was an aspect that they felt fitted within the integration model. The approach is supported in the research literature.

However, in advocating for the inclusion of international concepts in doctrinal subjects, the research also suggests that 'international legal research is a necessary element in any introductory course teaching the fundamentals of legal research and writing'.<sup>189</sup> Magallanes argues that 'the proliferation of international laws has led many lawyers to work in fields that require the domestic incorporation and application of such laws' and therefore 'students should be familiar with the skills required to undertake such tasks'. This includes knowing where and how to research this.<sup>190</sup>

Put another way, it is argued that 'if lawyers must be skilled at incorporating transnational legal matters into their work, they must be able to engage in research on foreign and international legal issues, incorporate the results of that research into legal reasoning, and be able to communicate effectively in writing about transnational legal questions'.<sup>191</sup> Rumsey further argues that because of the increasing globalisation of law, law schools should offer classes in international and foreign legal research noting that: 'exposing law students to international and foreign law will not help them much if they have no tools to research the law in those jurisdictions'.<sup>192</sup>

Whilst it is acknowledged that teaching research skills is essential and that this is an area that may require more attention by law schools, the discussion does raise pertinent questions about how this is accommodated in 'an overcrowded curriculum', what approach should be used to teaching legal research and by whom it should be taught. The answer tends again, particularly in light of participant comments on the importance of integration, towards an integrated rather an aggregated model. Although there is more to teach because of the international perspectives, the selection of content and examples in the

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<sup>187</sup> Michael J. Lynch, 'An Impossible Task but Everybody Has To do it – Teaching Legal Research in Law Schools' (1997) 88(3) *Law Library Journal* 427, 428.

<sup>188</sup> Klabbers, above n 2, 17.

<sup>189</sup> Grossman, above n 70, 31.

<sup>190</sup> Magallanes, above n 181, 519.

<sup>191</sup> Susan DeJarnett & Mark Rahdert, 'Preparing for Global Legal Practice: The Need to include International and Comparative Law in the Legal Writing Curriculum', above n 62.

<sup>192</sup> Mary Rumsey, 'The Skills they Need: International and Foreign Legal Research' (2009) 28(1-2) *Legal Reference Services Quarterly* 135.

curriculum of a particular subject requires careful design.

## Relationship building

Another strong theme to emerge from the discussions was the importance of developing skills in relationship building. The recurring comments were that graduates need to be able to 'build relations', 'network', 'work in teams', 'interact with clients', 'interact socially' and 'relate to people'. Some also noted that graduates need to be 'good listeners', have 'respect for others' and a sense of 'humility'. Such interpersonal relationship skills are typical of university Graduate Attributes. Relationship building, interpersonal skills and communication were all identified in the discussions as important skills and attributes. In this context, it was also noted that graduates need to be able to work and interact 'with a diverse cross section of people' and have a 'cultural fit'. One participant observed that graduates who are 'good at developing relations are the most successful'.

The importance of relationship building is by no means novel and is consistent with existing research. In a comprehensive article on legal skills needed for transforming the profession, Munneke cogently argues that the top lawyering skills set out in the MacCrate Report remain highly relevant and that human relations (relationship building skills) that cover aspects such as collaboration, working in teams and cultural sensitivity are fundamental:

Law school sometimes gives law students the impression that they are solitary warriors, doing battle for their clients without reference to any support staff. If ever this was an accurate representation of the way law is practiced, it is certainly not the case today. Lawyers practice law as part of a team, frequently as the leader of the team, but always as a part of it. To the extent that team participation skills, such as team building, cooperative problem solving, active listening, work flow modelling and motivation are integral to the competent delivery of legal services, these skills should be regarded as fundamental lawyering skills.<sup>193</sup>

It is axiomatic that successful legal practice requires developing and nurturing effective client-lawyer relationships as well as being able to work with and interact with a wide range of people within and external to the legal profession. However, in terms of preparing graduates for global legal practice it is equally important for graduates to develop these relationship skills within an international context so that they understand the international and intercultural aspects of human relations. There is a question, though, as to how much such a skill can be taught in a university setting.

## Adaptability and resilience

Overall participants noted that graduates working in a legal environment need to be adaptable, resilient and responsive to change. Participants variously commented that law graduates must 'be adaptable and resilient and tough it out', have the 'ability to multitask',

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<sup>193</sup> Gary A. Munneke, 'Legal Skills for a Transforming Profession' (2001-2002) 22 *Pace Law Review* 147.

‘adapt to change’ and ‘be flexible’. Associated with this was the need for graduates to ‘be able to think on their feet’, ‘learn quickly’, have the ‘ability to learn how to learn’ and ‘be able to get up to speed fast’. The majority of participants also empathised that to be adaptable and responsive to change requires graduates to ‘have an open mind’ and have a broader interest in the legal and business environment.

These comments are consistent with the literature. Freeland, for instance, advocates that law schools should encourage people from diverse backgrounds to study law and students should ‘possess an interest in other disciplines, must be interested and concerned with current affairs and must, above all, be able to think and adapt to changing circumstances’.<sup>194</sup> On the question of adaptability and change, Munneke argues that:

If lawyers are to serve their clients as well as themselves, they must learn to embrace the reality of change in our modern world, seek innovative solutions to problems, avoid getting mired down in the Procrustean status quo when doing so would impede problem resolution, and learn to adapt to new circumstances as they arise. To the extent that these skills are intrinsic to the work of lawyers and the problems of clients, they deserve to be included in any list of the basic skills of lawyering.<sup>195</sup>

Likewise, Magallanes also cites ‘adaptation skills’ as essential for ‘transnational lawyering’, and argues that emphasis should be placed on the ‘ability of the individual to adapt and learn new things on his or her own’. This is also important for ‘anticipating and dealing with the unfamiliar, and in handling uncertainty in law’.<sup>196</sup>

## The role of the law school in developing these skills and attributes

Although it was emphasised and reiterated that graduates require this knowledge and these skills and attributes, the issue of whether it is practical or feasible for law schools to teach all of them was raised, especially skills such as relationship building skills. Employers interviewed recognised that, in addition to practical legal training, employers need to provide in-house training for new graduates and junior lawyers. It was also acknowledged that these skills are continuously developed and honed throughout a person’s career. Nonetheless, law schools play a crucial role in ensuring that graduates have developed the basics. Some participants were of the view that law schools could do much more in teaching skills in particular writing and presentation skills. Teaching the so called ‘soft-skills’ therefore becomes a combination of law school, legal practice training and life-long learning.

## Summary of preliminary findings from the roundtables

From the analysis of the data, it is possible to draw the following key findings on employers’

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<sup>194</sup> Freeland, above n 5, 501.

<sup>195</sup> Munneke, above n 193, 149.

<sup>196</sup> Magallanes, above n 181, 520.

perspectives on internationalising the law curriculum, in particular, their views on the knowledge, skills and attributes that are essential for law graduates working in a global, multi-jurisdictional environment.

- Graduates need to have an understanding of the jurisprudence of the law and a sound knowledge of fundamental legal concepts, principles and seminal cases.
- A solid foundation in traditional core areas of legal knowledge is fundamental to competence in a globalised legal practice. Particular emphasis was placed on core areas of the law such as contract law and tort law; however equity law, private international law, and comparative law were also cited as important units. A number of participants expressed some concern that not enough law schools were offering courses in private international law.
- Graduates need to have a good understanding and knowledge of different legal systems, and to have the ability to consider legal problems within different contexts and to be able to research legal issues within different systems.
- Graduates are not necessarily expected to have studied specific subjects with an international and comparative perspective. This was considered useful but not essential. However, private international law was considered to be an important subject and was recommended as a mandatory unit.
- Notwithstanding the inclusions of specialised international units, there was wide agreement that it would be preferable to incorporate international legal concepts and principles across the curriculum, and to consider legal issues within a domestic and international perspective, without necessarily having a separate standalone unit (such as 'Transnational Law').
- Graduates need to have well developed skills in communication, problem solving and analysis, legal research, statutory interpretation and relationships building, which includes working in teams and being able to negotiate. Although these may be considered 'soft skills' it was clearly evident that they are much more than that. These 'lawyering skills' are fundamental to being a good domestic and/or international lawyer and employers expect graduates to have these skills; it is these skills that distinguish law graduates from graduates in other disciplines and make them highly sought after.
- They also need to be resilient and adaptable with a keen ability to learn quickly, be flexible and respond to change.
- Graduates need to be 'culturally literate' and have some business acumen. They need to have good cross-cultural communication skills, and an understanding of the cultural, economic and political context in which law operates. Many of the employers noted their concern about the competence of law graduates in relation to a general knowledge of current world affairs, the workings of the global economy and financial system, global governance and practices, and the norms of international business culture.

It is recognised that, given the small number of participants, these findings cannot be generalised. However, they represent consistent, common and recurring views amongst the participants, which are supported by the research literature and which also reaffirm prevailing views in the literature. The findings serve as a useful guide to developing a framework for internationalising the law curriculum.

## Chapter 4                      National symposium on internationalising the Australian law curriculum: key themes

### Introduction

One of the primary outcomes of this project was to hold a national symposium to present research findings and to engage in discussion on key issues. The symposium was hosted by ILSAC in March 2012 at the National Portrait Gallery in Canberra. The purpose of the symposium was to engage representatives of the legal profession in a high-level discussion on the themes of this project and to present the preliminary findings of the project. The symposium program (Appendix D) consisted of presentations on a range of topics by eminent speakers from across the legal community. Key themes and points of discussion that emerged from the symposium are summarised below. This symposium contributed further to the development of the curriculum framework.

It is important to note that this was the first symposium to draw together members of the judiciary, academics, practitioners, government representatives, law students and representative stakeholder groups from across the legal profession to engage in detailed discussion on internationalising the Australian law curriculum. The calibre and quality of the speakers and the discussion demonstrates the keen engagement of all the major stakeholders in both legal education and internationalisation. Continuing this engagement will be critical to embedding change in future regulation and design of law curricula.

### Key symposium themes

The symposium was opened by the Hon. Chief Justice Robert French, AC. The project team then set the context with a project briefing and an outline of the purpose of the symposium and discussion. Former ALTC Discipline Scholar and co-leader of the law discipline's work on the Learning and Teaching Academic Standards Project, Professor Sally Kift, provided a legal education context for discussion.

The symposium sessions that followed addressed the following key topics: the international context in preparing graduates for work in a global context; the current advantages, constraints and innovations within the domestic context; and innovations and outcomes in international legal education. From the presentations and discussions a number of key issues emerged. These built on the roundtable discussions and provided the opportunity to synthesise what were seen as important issues that should lead to recommendations.

The discussion was framed consistently in the high quality of legal education in Australia, the importance of identifying the factors that contributed to that quality, and ensuring that quality was maintained in an era of intense global competition. It was noted that as the Australian legal services sector becomes increasingly export-oriented and domestic practice is infused with international elements, legal education must respond to the increasingly global nature of legal practice. Whereas previously this might form an “add-on” or area of special interest, the discussions spent considerable time exploring how best internationalisation might be integrated into the knowledge, skills and attributes taught and developed through the curriculum. There were mixed views on the need to achieve this through reform of the Priestley Eleven areas of knowledge, but there was exploration of “light touch”, synergistic regulation and the importance of ensuring quality through standards. The following discussion summary reflects these broad themes.

## High quality of legal education in Australia

There was a general consensus that Australia has very high quality legal education evidenced by the recruitment of Australian law graduates internationally and international firms conducting recruitment programs into Australia. It was noted that there is disproportionate representation of Australian educated lawyers in positions of legal influence across the world.

It was accepted that not all Australian law graduates are of equivalent standard, but that in the main law schools deliver high quality education programs. Nonetheless, graduates who have been high performers, who have a real passion for law and a strong interest in international affairs, will be in the highest demand by employers.

The quality of Australian legal education is evidenced by its attractiveness to international students from across the globe. This has the added advantage of improving the quality of teaching and learning through the integration of these students, with their different cultures, perspectives, knowledge, skills and experience into the Australian classroom environment. There is evidence that Australian educated lawyers are well-placed to achieve senior positions relatively quickly on their return to their home jurisdiction.

It was noted that the number of lawyers holding key positions internationally, the regard with which Australian lawyers are held internationally and the ability of Australian lawyers to take a competitive role in the global practice of law, all demonstrate the high quality of Australian legal education and practice. All of these elements facilitate mutual recognition of Australian law degrees internationally and the export of legal services, particularly during the negotiation of free trade agreements.

There was an emphasis on maintaining standards and this is discussed below in the context of the Priestley Eleven. It was noted that a high quality legal education in all law schools will

support the national legal profession reforms.<sup>197</sup> Professor Coper noted that robust standards for legal education are good for the export of legal services; are a means of embracing internationalisation; and can become the basis for Australia contributing to the development of “international or global standards for lawyers, lawyering, and legal education”. He illustrates this by Australia’s involvement in the International Association of Law Schools which has become interested in recent times in “identifying any ‘universals’ about good practice in legal education and the concept of being a lawyer”. He notes that this may develop further into global standards or statements of best practice, or at least good practice, and that Australia will be able to make a significant contribution because of our experience of developing standards.

There was consensus that it was important to ensure continuous improvement of the quality of Australian legal education with a focus on maintaining cutting edge teaching and learning to ensure we keep our competitive advantage in the graduates we produce. There was confirmation that this would be achieved most effectively through the integration of international and comparative perspectives into the curriculum coupled with the development of relevant intellectual skills incrementally over the whole period of a law degree, the attainment of which would be assessed.

To maintain high quality education outcomes, it was emphasised that law schools must ensure that they have robust ways of judging whether outcomes have been achieved. This is becoming increasingly important also in ensuring that graduates can genuinely demonstrate that they have the legal skills and attributes required for legal practice.

The symposium noted the changes in the delivery of academic legal education and practical legal training, and the need to take advantage of the range of quality learning and teaching methods to better develop integration of internationalisation. Recent developments have highlighted the opportunities to enhance quality through investment in advanced technologies.

Participants highlighted consistently the importance of continuous improvement in legal education to ensure that Australian law schools maintain their high quality. However, although this might occur through benchmarking against good practices in law schools elsewhere, it was noted that Australian law schools have maintained an edge through working very closely with the profession and other employers of law graduates. This has ensured that aspects of Australian legal education have led the world in providing graduates suited to a constantly changing environment in practice, government and institutions, both domestic and international. There was encouragement to continue and further develop this practice.

## Global nature of legal practice

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<sup>197</sup> The acknowledged high quality of law schools across Australia, as demonstrated by their international recognition and audits by the profession, means that legal education is an exemplar of how a national approach does not lead to a lowering of standards and indeed is able to maintain them.

Legal practice is increasingly international and law firms are operating globally. This is demonstrated, inter alia, by the presence in Australia of increasing numbers of global practices, by Australian firms joining global partnerships, and by the growing export in Australian legal services by a wide range of legal practices. It was emphasised by the stakeholder representative groups that even small, regional practices are being touched increasingly by cross-border transactions, ranging from family law matters and succession, through to commercial transactions as foreign investment reaches into all sectors of the Australian economy.

The Chief Justice noted this trend in the jurisprudence before the Courts and his view was widely supported. An additional dimension, he noted, is the consequent increased “interactions of the judiciary and the profession of different countries particularly in our region”. This occurs through conferences, seminars, organisational links and continuing legal education. Australia and Australian lawyers play leading roles in initiating as well as participating in such activities, which means that we are influential actors on the international stage.

The Chief Justice also noted that “international transaction models, such as standard contracts, informed by more than one legal system have been available for some time”. The international dimension, it was noted, is present in most, if not all, subjects taught in the Australian law school curriculum. Accordingly, it would be strange for some reference not to be made to it.

The result of the increasing global presence of Australian law firms, whether from within Australia, on a fly-in fly-out basis or through overseas offices or firm mergers, ensures that Australian legal practitioners are becoming widely known. Particular strengths, which give Australian lawyers a competitive advantage are their expertise and experience, their cost competitiveness and their willingness to provide legal services anywhere in the world. The legal practitioners emphasised the importance of graduates entering the firms with an established global worldview. This then provides a frame of reference for firms to continue the development of the graduates’ legal knowledge and skills so that they can work across jurisdictions.

A number of case studies by presenters illustrated how important it is for graduates to have a clear understanding of the global nature of legal practice. This is recognised by students, who have become increasingly mobile during their legal education. Law students come to Australia to study and create a cross-cultural and multi-jurisdictional perspective in both undergraduate and postgraduate programs. Australian students increasingly spend time studying abroad as part of a degree to immerse themselves in a deeper understanding of the laws and their practice in other jurisdictions.

The case studies of actual transactions illustrated also the key attributes required in young lawyers. These included: a sound understanding of legal principles that can apply across jurisdictions; a robust ethical framework; an appreciation of the diversity of legal systems even within the common law family; the ability to develop client relationships; the ability to work in teams; cultural awareness; adaptability; and strong skills in research, communication and presentation, critical analysis and problem solving.

It was submitted that Australia is well placed to develop a law degree that is common to multiple countries for admission to practice. This would build upon the approach of several law schools currently offering subjects to facilitate admission in other jurisdictions or partnering with law schools elsewhere for double degrees to satisfy multiple admission requirements.

## Curriculum development

There was a general consensus that law graduates should be educated for practice in a global, multi-jurisdictional context. This probably occurs best through integration of international and comparative elements into the substantive areas of knowledge. However, it was recognised that each law school has a different mission and this should be supported within the framework of a curriculum leading to admission to practice.

The Chief Justice summarised it as follows: “A one size fits all model is not appropriate. There should be openness to a variety of approaches. However, the balkanisation of legal education by a diversity which enriches some courses with international perspectives and denies them entirely to others, is to be avoided.”

Of particular concern is that internationalisation should become integrated into legal education as it is into legal practice. In this way, it is not bolted on but provides recognition of the broad context in which law operates. It also then does not operate in competition with other important elements of legal education such as the provision of access to justice for all members of the Australian community. Rather it provides part of the framework for the delivery of justice. In this way, whether acting for a multi-national company, a refugee from Somalia, or in a native title case in the Northern Territory, the international and comparative dimensions of legal practice are but part of the armoury of the legal practitioner in approaching each legal problem.

In the same vein Australia has demonstrated the importance of equipping future lawyers practising all over the world with the ability “to play a special role in society in protecting and upholding the rule of law”. This depends on “a high quality, continuously evolving and innovative legal education system...that keeps pace with advances across all areas”.

As Mr David Fredericks put it: “The integration of international and intercultural dimensions into legal education would better equip Australian legal graduates with the necessary international and intercultural competencies to work flexibly in a global legal context”.

The academic research and scholarship in legal education reinforces the need for a clear definition of, as Prof Kift put it, “what law students should know, understand and be able to do”. This highlights the roundtable focus by legal practitioners on the importance of all of the three elements: knowledge, skills and attributes. Prof Kift also illustrated the wide range of delivery methods, forms of assessment and learning approaches that make up 21<sup>st</sup> century legal education.

This was further reinforced by the President of the Law Council of Australia, Mr Joe Catanzariti, in his examination of the range of approaches used to deliver the practical legal training requirements for admission to legal practice. It was generally supported that legal education must continue to explore the frontiers of educational delivery to maintain its edge as a provider of some of the world's highest quality legal education.

## Reform of Priestley Eleven

There was broad discussion of the continuing validity and effectiveness of the Priestley Eleven areas of knowledge. For some, they represent an anachronism and a dead hand stifling innovation in the curriculum. For a majority they represent a continuing valid framework within which there is scope for innovation and broad development of the curriculum. There was general acknowledgement that the areas of knowledge favoured the litigation-centred make-up of LACC in 1982. However, and this was seen as the critical point, provided the “light-handed” regulatory approach taken in a majority of jurisdictions applies across the Commonwealth, then the requisite integrated approach to internationalisation of the curriculum is feasible. So, too, are a broad range of delivery methods that allow the development in law students of the range of knowledge, skills and attributes required for practice in a globalised legal environment. All participants supported a principled and sensible approach to regulation that did not impede the effective delivery of legal education.

It was noted that in those States where a “light-handed” approach to regulation was maintained, the law schools had the freedom to develop innovative approaches to the curriculum that ensured that different schools could remain at the forefront of best practice in different aspects of legal education internationally.

Significant concerns were raised that overly prescriptive approaches to regulation in some States and judicial intervention in the application of regulation, down to modes of delivery and individual unit content, would significantly impede the maintenance of good practice in legal education to ensure quality outcomes. It was noted that expertise in the practice of law did not translate into expertise in legal education and that the boundaries should be respected to ensure the highest quality education outcomes.

Lest there be concerns that regulatory intervention by the profession was required to maintain quality education, rather than overseeing the requisite outcomes of that education for admission to legal practice, there was extensive exploration of the quality framework to which all law schools in Australia are subject. It was noted that quality is assured through a number of mechanisms, including the 2009 CALD Standards for Australian Law Schools, the new Tertiary Education Quality and Standards Agency (TEQSA) and its development of Provider and Qualification Standards, the Australian Qualifications Framework, and the Compacts between Universities and the Commonwealth to deliver specified quality outcomes. All of these mechanisms will support the move to a national legal profession with a National Admissions Committee.

Professor Coper was strongly supported in his statement that the challenge is to coordinate the various roles of different stakeholders in regulation to ensure that the standards do

ensure quality and assure the public of quality; that there is synergy in regulation rather than “duplication, confusion, and dysfunction”.

It was also suggested, but not discussed in detail, that consistent quality would be ensured more effectively in relation to international applicants for admission to practice in Australia by a similar central assessment of overseas qualifications to the National Admissions Committee. This body could use the LACC uniform principles. This would ensure greater expertise in assessment and transparency, greater uniformity in the application of discretion, particularly to take account of experience to offset formal academic and PLT requirements, and greater consistency and fairness in outcomes.

While the Priestley areas of knowledge may not need reform there was strong support for private international law to become a compulsory unit.

Furthermore, there was continual reference throughout the discussion that graduate attributes and skills should be recognised as integral to legal education at all levels of the AQF framework.

## Conclusion

The feedback from symposium participants made it clear that it was part of an iterative and continuing dialogue. The symposium provided an important catalyst for key stakeholders in legal education to engage in discussion. Certain areas require further debate and analysis before the implications are fully understood and widely accepted. There are other areas of broad agreement. The symposium provided a forum to demonstrate that agreement and should be used as a basis for generating momentum for change in these areas.

The level of support for integrating comparative law into the curriculum and focusing more specifically on the application of knowledge and the development of critical skills and attributes was marked. However, implementation is more difficult as law schools operate in the broader university context. This is one of increased competition, reduced funding, pressure on resources, and a research-focused agenda that can de-emphasise investment in quality teaching and learning. Even in those institutions providing significant infrastructure investment for their law school, it is unusual to find associated continuous investment in the law curriculum to allow it to deliver the preferred outcomes of the major stakeholders. Law is not seen as warranting resource allocation equivalent, for example, to health, engineering or science. Professor Coper noted that in the pursuit of quality legal education, “there is a direct relationship between resources that are invested and the quality of the outcomes....that is, we need to invest in the resources that are necessary to make the aspirations of the standards a reality”.

Innovative funding and partnership arrangements will therefore be a fundamental requirement to take many of the symposium themes forward for implementation in law school curricula. Given the dearth of opportunity for the relevant stakeholders to discuss curriculum quality rather than regulation, it is incumbent on representative groups such as LACC, the LCA, ILSAC, CALD and the Australian Academy of Law to maintain this momentum

through their education forums. The Australian Academy of Law provides a forum, and indeed the only forum, in Australia that brings together judges, practitioners and academics and hence is well placed to do this.

Dissemination of the conclusions and recommendations of this study can now form the basis for initial discussion.

## Chapter 5                    A curriculum framework for an internationalised law curriculum

### Introduction

The primary purpose of this project was to develop a framework for internationalising the Australian law curriculum so that law graduates are better equipped to work in a global, international context and across multiple jurisdictions, and are able to contribute in an international setting to the articulation, nurturing and transmission of values.<sup>198</sup> The literature review, the roundtable discussions and the Symposium confirmed that, given the impact of globalisation on legal services, law graduates increasingly need to have the knowledge, skills and attributes that will enable them to work and live in a complex, changing global context. This not only involves greater international and cross-cultural awareness, but also requires a level of international competence and expertise in a range of legal matters.

The purpose of this chapter is twofold: to provide

- a *process* for developing and implementing such a curriculum, and
- a *framework* for an internationalised law curriculum.

### Enriching learning in the law school

It is important to recognise that beyond the focus on working in a global, international context there is also another important reason why an internationalised curriculum enriches learning for all law students. As Michael Coper has said, it enables us<sup>199</sup>

... to enrich our thinking by consideration of diverse approaches to common problems; to learn from difference but to be alert for universals; to strive for best practice; to avoid parochialism, ignorance, and narrow-mindedness; to cultivate the spirit and habit of open-mindedness and tolerance; and ultimately — consistently with our law reform and social justice ethos — to make a contribution to advancing the common good.

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<sup>198</sup> See Coper, above, n 1.

<sup>199</sup> See Michael Coper, 'Internationalisation and the ANU College of Law', Discussion Paper, March 2010, p 2.

## A process for developing and implementing an internationalised law curriculum

Although there is much research on the subject of internationalisation there is, as pointed out by Edwards et al, 'little guidance on how a curriculum might be internationalised'.<sup>200</sup> This is particularly evident in the research relating to the discipline of law. The following process for developing and implementing the curriculum seeks to build on existing research and practice, and in particular to draw on lessons from other disciplines such as business education that are more advanced in the process of internationalisation.

In the literature review it was noted that there are various perspectives on and definitions of 'internationalising the curriculum'. As Leask observes 'it means different things to different people'.<sup>201</sup> Nonetheless, there is a consistent view emerging from the literature that 'internationalisation' is a multifaceted integrated process that cuts across all aspects of the curriculum, and that involves the integration of international and intercultural (diverse cross-cultural elements) perspectives across all aspects of the design, development, delivery and implementation of the curriculum, as well as support services. This view impacts on the process of internationalising the curriculum.

An insight into how the curriculum might be internationalised is found in the OECD description of an internationalised curriculum already referred to in the Literature Review. The OECD describes it as 'a curriculum with an international orientation in content and/or form aimed at preparing students for performing (professionally/socially) in an international and multicultural context and designed for domestic/and or foreign students'.<sup>202</sup> Although no definition or conceptualisation of curriculum is necessarily complete or ideal, this definition is sufficiently broad to point to the various dimensions of teaching and learning which need to be addressed in the process of implementing the curriculum.

Incorporating international dimensions into the law curriculum involves an incremental internationalising of learning objectives and outcomes, content, learning activities and assessment in a systematic and integrated manner. It also involves the provision of some further activities that support and enhance the development and acquisition of international experiences and perspectives.

Four theoretical models (or approaches) to internationalising law curricula were identified and discussed in the literature review. In summary these are:

- *Aggregation*: the inclusion of separate 'internationalised' or 'transnational' subjects/units

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<sup>200</sup> Ron Edwards, Glenda Crosling, Sonja Petrovic-Lazarovic & Peter O'Neill, 'Internationalisation of Business Education: Meaning and Implementation' (2003) 22(2) *Higher Education Research and Development* 183.

<sup>201</sup> Leask, above n 29, 10.

<sup>202</sup> OECD, n48.

- *Segregation*: the establishment of separate administrative area such as an institute or centre
- *Integration*: the incorporation of international elements across the whole curriculum, research and services
- *Immersion*: studying in different jurisdictions.

These various approaches offer different ways in which a curriculum may be internationalised and are not necessarily mutually exclusive.

The aggregation model is probably the simplest and most common approach, and typically one in which stand-alone international units of study are included as electives in the law program. The aggregation model provide less opportunity to develop a more inclusive internationalised curriculum from which all students benefit, as internationalisation is limited to certain electives or specialist programs. Only a small cohort of law graduates is likely to be exposed to a globalised learning experience.

The segregation model is essentially about the structuring of the law school rather than its curriculum, and can support any of the other models.

The integration model is one that many disciplines strive to achieve by incorporating international and intercultural dimensions across the whole curriculum.

The immersion model is the most challenging to achieve as it aims to deliver a high level of international competence, expertise and experience, which may allow law graduates to practise in multiple jurisdictions.

In reality, the implementation process will most likely be an incremental and accumulative one that may start with the inclusion of select content or units, with the gradual infusion of international dimensions across the whole curriculum to the possible implementation of a fully integrated immersion model. This process will be influenced by a number of factors not least of which are time, resources, faculty expertise and institutional support.

The progressive levels of internationalisation in which students move from a level of international awareness to international expertise is presented by Edwards et al<sup>203</sup> in an instructive typology of curriculum internalisation. This typology accords with the above models of internationalisation.<sup>204</sup> The typology<sup>205</sup> has been adapted to form the basis for the framework for internationalising the law curriculum that is set out below.<sup>206</sup>

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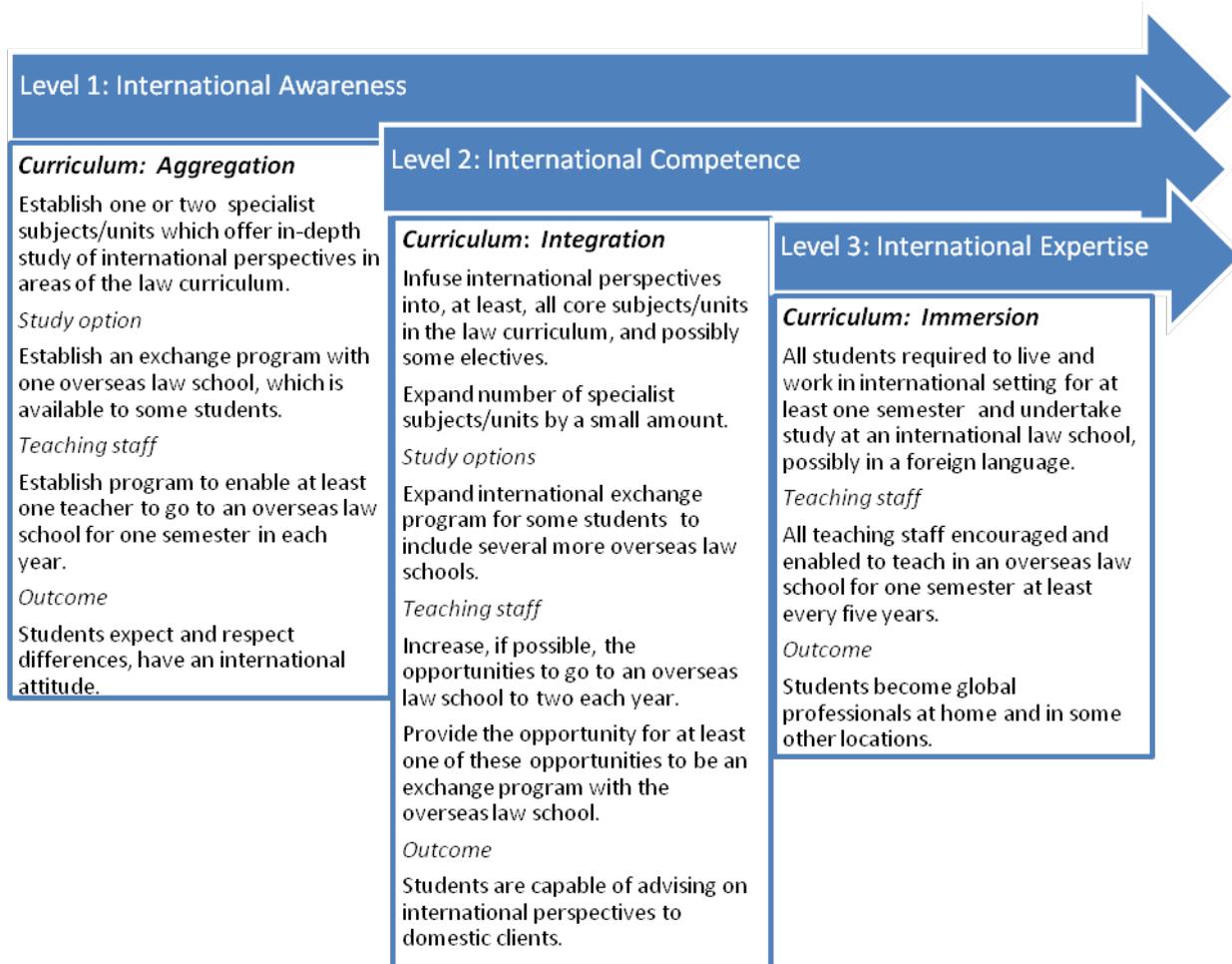
<sup>203</sup> Edwards et al, above n 200.

<sup>204</sup> It is also illustrative of the shift from surface learning to deep, transformational learning.

<sup>205</sup> Ibid 189.

<sup>206</sup> Note that this framework specifically does not include the segregation model.

**Figure 5.1: Curriculum internationalisation: adapted from Edwards et al (2003)**



**Level 1** focuses on several specialist subjects, such as *Transnational Law* or *Chinese Business Law*, with the intention that students will understand that knowledge does not ‘emerge from a singular cultural base; rather that knowledge is applied differently in different cultural settings’.<sup>207</sup> At this level the idea is to expose some students to ‘the international origins and interpretations of key concepts’ and to ‘stimulate their interest in non-domestic issues’. In the context of a law curriculum, these students would be introduced to the international dimensions and interpretations of the relevant legal concepts and principles pertaining to a particular area of law. These law students become aware of and develop a greater appreciation for the legal environment that exists beyond the domestic context.

At this level there is also a modest introduction of other activities which permit and enable some students and staff to gain experience in another jurisdiction.

**Level 2** is a major step beyond Level 1 and may require several years to implement. It requires all teachers responsible for teaching core subjects, and perhaps some other subjects, to integrate international and comparative perspectives into their subjects. The

<sup>207</sup> Ibid 188.

aim would not be that students would, for example, become competent in Japanese contract law, but that they would have a broader understanding of Australian contract law by being able to identify and appreciate comparative perspectives on various aspects of that area of law.

As well, the option to study overseas involves 'building cross-cultural interaction into the formal and informal experience of students' university life'. Students would thereby engage with fellow students and professionals from other countries and cultural settings, and develop the ability to look at issues from different perspectives.<sup>208</sup> This level should also incorporate a range of teaching and learning strategies that includes experiential learning that engage local and international students, as advocated by Whalley.<sup>209</sup> In the context of teaching law, students are actively engaged in tasks that incorporate international input from other legal jurisdictions and collaboration with international students.

**Level 3** aims at developing international expertise by immersing students in international study such that they become 'global professionals at home and in many locations'. It aims to 'prepare global professionals' and, therefore, involves students being 'immersed in global settings through study abroad and international work placements', and includes students studying in another country and learning in a foreign language.<sup>210</sup> This level builds on the integration model (which is not abandoned) and works towards the notion that law graduates are to become 'global lawyers' with knowledge and skills enabling them to work within and across jurisdictions and be 'residents, not tourists'.

This level represents a significant shift in learning as students become truly global citizens. Some, perhaps many, law schools will not seek to reach this level.

Law programs that reach Level 2 and require students to complete part of the law program in another country<sup>211</sup> go a long way in providing students with a systematic and integrated internationalised learning experience that is most likely to equip law graduates to work in a global context, whether in-country or abroad.

## A framework for an internationalised law curriculum

For the purpose of this project the generic curriculum framework that has been developed is primarily for an undergraduate Bachelor of Laws program or a JD (Juris Doctor) program. However, the general components and descriptors are transferable to developing a law curriculum for postgraduate programs.

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<sup>208</sup> Ibid 190.

<sup>209</sup> Thomas Whalley, 'Best Practice Guidelines for Internationalising the Curriculum' (1997) British Columbia, Minister of Education, Skills and Training and the Centre for Curriculum, Transfer and Technology, cited in Edwards, *ibid*.

<sup>210</sup> Edwards et al above n 200, 190, 191.

<sup>211</sup> See, eg, the Bucerius Law School that requires students to complete a trimester at a partner law school in another country <[www.law-school.de/jurastudium.html?&L=1](http://www.law-school.de/jurastudium.html?&L=1)>.

Moreover, the proposed curriculum framework is not intended to be a prescriptive, single model but rather a fairly comprehensive and flexible approach that takes cognisance of the fact that learning is an interactive and dynamic process of continually developing and acquiring increasingly more complex levels of knowledge and skills.

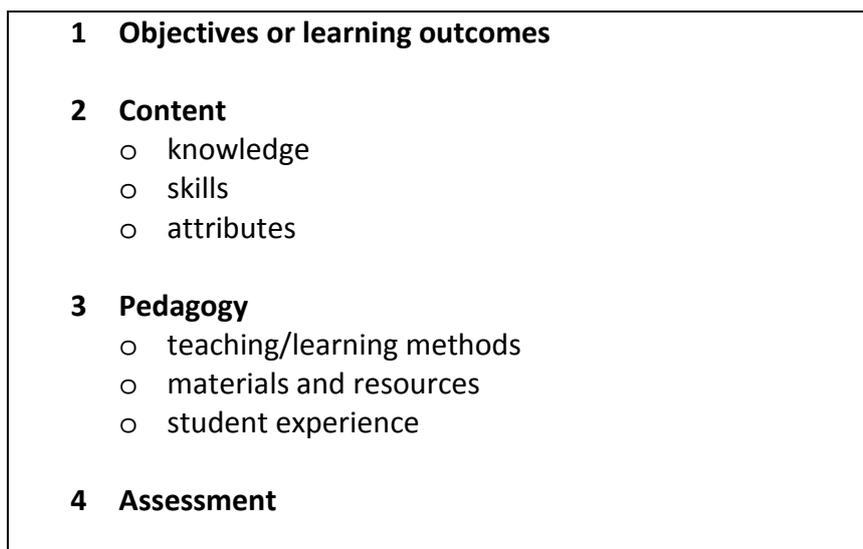
The challenge is to develop a curriculum which

- enables subjects to have a strong international focus and element, *and*
- requires a high level of competence in the intellectual skills and the attributes particularly applicable to global practice.

The outcomes of the curriculum, in terms of knowledge, skills and attributes, should be:

- Knowledge
  - Foundational knowledge – a deep understanding of core legal principles in core areas of the law.
  - International-specific knowledge – which includes a comparative perspective to open their minds to alternative possibilities.
- Skills
  - Communication and presentation
  - Problem solving
  - Legal research, including statutory interpretation
  - Relationship building
- Attribute
  - Adaptability

A curriculum is often conceived as having four elements, all of which must be aligned:



To be successful, the internationalisation of the curriculum should not be ad hoc or piecemeal (as is often the case) but should incorporate international perspectives across all these elements. Therefore in developing the framework below, all these elements of curriculum design were included.

The elements are mapped against the three levels of internationalisation as proposed by Edwards et al. The levels accommodate the varying situations in which law schools are placed and their plans for internationalisation. Usually the 2<sup>nd</sup> level would build on the first level, and the 3<sup>rd</sup> level would build on the 1<sup>st</sup> and 2<sup>nd</sup> levels.

All of the elements and sub-elements would aim to provide an integrated approach to internationalisation in the following way:

- *Objectives or Outcomes*: an internationalised curriculum articulates specific learning outcomes relating to the international and multi-jurisdictional context and dimensions of law.
- *Knowledge*: the law curriculum includes international legal content and materials that enable law students to develop and acquire the appropriate level and depth of knowledge of ‘international law’ and law with an international or comparative perspective.
- *Skills*: the law curriculum enables law students to develop relevant legal (‘lawyering’) skills that include cognitive (e.g. analytical skills), technical (e.g. research skills) and communication skills (e.g. writing skills).
- *Attributes*: the law curriculum enables law students to develop international and intercultural perspectives and ways of thinking that prepare them as global citizens.
- *Teaching/learning methods*: a diverse range of teaching and learning strategies are employed to convey international content, materials, and experiences.
- *Materials and resources*: students are given access to materials and other resources from both the domestic and the relevant overseas jurisdiction/s.
- *Student experience*: in addition to the formal curriculum, students engage in a range of other, including overseas, activities that promote international engagement, as well as interaction with overseas students studying at the law school on exchange programs.
- *Assessment*: assessment tasks are developed that incorporate international dimensions and specifically test the required intellectual skills at the level required for global practice.

These descriptors, which are by no means comprehensive or exhaustive, are indicative of each element and are drawn from the literature review and roundtable data.

The following is a curriculum framework for each of the three options open to law schools – aggregation, integration and immersion.

**Table 5.1: Curriculum framework for an internationalised Australian law program**

	Level 1: Aggregation <b>International Awareness</b>	Level 2: Integration <b>International Competence</b>	Level 3: Immersion <b>International Expertise</b>
<b>Objectives or outcomes</b>	<ul style="list-style-type: none"> <li>▪ Graduates will appreciate the global context in which the law operates.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Graduates will be able to recognise, analyse and interpret international or cross-jurisdictional legal transactions or events.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Graduates will have expertise in law in more than one jurisdiction.</li> </ul>
<b>Knowledge</b>	<ul style="list-style-type: none"> <li>▪ General knowledge of</li> </ul>	<ul style="list-style-type: none"> <li>▪ Comparative</li> </ul>	<ul style="list-style-type: none"> <li>▪ Advanced knowledge</li> </ul>

	<p>basic international and comparative<sup>212</sup> content within selected specialist areas of legal knowledge.</p> <ul style="list-style-type: none"> <li>▪ Knowledge of different legal systems, international institutions and instruments.</li> </ul>	<p>knowledge of relevant law concepts and principles in areas of legal knowledge across the curriculum.</p>	<p>in areas of international and comparative perspectives in more than one jurisdiction.</p>
<b>Skills</b>	<ul style="list-style-type: none"> <li>▪ Basic awareness of the need for cross-cultural communication.</li> <li>▪ Basic research skills in relation to international materials</li> <li>▪ Basic analytical, interpretive and problem solving skills in the context of law concepts, principles and examples found in international and comparative settings.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Good written communication skills to advise persons from another jurisdiction.</li> <li>▪ Good research skills to research international law and law and legal issues/transactions in different jurisdictions.</li> <li>▪ Good analytical, interpretive and problem solving skills to resolve international legal problems involving a degree of complexity.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Advanced skills in cross cultural communication.</li> <li>▪ Advanced skills to research international legal problems in their context.</li> <li>▪ Advanced analytical, interpretive and problem solving skills to resolve complex international legal problems.</li> <li>▪ Ability to communicate in a second language, where applicable.</li> </ul>
<b>Attributes</b>	<ul style="list-style-type: none"> <li>▪ Appreciation of cultural diversity and the contributions to the law of different cultures, values and belief systems.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Capacity to build relationships and adapt to different contexts to address legal issues across cultures and jurisdictions.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Expertise in building relationships across cultures and adapting seamlessly to diverse cultural contexts.</li> </ul>
<b>Teaching /learning methods</b>	<ul style="list-style-type: none"> <li>▪ Introduction of basic international and comparative content and perspectives.</li> <li>▪ Inclusion of examples from other jurisdictions.</li> </ul>	<ul style="list-style-type: none"> <li>▪ In-depth integration of international and comparative content and international perspectives in teaching.</li> <li>▪ Comparative consideration of materials and cases from one or more other jurisdictions.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Immersion in law content and perspectives in another jurisdiction.</li> <li>▪ Inclusion of detailed and complex case studies from several jurisdictions.</li> </ul>
<b>Materials &amp; resources</b>	<ul style="list-style-type: none"> <li>▪ Availability of materials and other</li> </ul>	<ul style="list-style-type: none"> <li>▪ Availability of materials and other</li> </ul>	<ul style="list-style-type: none"> <li>▪ Access to materials and resources in the</li> </ul>

<sup>212</sup> See footnote 209.

	resources from other jurisdiction/s for the applicable subjects.	resources from other jurisdiction/s for all applicable subjects.	jurisdiction in which students are studying.
<b>Student Experience</b>	<ul style="list-style-type: none"> <li>▪ Engagement with overseas students studying in the law school.</li> <li>▪ Engagement for those students studying overseas with international student peers.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Engagement with international student peers inside and outside the classroom.</li> <li>▪ Law school supports international student exchange or study opportunities.</li> <li>▪ Law school develops international networks for teaching staff and students.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Students engaged in immersion programs experience interaction with other students in their home environment, with law teachers, and legal institutions.</li> </ul>
<b>Assessment</b>	<ul style="list-style-type: none"> <li>▪ Assessments in specialist subjects/units include problem-solving activities incorporating international and comparative examples.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Assessments in all core subjects and others which have been internationalised include problem solving activities involving more than one legal jurisdiction.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Students engaged in immersion programs are assessed in accordance with the requirements of the overseas law school, and possibly in a foreign language.</li> </ul>

## Applying the framework to an area of law

It is beyond the scope of this project to develop a model curriculum for an entire LLB or JD program. Therefore, for purpose of illustration only, the framework is applied to the area of contract law (one of the Priestley Eleven).<sup>213</sup> The reason for choosing contract law is that this is the area of law that was consistently cited by roundtable participants as one of the most important areas of law and it also featured as a key theme and discussion at the National Symposium.

The illustration proposes how this might be done for Level 1 – Aggregation, Level 2 – Integration, and Level 3 – Immersion. It is recognised that some or many law schools may choose not to implement the Level 3 model. Law schools may also choose to implement the several levels in a different way.

**Level 1 - Aggregation** is aimed at having students examine contract law in an international context in elective subjects which might be, for example, *Transnational Contract Law*, *Comparative Contract Law* or *Chinese Contract Law*. Such subjects would, obviously, require

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<sup>213</sup> See, eg, Hannah Buxbaum, 'Integrating Transnational Legal Perspectives into the First-Year Contracts Course - The Relevance of Foreign Law' <[www.aals.org/am2006/program/transnational/Buxbaumoutline.pdf](http://www.aals.org/am2006/program/transnational/Buxbaumoutline.pdf)>.

the core subject *Contract Law* as a prerequisite. Such an elective subject would help students ‘acquire an appreciation of the diversity of national contract law regimes’, ‘sensitises students to the world beyond the system that they are currently studying’ and ‘provides them with a basis for understanding the challenges of dealing with transnational activity’.<sup>214</sup>

**Level 2 - Integration** integrates into the study of contract law in the core subject/s one or more international comparative contexts based on at least one other jurisdiction. For example students might, near the beginning of the subject, undertake a comparative study of what elements are required to establish a contract in Australia and one or more selected jurisdictions.<sup>215</sup> Later in the subject they might study the effect of misrepresentation on a contract in both Australia and one other jurisdiction, possibly a non-common law jurisdiction.

**Level 3 - Immersion** contemplates students undertaking advanced study in international contract law that might involve students studying contract law in situ in another jurisdiction.

**Table 5.2: Application of the internationalised curriculum framework to Contract Law**

	Level 1: Aggregation <b>International Awareness</b>	Level 2: Integration <b>International Competence</b>	Level 3: Immersion <b>International Expertise</b>
<b>Outcomes</b>	<ul style="list-style-type: none"> <li>Students will understand the contract law of another jurisdiction, or aspects of contract law from an international perspective.</li> </ul>	<ul style="list-style-type: none"> <li>Students will be able to investigate, analyse and compare Australian contract law with at least one international jurisdiction.</li> </ul>	<ul style="list-style-type: none"> <li>Students will be able to investigate, analyse and apply fundamental principles of contract law governing international commerce.</li> </ul>
<b>Knowledge</b>	<ul style="list-style-type: none"> <li>General knowledge of principles, legislation and cases in contract law within selected specialist area.</li> </ul>	<ul style="list-style-type: none"> <li>Comparative knowledge of relevant contract law concepts, principles, legislation and cases relating to contract law in Australia and at least one other jurisdiction.</li> </ul>	<ul style="list-style-type: none"> <li>Advanced knowledge of the principles, legislation and cases relating to contract law in another jurisdiction, either alone or comparatively.</li> </ul>
<b>Skills</b>	<ul style="list-style-type: none"> <li>Basic awareness of the need for cross-</li> </ul>	<ul style="list-style-type: none"> <li>Good written communication</li> </ul>	<ul style="list-style-type: none"> <li>Advanced skills in cross cultural</li> </ul>

<sup>214</sup> Ibid.

<sup>215</sup> For example, the Comparative Contract Law offered by the University of Murdoch Law School <[www.murdoch.edu.au/Courses/Law/Course-structure/#](http://www.murdoch.edu.au/Courses/Law/Course-structure/#)>.

	<p>cultural communication.</p> <ul style="list-style-type: none"> <li>▪ Basic research skills in relation to contract law.</li> <li>▪ Basic analytical, interpretive and problem solving skills in the context of contract law.</li> </ul>	<p>skills to advise persons from another jurisdiction in relation to contract law.</p> <ul style="list-style-type: none"> <li>▪ Good research skills to research contract law and legal issues and transactions in different jurisdictions.</li> <li>▪ Good analytical, interpretive and problem solving skills to resolve contract problems involving a degree of complexity.</li> </ul>	<p>communication.</p> <ul style="list-style-type: none"> <li>▪ Advanced skills to research contract problems in their context.</li> <li>▪ Advanced analytical, interpretive and problem solving skills to resolve complex contract problems.</li> <li>▪ Ability to communicate in a second language, where applicable.</li> </ul>
<b>Attributes</b>	<ul style="list-style-type: none"> <li>▪ Appreciation of cultural diversity and the contributions to the law of different cultures, values and belief systems.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Capacity to build relationships and adapt to different contexts to address contract law issues across cultures and jurisdictions.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Expertise in building relationships across cultures in the context of international contracts.<sup>216</sup></li> </ul>
<b>Teaching /learning methods</b>	<ul style="list-style-type: none"> <li>▪ Inclusion of seminal contract law cases from selected other jurisdiction/s.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Comparative integration of contract law content from selected other jurisdiction/s.</li> <li>▪ Consideration of materials and cases from selected other jurisdiction/s.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Immersion in contract law content and perspectives of other country.</li> <li>▪ Inclusion of detailed and complex case studies from several jurisdictions.</li> </ul>
<b>Materials &amp; resources</b>	<ul style="list-style-type: none"> <li>▪ Contract law materials and other resources from other jurisdiction/s.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Contract law materials and other resources from other jurisdiction/s.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Contract law materials and resources in the jurisdiction in which students are studying.</li> </ul>
<b>Student Experience</b>	<ul style="list-style-type: none"> <li>▪ Engagement with overseas students studying in the law</li> </ul>	<ul style="list-style-type: none"> <li>▪ Engagement with international student peers in</li> </ul>	<ul style="list-style-type: none"> <li>▪ Students engaged in immersion programs</li> </ul>

<sup>216</sup> See, eg, Edwin Chan and Raymond Tse, 'Cultural Considerations in International Construction Contracts' (2003) *Journal of Construction Engineering Management* 375.

	<p>school.</p> <ul style="list-style-type: none"> <li>Engagement for those students studying overseas with international student peers.</li> </ul>	<p>solving contract law problems together.<sup>217</sup></p> <ul style="list-style-type: none"> <li>Students exposed to visiting international guest speakers.</li> </ul>	<p>experience interaction with other students in their home environment, with law teachers, and legal institutions.</p>
<b>Assessment</b>	<ul style="list-style-type: none"> <li>Assessments in specialist contract law subjects/units include problem-solving activities incorporating contract law examples from other jurisdictions, or case note that discusses and explains a recent contact-related decision that has an international element.<sup>218</sup></li> </ul>	<ul style="list-style-type: none"> <li>Assessments include contractual problem solving activities involving more than one legal jurisdiction.</li> </ul>	<ul style="list-style-type: none"> <li>Students are assessed in accordance with the requirements of the overseas law school, and possibly in a foreign language.</li> </ul>

## Conclusion

This research supports the view that internationalisation is not an option but a reality given the globalisation of legal education and practice. The issue is how this might be achieved in a meaningful and purposeful manner in an integrated and coherent curriculum. The framework for internationalising the law curriculum is modelled on other curriculum frameworks in particular the Australian Qualifications Framework and the typology proposed by Edwards et al.

The framework is intended to provide a flexible approach to incorporating international perspectives and content into the curriculum both horizontally across the whole curriculum and vertically within a particular unit as illustrated by the application to contract law. It is recognised that internationalising the law curriculum remains a challenging exercise and will no doubt continue to be dependent on factors such as academic workloads, competing research-teaching demands, the availability of expertise and the availability of resources.

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<sup>217</sup> Explored in Duncan Bentley and John Wade, 'Special Methods and Tools for Educating the Transnational Lawyer' 55 (2005) *Journal of Legal Education*. 479.

<sup>218</sup> For example, *A-G of Botswana v Diamond Aussie Products Pty Ltd* (No 3) [2010] WASC that deals with formation of contracts, remedies for breach of condition and choice of law.

## Chapter 6

## Conclusions and recommendations

### Conclusions

The literature review and the consultations through the roundtables and Symposium lead to the following conclusions –

- Internationalisation is having a significant impact on legal practice in Australia.
- Law schools recognise that legal education must change to reflect this new reality.
- Developments in regard to the internationalisation of the law curriculum are not static and there are further developments.
- A multi-faceted approach is required for internationalising the law curriculum.
- There is a range of knowledge, skills and attributes which are essential for law graduates working in a global multi-jurisdictional environment, and for law graduates generally.
- Therefore, the internationalised law curriculum needs to focus on the knowledge, skills and attributes identified as essential for global practice.
- Law schools recognise that their role is to prepare law graduates for both domestic and international legal practice.
- There are some hurdles to achieving an internationalised law curriculum and it is important these hurdles be overcome.

#### **1      *Internationalisation is having a significant impact on legal practice in Australia***

- There is no question that internationalisation is having an increasingly significant impact on legal practice in Australia.
- This impact is most keenly felt amongst the large commercial law firms, which have offices overseas or are part of international law firms. Most of their work has an international dimension. Internationalisation is already a fact of life for them.
- But there is also an impact amongst medium and small size firms. Although this has not been measured, there is fairly widespread agreement that many lawyers need to deal

with a dimension from outside the Australian jurisdiction in many of their matters. This could range from a family law matter where children had been taken outside the jurisdiction, to an investment in a family farm by an overseas company, to the purchase of factory machinery from an overseas supplier. In addition, it is clear that, while the international work is still concentrated amongst the large Australian law firms, the engagement of small to medium firms in international work has grown in the recent past,<sup>219</sup> and is likely to continue to grow.

- In summary, the practice of law has changed for many lawyers, and with it the need for their education to change.

## **2 Law schools recognise that legal education must change to reflect this new reality**

- Australian law schools have already recognised this new dynamic and this is reflected in various ways in their undergraduate and postgraduate programs. (This project did not include a comprehensive survey of what is already being done in Australian law schools.)
- This recognition is not static but is developing to reflect a more sophisticated awareness of how the Australian law degree might be internationalised.
- To date, internationalisation has been incorporated largely by –
  - the ‘recruitment’ of foreign students to study in Australian law schools in undergraduate and postgraduate programs
  - exchange programs with overseas law schools under which law students can spend some of their time at law school studying at the overseas law school and obtaining credit towards their degree (and vice versa for students from the overseas law school)
  - the establishment of specialist subjects or units, almost always as part of the electives program in the undergraduate degrees, on topics such as *Asian Law*,<sup>220</sup> *Chinese Law & Legal Tradition*,<sup>221</sup> or *Chinese Intellectual Property Laws in the Global Context*<sup>222</sup>
  - opportunities for teaching staff to spend time at overseas law schools, and for academics from overseas law schools to spend time and teach at Australian law schools.
- All of these will continue and will no doubt expand.

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<sup>219</sup> ILSAC, the export market share of small to medium size firms has grown from 21% in 2006-07 to 33% in 2008-09 <[www.ilsac.gov.au/Pages/default.aspx](http://www.ilsac.gov.au/Pages/default.aspx)>.

<sup>220</sup> University of Melbourne, JD.

<sup>221</sup> Griffith University, LLB.

<sup>222</sup> Murdoch University, LLB.

### **3      *Developments in regard to the internationalisation of the law curriculum are not static and there are further developments***

- The impact of internationalisation on the law curriculum has developed incrementally and has accelerated over the last decade. The 2004 ILSAC Report, *Internationalisation of the Australian Law Degree*<sup>223</sup> was a report of the time but in just a short period it can be updated.
- The literature demonstrates that international thinking has moved on such that good practice in legal education now points to an integrated approach to internationalisation across the whole curriculum.
- As well, the term internationalisation is now much broader and must be understood to include a global perspective incorporating a rich content, including elements such as cultures, worldviews, families of law, views of justice and dispute resolution, and approaches to life and business.
- No longer can internationalisation be considered as an add-on. In the same way as electronic commerce was once a specialist area, but has now become integral to the way we work and think, so too has an international mindset. The literature has moved inexorably to this conclusion.
- Legal education must continue to mirror this reality. Internationalisation with its richer meaning must become integral to the legal knowledge, skills and attributes with which law students graduate. This is increasingly sought by employers of every kind and provides the competitive advantage not only for Australian law firms but for Australian lawyers.

### **4      *A multi-faceted approach is required for the process of internationalising the law curriculum***

- Australian law schools can choose between four models for internationalising the law curriculum –

Aggregation  
Segregation  
Integration  
Immersion

They are not mutually exclusive.

- The most likely approach will be a combination of the aggregation and integration

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<sup>223</sup> ILSAC, above n 133.

models.

- Under the aggregation model, specialist subjects/units will initially be developed, usually as part of the electives program. Occasionally a law school will adopt the segregation model and establish a separate program or academic unit within the school dealing with global law, but this will be rare.
- However, the most effective means of implementing an internationalised law curriculum will be the adoption of an integration model, whereby international/global perspectives will be woven into all core subjects and many of the electives. Students will learn the domestic law in a comparative context, developing over time the ability to move easily into the laws of other jurisdictions in order to enrich their understanding of Australian law and to be able to interpret and resolve problems and situations from various global perspectives.
- There may be a few occasions when an Australian law school is able to offer its students an opportunity to immerse themselves in study in another jurisdiction, possibly studying in a foreign language.
- For some law schools, the process of internationalisation will be incremental, starting with the offering of specialist subjects/units and leading later to a widespread integration of international perspectives into all core and many elective subjects.

**5 *There is a range of knowledge, skills and attributes which are essential for law graduates working in a global multi-jurisdictional environment, and for law graduates generally***

- The knowledge which is considered essential is
  - Foundational knowledge – a deep understanding of core legal principles in core areas of the law.
  - International-specific knowledge – which includes a comparative perspective to open their minds to alternative possibilities.
- The skills which are considered essential are
  - Communication and presentation
  - Problem solving
  - Legal research, including statutory interpretation
  - Relationship building
- The attribute which is considered essential is
  - Adaptability
- Bilingualism is also a very valuable skill.

## **6     *The internationalised law curriculum needs to focus on the knowledge, skills and attributes identified as essential for global practice***

- The essential components and emphases of an internationalised law curriculum are
  - A sustained focus on ensuring all students have acquired foundational knowledge – ie. a deep understanding of core legal principles in core areas of the law.
  - The integration of aspects of international legal systems from a comparative perspective into all core subjects and some elective subjects.
  - The inclusion of international-specific specialist subjects in the elective program.
  - A sustained focus on the development of the intellectual skills needed for global practice, including specific assessment of them in assessments.
  - An understanding of the cultural and political context in which legal business is conducted and legal transactions take place.
- Private International Law should be available as a subject for all students.
- It would be desirable if there were a subject on Comparative International Law available for all students.
- There should continue to be robust assessment of both knowledge and skills to ensure the highest quality.
- As far as possible, the curriculum should enable students to develop a strong ethical framework and an attitude of adaptability.
- In the longer term it would be desirable if there were a law degree that was common to multiple countries for admission to practice.

## **7     *Law schools recognise that their role is to prepare law graduates for both domestic and international legal practice***

- Internationalisation does not mean an abandonment by law schools of their continuing responsibility to prepare lawyers to practise domestic law for domestic clients. Despite the significant impact on legal practice of internationalisation, it is probably true to say that, even now, the majority of matters handled by the majority of Australian lawyers are purely domestic in nature. However, it is also true that the legal services market in Australia is increasingly becoming an integral part of the international legal services market and therefore, ‘preparing lawyers to practise domestic law’ should be viewed as ‘preparing lawyers to practise domestic law in an international legal services market’.
- What is required above all else of a lawyer, whether he/she practises in a domestic or an international matter, is the same –
  - *Knowledge* – A deep and conceptual understanding of the legal principles in the core areas of the law.

- *Skills* – An assured ability to use intellectual skills in working with that law – such as critical analysis, research, statutory interpretation, problem-solving and persuasive and cogent writing.
  - *Attributes* – an awareness of the client and others – their needs and expectations, their culture and attitudes.
- Hence an internationalised law curriculum can provide the high quality legal education which *both* domestic and international practice require as –
    - Students gain a deeper and more rounded understanding of Australian law by the inclusion of comparative perspectives from other jurisdictions, and the stretching of their mind to see law in operation in different jurisdictions, cultures and political settings.
    - The intellectual skills needed in international practice are exactly the same as those needed for domestic practice – and both forms of practice require they be highly developed.
  - In summary, the approach required for the preparation of law students for domestic and international practice is the same: and the addition of the international aspect only operates to increase the depth of understanding, the level of intellectual skills performance, and the depth of understanding of the perspectives of those involved. Such improvements are as much in the interests of high quality domestic legal services as they are in the interests of international practice.

## **8      *There are some hurdles to achieving an internationalised law curriculum***

- In jurisdictions where they are applied too prescriptively, the impact of the Priestley Eleven areas of knowledge on the law curriculum may act as a hurdle. They must be applied with a “light touch”, particularly in light of the wide range of other quality assurance mechanisms applied to universities and law schools.
- Potential over-regulation in a changed regulatory environment. Compliance with the requirements of the AQF, TEQSA and other regulators can mean that law schools are not able to develop graduates with the knowledge, skills and attributes required by employers.
- Potential under-funding of law schools to deliver best practice global legal education in a constrained funding environment will inhibit the implementation of an internationalised law curriculum. Such a curriculum will be more expensive than at present, particularly where an integration model is adopted.
- A “one-size fits all” approach to Australian education, where there is a tendency towards convergence rather than the delivery of best practice education in different ways to suit the mission and strategy of each law school, will inhibit the implementation of an internationalised law curriculum.

- The difficulty in attracting academic staff with the right qualifications and experience required to offer an internationalised law curriculum will act as a constraint across all law schools.
- Increasing, and perhaps at time unrealistic, demands from employers may push law schools to achieve unattainable goals, or discourage law schools to internationalise their curricula.
- Under-funding of key government representative agencies that enhance the position of law schools internationally, such as ILSAC, will also act as an inhibiting factor.

## **9      *It is important these hurdles be overcome***

- Although a country of only 23 million people, Australia plays a leading and influential role internationally through its export of legal services, Australian lawyers, and the rule of law; and because of the recognised quality of its legal education.
- Australia attracts students from all over the world into both its undergraduate and postgraduate legal education. Most importantly in recent times, through their PhD programs, Australian law schools are a leader in the development of advanced legal thought.
- Increased numbers of overseas students will have a direct and positive ‘socialising’ impact on Australian students, improving the cultural awareness of Australian students enabling them to better engage internationally into the future; and have a positive impact on the rule of law and good governance in the home jurisdictions of overseas students in the longer term.
- The quality of Australian legal education underpins the growing export of Australian legal services: it is essential that it continues to be of high quality.
- The portability and quality of legal education is a national competitive advantage. There is significant scope to build on these strengths if they form part of a national strategy.
- An internationalised law curriculum should be a core component of that strategy.

## **Recommendations**

In the light of these conclusions, the following recommendations are made –

### **1      Council of Australian Law Deans**

- 1.1 CALD be invited to conduct a special meeting or workshop (of deans and other key people within the law schools) on the topic of internationalising the law curriculum,

at which this report and its proposed curriculum would be discussed and analysed, with a view to the model being improved and made more implementable.

- 1.2 CALD be invited to play a monitoring role in regard to the implementation of diverse internationalised law curricula in Australian law schools.
- 1.3 CALD be invited to consider whether, in the light of this report, the CALD Standards should be reviewed or a commentary published to reflect the contemporary prominence of the internationalised law curriculum.
- 1.4 CALD be invited to discuss this report at its next meetings with Indian and Chinese law deans.

## **2 Australian law schools**

- 2.1 All Australian law schools be invited to consider this report and decide whether anything should be done to internationalise, or further internationalise, their undergraduate law curricula.
- 2.2 All Australian law schools be encouraged to further their international and domestic collaboration to improve the breadth of legal education, while ensuring the maintenance of standards established through CALD and LACC.
- 2.3 The organisers of an international seminar on internationalising the curriculum at Bond University be invited to use the project report as a core resource document for the seminar.

## **3 Australasian Law Teachers Association**

- 3.1 ALTA be asked if a presentation might be made, by a member of the project team or a representative of CALD, at one of its forthcoming meetings.
- 3.2 ALTA be invited to include a session at its annual conference, or convene a special workshop, to discuss and analyse the proposal in regard to internationalising the teaching of contracts in undergraduate programs, with a view to the model being improved and made implementable.

## **4 International Legal Services Advisory Council**

- 4.1 ILSAC be invited to post this project report on its website.
- 4.2 ILSAC be asked that the topic of internationalisation of the law curriculum remain on ILSAC's International Legal Education and Training Committee agenda as a standing item.
- 4.3 The ILSAC Chairman be asked to:
  - a) issue a press release and seek to have either *The Australian* or the *Australian*

- Financial Review*, or both, run articles at the time the report is released;
- b) write to the Council of Australian Law Deans, providing the report for appropriate further action;
  - c) write to the Chief Justice of the High Court seeking his support for the report and his endorsement of the recommendation below to LACC;
  - d) write to all members of the Council of Chief Justices providing copies of the report;
  - e) write to the Commonwealth Attorney General seeking her support in terms of Recommendation 3.2 and 3.3 below;
  - f) write to the Law Admissions Consultative Committee providing the report and seeking to brief LACC at one of its meetings; and
  - g) write to the Law Council of Australia as well as State and Territory professional bodies providing copies of the report and seek to have the report considered by the Law Council's Legal Education Committee with an offer of a verbal presentation by members of the project team.
- 4.4 The ILSAC Secretariat be asked to:
- a) Include the article and updates on the project in ILSAC's Newsletter and consider if a special issue might be published for this initiative;
  - b) keep the Council of Australian Law Deans updated on developments through regular briefings at CALD meetings; and
  - c) include material from the project as one of the key legal education elements in future missions by the Attorney General and, where appropriate, other Ministers.
- 4.5 The Chair of the International Legal Education and Training Committee of ILSAC be asked to write to the International Association of Law Schools providing a copy of the report and exploring whether Professor Michael Coper might provide a briefing to the Association on the project at its next meeting in Mysore, India in March 2013.
- 4.6 ILSAC be funded to coordinate a strategy with key stakeholders to strengthen their engagement with law schools to enhance the knowledge, skills and attributes to enhance integration of internationalisation in the curriculum.
- 4.7 ILSAC be invited to convene a further symposium, in two years time, to review the implementation of the recommendations in this report.
- 4.8 The role of ILSAC be strengthened through appropriate funding to continue the ground-breaking work it has undertaken to ensure the recognition of Australian law degrees and to enhance the export of Australian legal services.

## **5 Template article, press release and booklet**

Templates of an article for publication and of a press release be prepared, for publication in various journals with appropriate adaptations, as outlined below. The article/press release would be a summary of key elements of the report written in a way likely to attract the readers' attention, depending on the journal or form of media in which the article/release

was published.

In addition, a booklet be prepared containing the main elements of this report in readable form, for distribution, as appropriate, with this report, as an additional means of dissemination, and for use at proposed seminars and other presentations on the findings of this report.

## **6 Commonwealth Attorney-General**

- 6.1 The Commonwealth Attorney-General be asked to write to her State and Territory counterparts providing copies of this report for their information and further action.
- 6.2 The Commonwealth Attorney-General be asked to table the report at a meeting of the Standing Council on Law and Justice with a view to the report be accepted as a basis for a Commonwealth project on internationalisation of the law curriculum along the lines suggested in the report leading to the working up of further modules for a model curriculum.
- 6.3 The Commonwealth Attorney-General be asked to consider putting 'internationalising legal education' or 'an internationally portable law degree' (or similar) on the agenda for the Quintet of Attorneys-General meetings (Australia, Canada, New Zealand, the UK and the USA) and/or the wider Commonwealth Law Ministers meetings.

## **7 International Bar Association, International Association of Law Schools, Association of American Law Schools and the American Bar Association Section on Legal Education and Admissions to the Bar**

These associations be asked if a presentation on the report might be made, by a member of the project team or a representative of CALD, at one of their forthcoming meetings.

## **8 Law Admissions Consultative Committee and state and territory law admitting authorities**

- 8.1 LACC and the law admitting authorities be encouraged to ensure “light touch” regulation to allow for differentiation in undergraduate law programs to permit internationalisation, particularly in regard to the delivery of the Priestley areas of knowledge, including pedagogy, delivery and assessment.
- 8.2 LACC be invited to consider the particular focus of the legal knowledge, skills and attributes identified in this study and to consider whether and how that might impact on their recognition of law schools and law programs.

## **9 AusAID**

AusAID be invited to allocate funding for collaborative research, including PhD and postdoctoral programs, to build capacity for internationalisation of legal education in

countries receiving Australian aid. This could build on the framework for contract law in this report and apply it across core areas of the curriculum, following on from the approach to discipline learning standards successfully modelled by several OLT projects.

## Chapter 7                      Dissemination

### Project application

The Project Application for this project envisaged, as a final phase, the following –

#### Phase 7: Dissemination of results

- i. Stakeholders will be engaged in the process during the symposium, and therefore have an interest in the outcomes. Findings and recommendations will be reported directly to Australian law schools and other relevant bodies.
- ii. Dissemination to international law schools will be conducted via International Association of Law Schools and American Association of Law Schools.
- iii. The project report will be presented at domestic and international conferences to facilitate wider engagement with the findings, including to the international legal profession.
- iv. Publication of results in research form for international journals.

### Dissemination

The recommendations in the previous chapter indicate how this report, and the ideas and possibilities generated by this project, will be widely disseminated. In a number of instances the report will be supplemented by a booklet containing an outline of the main elements of the report.

Listed below is a full list of those to whom the report, and in some instances the template article and/or the booklet, will be sent.

1. All roundtable participants and interviewees.
2. All symposium participants.
3. The Chief Justice of the High Court.
4. LACC and the State and Territory admitting authorities drawing their attention to the recommendations of particular pertinence to the requirements for admission to practice.
5. The Commonwealth Attorney-General, in particular with recommendations 3.1 to 3.3.

6. The Commonwealth Attorney-General and the Minister for Tertiary Education, Skills, Science & Research, drawing their attention to the importance of the role of ILSAC and its funding to further work in this area.
7. CALD, in particular with recommendations 4.1 to 4.4.
8. ALTA, in particular with recommendations 5.1 and 5.2.
9. The Association of American Law Schools, with a request that the article be published in the *AALS Newsletter*.
10. The American Bar Association Section on Legal Education and Admissions to the Bar, with a request that the article be posted on its website, and to explore if it might be a topic at one of its Section Meetings.
11. The Law Council of Australia and the State and Territory law societies and bar associations, with a request that internationalisation and the law curriculum might be a topic at one of their conferences, and that the article be published in their journal or newsletter.
12. The Large Law Firm Group with a request that the report be considered at one of its meetings.
13. The Australian Academy of Law for its consideration and information.

## Journals

The report will be adapted to be a journal article and submitted to various Australian and overseas law journals for publication.

## Websites

The following bodies will be asked to upload this project report to their websites –

- ILSAC
- CALD
- OLT
- Law Council of Australia

- Law schools, if they consider it appropriate.

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## Appendix A      Project team members

### Victoria University

Professor Duncan Bentley

### Curtin University

Associate Professor Joan Squelch

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### The Australian National University

Professor Michael Coper

Associate Professor Anthony Connolly.

### The University of Sydney

Professor Gillian Triggs

Mr Peter Lead

### International Legal Services Advisory Council

Mr Arjuna Nadaraja

Independent Consultant and Reviewer

Mr Christopher Roper AM

## Appendix B            A sample of developments in some Australian law schools

### **Australian National University**

*The Geneva Program* – students taken to Geneva for four to six weeks to study international institutions and experience them first hand.

*The Alabama Program* – combined groups of ANU and University of Alabama students together study select topics in US/Australian comparative law, in Canberra in one iteration and in Tuscaloosa in another, over four to six weeks on each occasion.

### **Murdoch University**

Internationalisation is one of the distinctive qualities of the law programs at Murdoch University. Internationalisation is not seen as a quality in itself. But the law school is convinced that offering its students various kinds of international experiences will not only broaden their horizon but also equip them better to deal with matters of domestic law because they will develop a deeper understanding.

It should be noted that for a long time, and in the USA still to a considerable degree, the law that is taught was not the law that is practised but a form of *jus commune* used to train future jurists in such a way as to be able to deal with any law they might be confronted with.

Murdoch University Law School believes that the international perspective can bring some of this thinking back to its law program and make for better lawyers even if they never look at international matters ever again (for those who want to practise in some form, be it at the bar, in-house or as a government lawyer) or for a better education.

Internationalisation is an inherent part of the school's curriculum in several ways. The units listed below are one element.

In addition the school offers several international programs to its and other students where some of these units are taught by its staff or by staff from other institutions. The School's two winter programs take students to Geneva, Switzerland to study international human rights law intensively at the Center of International Human Rights and with exposure to various institutions and people active in this field. The School's Macerata program takes its students or students from other institutions to the beautiful medieval city of Macerata, Italy and its University and Law School which are over 700 years old. There they are exposed to European Union and comparative law taught by Italian colleagues. Together with the City University in Hong Kong the School offers a specialisation program in Chinese law which is taught under its auspices and to its students and students from other institutions by City

University staff in Hong Kong.

Another distinctive feature of the Murdoch University law programs is the broad involvement in mooting, especially in international mooting competitions. The School's students are regulars at the Willem C. Vis International Commercial Arbitration Moot in Vienna, the Jessup Moot and various other mooting competitions. Murdoch Law School is the home of the International Maritime Law Arbitration Moot Competition. This gives its students opportunities to internationally compete at the highest levels and the School is convinced that successful participation in these programs will make better professionals regardless of what they might end up doing later.

Finally, the School has a diverse academic staff with lecturers who are from and have received some or much of their legal training all over the world (e.g. Belgium, Brazil, China, Germany, Great-Britain, Ireland, South Africa, Uganda, USA).

### **Units with predominantly or distinct “international” content**

#### *Undergraduate*

- Law in China: Continuity and Change
- Introduction to Australian & International Intellectual Property Law
- Legal Protection of International Human Rights (at Murdoch)
- Legal Protection of International Human Rights S2G (in Geneva)
- European Union Law
- Human Rights Law Clinic
- Willem C Vis Int'l Commercial Arbitration Moot
- Conflict of Laws (Zeller)
- Comparative Contract Law (Gabriel)
- Public International Law
- Refugee Law (in Geneva)
- International Human Rights Organisations (in Geneva)

#### *Postgraduate*

- Introduction to the Chinese Legal System (with City University of Hong Kong)
- Chinese Contract and Commercial Law (with City University of Hong Kong)
- Chinese Intellectual Property Laws in the Global Context (with City University of Hong Kong)

### **Units with significant “international” and domestic content**

- Law Moot (depending on which competition we are in)
- Moot Court Bench (coordinates all mooting and preparations)
- Celtic Law and Society
- Intellectual Property: Patents & Sui Generis Regimes
- Intellectual Property: Trade Marks & Copyright
- Shipping Law

In addition there are research units, including the honours with a substantive research

component that can and do deal with international matters.

## **The University of Melbourne**

### ***Juris Doctor***

In the JD, students are required to take Principles of Public Law which integrates domestic and international approaches to public law issues and ensures that students understand basic principles of constitutional, administrative and international law and the way that they intersect. Many other JD compulsory subjects include comparative elements. For example, Dispute Resolution includes comparisons of different cultural methods of resolving disputes, Criminal Law looks at Australian law in a comparative and international context, and Legal Theory examines society and culture, asking students to reflect on the way their own cultural background influences the theories of law that they adopt.

In their electives, the students have a wide variety of options that focus upon or include international content that are taught in Australia. At present these include: public international law, Asian law, cross-border litigation, international commercial disputes, international criminal law, international human rights law, the Jessup Moot, international humanitarian law, and Islamic law.

Students may also study overseas through the exchange program, international internships, taught courses overseas (particularly Global Lawyer in the USA and Institutions in International Law in Geneva), and at the Centre for Transnational Legal Studies in London [www.law.unimelb.edu.au/index.cfm?objectid=6614F050-D762-11E0-BED80050568D0140&sid=5329](http://www.law.unimelb.edu.au/index.cfm?objectid=6614F050-D762-11E0-BED80050568D0140&sid=5329)

### ***Melbourne Law Masters***

In the Masters, approximately a third of all subjects are taken by international visitors, which brings a comparative element to a wide range of subjects across all our specialisations.

There are specialist Masters with an international or comparative element in:

- Asian Law
- International Law
- International Economic Law
- Law and Development
- International Tax

Each of these specialties has a wide range of subjects for students to select from and details of the subjects can be found at [www.law.unimelb.edu.au/masters/courses-and-subjects/subjects-2012](http://www.law.unimelb.edu.au/masters/courses-and-subjects/subjects-2012)

## **The University of Sydney**

Lecturers are encouraged to 'internationalise' the curriculum. To the extent that this is possible in the Priestly 11 subjects in the light of curriculum and time constraints, lecturers are encouraged to do so.

### **In relation to the LLB and JD units**

LLB and JD students are required to undertake two units which are completely international in orientation:

- Public International Law
- Private International Law A

JD students are also required to select at least one of the international, comparative or transnational elective units of study from the following:

- Advanced Public International Law
- Chinese Law and Chinese Legal Systems
- Commercial Dispute Resolution
- Comparative Constitutional Law
- Criminology
- Development and Human Rights (Himalayan Field School)
- International Commercial Arbitration
- International Commercial Transactions
- International Economic Law
- International Human Rights Law
- International Moot
- Introduction to Islamic Law
- Japanese Law
- Law and Society in Indonesia
- Legal Systems of South-East Asia
- Migration Law
- Policing Crime and Society
- Private International Law B
- Refugees and Forced Migration
- Sustainable Development Law in China
- US Constitutional Law

- War Law: Use of Force and Humanitarian Law

### **In relation to the Master of International Law**

The following are Compulsory/Core units

- International Law I
- International Law II
- International Business Law
- International Commercial Arbitration
- International Criminal Law
- International Environmental Law
- International Human Rights
- International Humanitarian Law
- International Law & the Use of Armed Force Law of the Sea

In addition, students are able to select from the following Elective Units of Study in 2012:

- Australian International Taxation
- Carbon Trading, Derivatives and Taxation
- Chinese International Taxation
- Chinese Laws and Chinese Legal Systems
- Comparative Admiralty and Maritime Law
- Comparative Climate Law
- Comparative Corporate Taxation
- Comparative Income Taxation
- Comparative International Taxation
- Comparative Value Added Tax
- Consumer Contracts and Product Defects
- Corporate Governance
- Cross-Border Deals: A US Perspective
- Development, Law and Human Rights
- Doing Business in China
- Energy and Climate Law
- Global Energy and Resources Law
- Global Oil and Gas Contracts and Issues
- Human Rights and the Global Economy

- International & Comparative Labour Law
- International Banking Law
- International Commercial Litigation
- International Contract Law
- International Financial Organisations
- International Financial Transactions: Law & Practice
- International Human Rights Advocacy
- International Import/Export Laws
- International Investment Law
- International Sales
- Japanese Law
- Law and Investment in Asia
- Law of International Institutions
- Legal Pluralism in Southeast Asia
- Legal Reasoning & the Common Law System
- Legal Systems of the Pacific
- Microfinance: Law and Policy
- Olympic Sports Arbitration
- Personal Property Securities in the US
- Principles of Oil and Gas Law
- Private International Law
- Regulating Global Crisis
- Sustainable Development Law in China
- Tax Treaties
- Tax Treaties Special Issues
- The Legal System of the European Union
- The State and Global Governance
- Transfer Pricing in International Tax
- UK International Taxation
- US Corporate Law
- US International Taxation
- World Trade Organization-Dispute Resolution

## Appendix C Program for roundtable discussions

### ***Internationalising the Australian law curriculum***

*Dissemination and Discussion Among WA Academics and Practitioners*

Friday, 16 September 2011 from 9.30am to 12.30pm (with lunch to follow)

### **Large Meeting Room, Building 407, Room 308**

School of Business Law and Taxation, Curtin University

Kent Street, Bentley

#### PROGRAM

Time	Topic	Presenter
9:15am	Refreshments and registration	
9:30am	Welcome and Introductions <ul style="list-style-type: none"> <li>○ Overview of ALAP</li> <li>○ Highlight work of School</li> <li>○ Introduce Presenters</li> </ul>	Professor Dale Pinto Professor of Taxation Law Convenor ALAP Group Curtin University
9:40am (including discussion)	Internationalising the Law Curriculum: An ALTC/ILSAC Project	Professor Duncan Bentley (Project leader) Curtin University
10.30am	Morning tea break	
10:45am (including discussion)	Internationalising the Law Curriculum: Employers' Perceptions	Professor Joan Squelch (Project team member) Curtin University
11:30am (including discussion)	Internationalising the Law Curriculum: Employers' Perceptions	Associate Professor Tony Connolly (Project team member) The Australian National University
12:15pm	Next Steps <ul style="list-style-type: none"> <li>○ National Symposium (Canberra - March 2012 TBC)</li> <li>○ Final Report and Dissemination</li> </ul>	Professor Duncan Bentley (Project leader) Curtin University
12:30pm	Lunch	

## Appendix D National Symposium program

**National Portrait Gallery, Canberra**  
King Edward Terrace, Parkes, ACT

**Friday, 16 March 2012 from 8.30am to 5.30pm**  
(with drinks and canapés to follow)

### PROGRAM

- 8.00am**      **Arrival and Registration of participants**
- 8.25am**      **Welcome**  
*Professor Duncan Bentley*  
*Deputy Vice-Chancellor, Victoria University; Member of International Legal Services Advisory Council; Project team leader*
- 8.30am**      **Opening of Symposium**  
*The Hon Chief Justice Robert French AC*  
*Chief Justice of the High Court of Australia*
- 8.50am**      **Report on the Australian Government Office of Learning & Teaching Project and Context for the Symposium**  
*Professor Duncan Bentley*  
*Victoria University; Project team leader*  
**Associate Professor Joan Squelch**  
*Curtin University; Project team member*
- 9.30am**      **Morning Tea**
- 10.00am**     **Changing context and delivery of legal education**  
*Professor Sally Kift*  
*Queensland University of Technology; Former ALTC Discipline Scholar in Law and co-leader of the law discipline's work on the Learning and Teaching Academic Standards Project*
- 10.45am**     **Session 1 - The International context - perspectives on preparing graduates for the practice of law in a global context?**  
*Professor Duncan Bentley (Session Chair)*  
*Project team leader*
- **What we are looking for in the practice of law in a global context?**  
*Mr Joe Catanzariti*

*President-Elect, Law Council of Australia; Chair, College of Law; Member of the Law Admissions Consultative Committee; Member of Consultative Committee to the Council of Australian Governments on national legal profession reform*

- **Australian law firm perspective**

**Mr Stuart Clark**

*Chair, Large Law Firm Group; Partner National, Chief Operating Officer and Managing Partner International, Clayton Utz*

- **Internationalisation of the curriculum**

**Professor Gillian Triggs**

*Challis Professor of International Law and Dean of Faculty of Law, The University of Sydney; Chair, Council of Australian Law Deans; Project team member*

(15 minutes presentation each with 45 minutes total discussion)

**12.15pm Lunch**

**1.45pm Session 2 - The Domestic context - current advantages, constraints and innovations**

**Associate Professor Anthony Connolly (Session Chair)**

*Director LLB Program, The Australian National University; Project team member*

- **National legal profession, developments and curriculum**

**The Hon Professor Michael Lavarch AO**

*Professor of Law and Executive Dean, Faculty of Law at Queensland University of Technology; Former Chair Consultative Committee to the Council of Australian Governments on national legal profession reform; Former Attorney-General of Australia*

- **Judicial perspective**

**The Hon Justice Michael Slattery**

*Justice of the Supreme Court of New South Wales; Chair of the Legal Profession Admission Board of New South Wales; Member of the Law Admissions Consultative Committee*

- **Government perspective**

**Mr David Fredericks**

*Deputy Secretary, Civil Justice and Legal Service Groups, Australian Government Attorney-General's Department*

- **Graduate attributes - The Priestley areas of knowledge and the broader educational context**

**Professor Jill McKeough**

*Dean, Faculty of Law at the University of Technology Sydney; Immediate Past Chair, Council of Australian Law Deans; Commissioner, Australian Law Reform Commission*

(15 minutes presentation each with 45 minutes total discussion)

**3.30pm Afternoon Tea**

**4.00pm Session 3 - Innovation and outcomes**

***Mr Tim Bugg (Session Chair)***

*Chairman, International Legal Services Advisory Council;*

*Director, Dobson Mitchell Allport Lawyers*

- **The benefits of free trade in legal education; solution to the challenge of admission requirements**

***Dr Gordon Hughes***

*Member of International Legal Services Advisory Council; Fellow, Australian Academy of Law; Partner, Ashurst (formerly Blake Dawson)*

***Mr Arjuna Nadaraja***

*Director, Secretariat, International Legal Services Advisory Council, Australian Government Attorney-General's Department*

- **How we can maintain standards?**

***Professor Michael Coper***

*Robert Garran Professor of Law and Dean of Faculty of Law at The Australian National University, Canberra; Vice President, International Association of Law Schools; Project team member*

(15 minutes presentation each with 30 minutes total discussion)

**5.00pm Drawing together the threads and the process for change**

***Mr Tim Bugg***

*Chairman, International Legal Services Advisory Council*

**5.30pm Close followed by drinks and canapés**

## Appendix E National Symposium delegates

Dr	Armstrong	Susan	Senior Lecturer	University of Western Sydney
Dr	Babeck	Wolfgang	European Counsel	Dibbs Barker
Professor	Bamford	David	Dean of Law	Flinders University
Emeritus Professor	Barker, AM	David	General Secretary	The Australasian Law Teachers Association
Professor	Baron	Paula	Head, School of Law	La Trobe University
Professor	Barton	Glenton	Head, School of Business Law & Taxation	Curtin University
Professor	Bentley	Duncan	Deputy Vice-Chancellor; ILSAC Member; Project team leader	Victoria University
Mr	Besley	Richard	Chief Executive Officer	Council of Legal Education & Board of Examiners
Professor	Brohmer	Jurgen	Dean of Law	Murdoch University
Professor	Buckley	Ross	Professor	The University of New South Wales
Mr	Bugg	Tim	Chairman	International Legal Services Advisory Council
Mr	Catanzariti	Joe	Partner	Clayton Utz
Associate Professor	Chay	Allan	Chair	Australasian Professional Legal Education Council
Mr	Chynoweth	Chris	President	ANU Law Student Society
Mr	Clark	Stuart	Chair, Large Law Firms Group	Clayton Utz
Associate Professor	Connolly	Anthony	Director LLB Program; Project team member	The Australian National University
Professor	Coper	Michael	Dean of Law; Project team member	The Australian National University
Professor	Deane	Elizabeth	Pro Vice-Chancellor, Learning, Teaching and Students	The Australian National University
Professor	Fairall	Paul	Professor of Law	Curtin University
Mr	Fellows	Gary	Acting Assistant	Secretariat,

			Director	International Legal Services Advisory Council
Mr	Fredericks	David	Deputy Secretary	Attorney-General's Department
The Hon	French, AC	Robert	Chief Justice	High Court of Australia
Mr	Garcia	Pat	Policy Director	Large Law Firms Group
Mr	Govey	Ian	Chief Executive Officer	Australian Government Solicitor
Master	Harper	David	Master	Supreme Court of the Australian Capital Territory
Ms	Hilkemeijer	Anja	Lecturer/Coordinator International	University of Tasmania
Dr	Hughes	Gordon	Partner	Ashurst (formerly Blake Dawson); ILSAC Member
Mr	John	Thomas	Principal Legal Officer	Attorney-General's Department
Mr	Kelly	Danial	Lecturer	Charles Darwin University
Professor	Keyzer	Patrick	Director, University Research Centre for Law, Governance and Public Policy	Bond University
Professor	Kift	Sally	Professor of Law	Queensland University of Technology
Professor	Klein	Natalie	Dean of Law	Macquarie University
Ms	Kurbalija	Antonija	ALSA Councillor	Australian Law Students' Association
The Hon Professor	Lavarch, AO	Michael	Professor of Law and Executive Dean, Faculty of Law	Queensland University of Technology
Mr	Littlejohn	Matthew	Vice President (Administration)	Australian Law Students' Association
Dr	Lu, OAM	Andrew	Senior Associate	Minter Ellison
Associate Professor	MacFarlane	Peter	Associate Professor of Law & Chair Teaching & Learning Committee	University of South Australia
Professor	McKeough	Jill	Dean, Faculty of Law; Immediate Past Chair, CALD; Commissioner, Australian Law Reform Commission	University of Technology Sydney
Mr	McLean	Andrew	Executive Officer; Project Manager	Curtin University

Ms	McLeod sc	Fiona	Barrister; ILSAC Member	
Mr	Minogue	Matt	First Assistant Secretary	Attorney-General's Department
Mr	Nadaraja	Arjuna	Director	Secretariat, International Legal Services Advisory Council
Ms	Nicoll	Margery	Director, International	Law Council of Australia
Mr	Phelan	Andrew	Chief Executive & Principal Registrar	High Court of Australia
Ms	Pirani	Toni	Assistant Secretary	Attorney-General's Department
Professor	Reynolds	Rocque	Head, School of Law and Justice	Southern Cross University
The Hon	Slattery	Michael	Justice	The Supreme Court of New South Wales
Associate Professor	Squelch	Joan	Associate Professor of Law; Project Member	Curtin University
Ms	Stockwell	Lucy	Legal Officer	Attorney-General's Department
Dr	Taliadoros	Jason	Associate Head (Teaching & Learning), School of Law	Deakin University
Ms	The	Angela	Legal Officer, Private International Law Section	Attorney-General's Department
Professor	Triggs	Gillian	Dean of Law; Chair, CALD; Project team member	University of Sydney
Mr	Vermeer	Zachary	Legal Officer	Attorney-General's Department
Ms	Vu	Maria	Executive Officer, Services Trade & Negotiations Section	Department of Foreign Affairs & Trade
Ms	Wallace	Anne	Associate Dean (Education), Faculty of Business, Government & Law	University of Canberra
Mr	Woods	Daniel	Director, Law & Justice Policy	AusAID

# Appendix F                      Formative evaluation

## Formative evaluation report Christopher Roper May 2012

Note: the structure of this report is largely based on the key evaluation questions in the *ALTC Project Evaluation Resource, 2011*.

### **1        The project process**

#### **1.1      What processes were planned and what were actually put in place for the project?**

The planned processes were:

##### *Phase 1: Scoping the project and preliminary literature review*

The various elements of this phase have been put in place. The International Legal Education and Training Committee of the International Legal Services Advisory Council (ILSAC) acted as the high level reference group, and there was ongoing involvement with it. The project was scoped and the comprehensive literature review was conducted. A separate project scope document was not written up in full but a four page outline was prepared as a project brief for Symposium presenters.

##### *Phase 2:        Curriculum analysis*

This has been done. The various elements by which the law curriculum is shaped were identified. Papers were prepared to brief the participants in the roundtable discussions and the symposium. The literature review has been written up and refined.

##### *Phase 3:        Regional Roundtables held in Sydney, Canberra, Perth and Singapore to consult with stakeholders from government, higher education and the profession*

This has been done. Roundtables were held in all cities as planned. There was significant contribution of views on the knowledge, skills and other attributes required of law graduates. These roundtables established buy-in from a number of stakeholders.

##### *Phase 4:        Develop a draft curriculum framework based on the research and stakeholder feedback*

This has been done. Feedback received as part of the evaluation process suggests it was seen as having been done very thoroughly.

*Phase 5: A Symposium for key stakeholders to provide engagement, ensure full consultation and allow comprehensive and ongoing discussion to feed into the project report*

The Symposium was held and was attended by over 50 people drawn from all of the stakeholders listed. Feedback received during the evaluation suggests those involved considered there was full consultation and comprehensive discussion. Papers delivered at the Symposium are being uploaded to the ILSAC website. The feedback and discussion have been incorporated into the final report.

*Phase 6: Amend and finalise curriculum framework*

This work is now in progress and is almost complete. It will be contained in the final report.

*Phase 7: Dissemination of results*

This work is yet to be done.

### **1.2 Were there any variations from the processes that were initially proposed, and if so, why?**

There were only very minor variations, as outlined above. It became clear, as the project developed, that some steps could be omitted or merged with others, for example, the discussion papers to be prepared prior to the Symposium were not prepared, and the papers to be written after the Symposium have been incorporated into the final report.

### **1.3 How might the project process be improved – is there anything that could be done to make it better?**

In most respects the project has not been in need of improvement, but there are a few improvements which have been suggested during the evaluation. These, however, relate to previous steps and not the remaining steps of the project. Individual suggestions were –

- Ideally, it might have proceeded faster in accordance with the original timetable.
- The project team might have worked better as an effective research team. One of those consulted during the evaluation said that project would have been improved if, from the outset, it had been clear what was expected of each team member, and what was agreed to was documented. This should have included strict deadlines, which should have been enforced. This problem led to the need to apply for an extension.
- It might have been useful to have placed greater pressure on the Law Admissions Consultative Committee (LACC) to be formally represented at the National Symposium.
- It would have been useful to have more engagement with the law deans and to have obtained more data from them. The Council of Australian Law Deans (CALD) might have played a bigger role in the project.

### **1.4 Is there anything major in the process which has been missed, which could be fixed or could be in future projects?**

There is no major aspect which has been missed. But, related to the issue of sustainability (see below), there may have been an element of ‘preaching to the converted’ in the process. It might have been desirable to have involved more those, in the admitting authorities, in academia and in the practising profession, who are sceptical or opposed to moving the focus of legal education away from widespread coverage of domestic law. It was, however, pointed out that it was not for want of trying that such people were not more fully represented at the Symposium.

It could be argued that the issue is not just about undergraduate legal education but also about practical legal training. However, it was appropriate that the first step should be in regard to academic legal education.

## **2 Outcomes**

### **2.1 What were the observable short-term outcomes and to what extent have they been achieved?**

The short-term outcomes were:

*Agreement among Australian and international stakeholders on the relevant knowledge, skills and other attributes of law graduates in a global environment*

This was achieved and indeed a particular strength of the project has been the bringing together of many stakeholders and developing a common understanding on what the knowledge, skills and other attributes should be. The Symposium was seen as particularly contributing to this as, for the first time, it brought all interested parties together. This view was expressed by a number of those consulted during the evaluation.

It was suggested that the process has been very valuable, from the perspective of the profession, because it has forced the profession to really consider the issues and articulate what it wanted.

Equally it had value from the academics’ point of view. It helped them understand that the large international firms did not primarily or only want, as they may have imagined, an extensive range of further courses with an international focus (what one lawyer called ‘a granular approach’), but rather there was a validation of the law schools’ position that “a deep understanding of the legal principles in the core areas of the law and the development of the core intellectual skills” are the essence of a high quality legal education.

Coupled with this was the view that the international and comparative perspectives should largely be incorporated into the mainstream courses, such as contracts, equity and company law, rather than leaving those courses as domestically focussed and adding further internationally focussed electives.

*Consistency across Australian Law Schools' curricula in regard to preparation of students for international practice, leading to law graduates prepared for international work and practice, and the recognition of Australian legal education as internationalised*

This cannot be achieved at this stage. However, the first step has been put in place.

*Project findings and research disseminated and promoted through conferences and journals*

This cannot be achieved at this stage.

*Increased professional mobility and export of Australian legal services*

It is too early at this stage to assess whether this outcome has been achieved.

There were also identified long term outcomes:

- Increased number of international students studying law in Australia.
- Increased number of Australian-educated law graduates practising and working internationally.

It is too early to say whether they have been, or will be, achieved.

## **2.2 Were there any unintended outcomes?**

There were no apparent unintended outcomes.

## **2.3 What factors helped and hindered in the achievement of the outcomes?**

Bearing in mind that most of the outcomes cannot yet be achieved, the project's outcomes are ambitious and require, for some institutions, a significant change of orientation. For outcomes yet to be achieved, it may take longer than might have been hoped to see deep implementation of the outcomes over all Australian law schools. For some it will be a quantum leap. At the same time, the readiness of the judiciary and many in the profession who are not in large international law firms, to see (in their eyes) the law school curriculum move away from a focus on their primary needs may lead to a backlash which will need to be understood and managed.

# **3 Sustainability and lessons learnt**

## **3.1 What measures, if any, have been put in place to promote sustainability of the project's focus and outcomes?**

There is already in place ILSAC, a permanent body charged with implementing objectives which encompass those of this project. It will, as part of its work, promote the implementation of the project's work.

The existence of CALD, and its regular meetings, means that there is a mechanism for an ongoing conversation with law schools. It will be important to ensure that happens and that CALD is committed to pursuing this agenda. In addition, as expressed during the evaluation, sustainability will also require that the project be carried down into individual law schools and into individual law courses, and that this will require leadership within the law schools.

The annual conferences of the Australasian Law Teachers Association (ALTA) should also be seen as an appropriate venue for promoting debate and understanding of the project's focus and outcomes.

There will also be ongoing academic scholarship around the issues which this project dealt with, seen in conference papers, articles in academic and professional journals, and so on.

It was pointed out during the evaluation that the project is timely. There has been a substantial shift in perceptions and a current readiness to pursue the aims of the project: which may not have existed even five to eight years ago.

### **3.2 What lessons have been learned from this project and how might these lessons be of assistance to other institutions and for other projects?**

There are several lessons learnt in regard to the project *process* as identified during the evaluation –

- As the process involved, to some extent, 'preaching to the converted', there will be an ongoing need for a strategy of how to bring the more conservative elements of the profession, and law academics, along with the project's aims. Coupled with this will be the need to express the fundamental aims of the project in words which are seen to be relevant to, and supportive of, those engaged in domestic legal practice; and not simply as an elitist 'take over' of legal education by the large international commercial law firms.
- As the project team comprised senior academics spread throughout Australia, all with significant responsibilities and workloads, attention must be given from the beginning to how a project will be effectively managed in terms of timelines and team responsibilities.
- In such a situation, a major advantage is seen to have a dedicated project officer, and this should be an essential element of any future projects. However, it was suggested during the consultation that it would be useful to have a project officer who is able to write up reports, at least as drafts, and to undertake research.

In regard to the *outcomes* of the project, one lesson apparently learnt is that, contrary to what might have been expected, internationalisation is not primarily or only about adding more international perspectives to the existing curriculum but about deepening the curriculum so that, with critical, flexible and creative intellects, law graduates can work in the international arena with a strong grasp of legal principles in the core areas of the law. Those abilities equally apply to the majority of individual lawyers who, for a majority of their time, undertake work with a sole domestic focus.

This approach produces a new generation of even better trained lawyers equally equipped

for both domestic and international work. This understanding is perhaps the key to ensuring acceptance of the changes in all areas of the profession and in the academy.

## **4 The future: building on the project**

### **4.1 How might what has been done best be built upon through how it is disseminated?**

Those consulted in the evaluation considered that this project should be seen as the start of a process. The report, and articles to be written based on it, should not be seen as the final outcome. There should also be put in place a process to implement its recommendations – involving the key players.

The final report should be adapted for publication (eg. by removal of the methodology section), and published electronically and perhaps in the print medium.

Apart from publications, it was suggested that there be follow-up seminars with various groups, such as small firm practitioners, including those in country towns, but especially with law academics. There needs to be an ongoing debate about how law is taught, in particular around the coverage v. deep learning approaches. This debate will need to be led by CALD.

Another approach to disseminating what has been done is to try to have, over the next few years, a place at every conference-type activity in Australia, for academics and practitioners, at which this issue is dealt with. So this would extend from the ALTA annual conferences to the Australian Legal Convention to the more specifically focussed conferences such as the family lawyers conference.

### **4.2 How might other projects add to this one?**

There could be value in developing a project which dialogues with the majority of lawyers in Australia for whom the majority of their work has no discernible international element. For the profession, and no doubt the admitting authorities, there may be the need to engage this group in a more sustained conversation about how a legal education curriculum which prepares students for international practice *also* prepares them for domestic practice. Otherwise, if there are to be changes, they may feel that their needs have been abandoned.

In parallel, another project could involve a dialogue with law teachers to identify how the one law curriculum can prepare for both forms of practice. The basic principle which could inform both projects is that the best preparation for both forms of practice of law is a curriculum which focuses on a deep and flexible understanding of core principles and (equally) develops the intellectual skills necessary for both forms of practice.

It was suggested during the evaluation that there could be a project to encourage greater opportunities for academics to teach in overseas law schools. It was pointed out that they would inevitably include some elements from the other country in their teaching on their return to Australia.

It was also suggested that a follow-up project could be a more in-depth review and analysis of the law curricula from Australia's law schools. This might involve taking the proposed curriculum framework and seeing how it might work, through simulated trials or actual implementation, followed by review and evaluation.

It was also suggested that the issues in this project equally apply to practical legal training, and there could be scope for a parallel project in that area.