

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'.¹⁵

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'.¹⁶

The flow of people and intercultural exchange is also emphasised by Van Rossum¹⁷ 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

¹⁵ 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>

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

¹⁷ 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'.¹⁸ 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'.¹⁹

Local firms in Australia 'are increasingly measured against global ones, in terms of experience, the spread of offices and depth of legal knowledge',²⁰ which is further fuelled by the establishment of such firms as Allen & Overy, Ashurst, Clifford Chance, DLA Piper, King & Wood Mallesons and Norton Rose.²¹ 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.²²

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.²³

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

¹⁸ Alex Boxell, 'Global Challenge' *CFO Financial Review*, November 2011, 53.

¹⁹ Ibid.

²⁰ Ibid 53-54.

²¹ Ibid 54.

²² Ibid 53

²³ 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>.

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

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).²⁵ 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'.²⁶

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.

²⁴ Ibid.

²⁵ Ibid.

²⁶ 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, Brusteian 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'.²⁷ 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'.²⁸

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'.²⁹

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'.³⁰ 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'.³¹

Distinguishing between globalisation and internationalisation, Altbach and Knight describe globalisation as 'the economic, political, and societal forces pushing 21st century higher education toward greater international involvement'.³² 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.

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

²⁸ Ibid 383, 385.

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

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

³¹ 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.

³² 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'.³³

Nonetheless, a useful and oft-cited definition is provided by Knight³⁴ 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'.³⁵ 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.³⁶

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'.³⁷ 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.³⁸

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

³⁴ 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.

³⁵ Cited in Marvin Bartell, n39 below.

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

³⁷ Altbach & Knight, above n 32, 290.

³⁸ 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'.³⁹ 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.⁴⁰

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'.⁴¹

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.⁴²

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'.⁴³ 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'.⁴⁴ To this end the Bradley Report recommends, inter alia, that a more holistic

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

⁴⁰ Ibid 51.

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

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

⁴³ Australian Government, *Review of Australian Higher Education: Final Report*, 2008, 87.

⁴⁴ 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'.⁴⁵ 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'.⁴⁶

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.⁴⁷

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.⁴⁸

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'.⁴⁹ Efforts at internationalisation of the curriculum have tended to focus narrowly on 'immediate matters associated with the pedagogy of teaching international students' rather

⁴⁵

Ibid.

⁴⁶

Betty Leask, above n 29, 10.

⁴⁷

Ibid.

⁴⁸

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

⁴⁹

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'.⁵⁰

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'.⁵¹

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 internationalisation⁵² 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.⁵³ 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'⁵⁴ whilst another study showed 'over 70 per cent of universities had strategies for the internationalisation of form and content of their curricula'.⁵⁵ Today, every university in Australia now professes the need to transform its curriculum to reflect the goals of internationalisation.⁵⁶ 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

⁵⁰ Ibid.

⁵¹ Clifford, above n 41, 134.

⁵² Lennart Svensson & Monne Wihlborg, above, n 42.

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

⁵⁴ Ibid 7.

⁵⁵ Ibid.

⁵⁶ 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.⁵⁷

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.⁵⁸

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’.⁵⁹

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

According to DeJarnett and Rahdert⁶² 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.⁶³ 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 School⁶⁴ in response to the creation of the European Economic Community and European Union and

⁵⁷ 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).

⁵⁸ 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’.

⁵⁹ Leask, above n 29, 10. See also A-Khavari, below n 80.

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

⁶¹ 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.

⁶² 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.

⁶³ Ibid footnote 2.

⁶⁴ 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’.⁶⁵

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.⁶⁶

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’.⁶⁷

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.⁶⁸ 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’.⁶⁹

Likewise, Grossman notes that ‘[to]day we are witnessing dramatic global transformations that call into question both the content and methodology of legal education’.⁷⁰ 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

⁶⁵ 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.

⁶⁶ Ibid. See also, Hanse Law School <www.hanse-law-school.de/about_hls.htm>.

⁶⁷ Ibid 979.

⁶⁸ Simon Chesterman, above n 26.

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

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

reality' affects legal education.⁷¹

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'.⁷² 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'.⁷³

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.⁷⁴ 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'.⁷⁵ 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.⁷⁶ 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, Klabbers⁷⁷ 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'⁷⁸ and

⁷¹ Ibid 21-22.

⁷² Steven Freeland, above n 5.

⁷³ Ibid 502.

⁷⁴ 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>.

⁷⁵ Ibid, 85.

⁷⁶ 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.

⁷⁷ Jan Klabbers, above n 2.

⁷⁸ 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’.⁷⁹ 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’.⁸⁰

However, as A-Khavari⁸¹ 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, Friel⁸² 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.⁸³

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’.⁸⁴

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’.⁸⁵ 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

⁷⁹ Bogdan, above n 4, 484.

⁸⁰ Freeland, above n 5, 503.

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

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

⁸³ Czarnota and Veitch, above n 6, 160.

⁸⁴ Bernabe-Riefkohl, above n 7, 152.

⁸⁵ 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”.⁸⁶ 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’.⁸⁷

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’.⁸⁸ 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.⁸⁹

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*⁹⁰ for example, argues that both Australian and international students who are studying in Australia benefit by studying an internationally-relevant curriculum.⁹¹

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

⁸⁵ Grossman, above n 70, 22.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Ibid 35.

⁹⁰ International Education Advisory Council, above n 38.

⁹¹ Ibid 5.

incorporation. Drawing largely on developments in the United States, Backer⁹² 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.⁹³ 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.⁹⁴ 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.⁹⁵ A-Khavari notes that the aggregation model in Australia is more often used in conjunction with other models.⁹⁶

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'.⁹⁷ Another version is found at the Cornell Law School.⁹⁸ Cornell Law

⁹² 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.

⁹³ Backer, *ibid.*

⁹⁴ *Ibid* 80.

⁹⁵ *Ibid* 80.

⁹⁶ A-Khavari, above n 81, 97

⁹⁷ University of Pittsburgh's Centre for International Legal Education <www.law.pitt.edu/academics/cile>.at 29 March 2011.

⁹⁸ 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.⁹⁹

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.¹⁰⁰

Integration model

The *integration model* seeks to provide the most extensive and comprehensive incorporation of international elements into the law curriculum, research and services.¹⁰¹ 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'.¹⁰²

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'.¹⁰³ 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.¹⁰⁴ 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."¹⁰⁵

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

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

¹⁰⁰ Backer, above n 92, 81.

¹⁰¹ Ibid 76-77.

¹⁰² Ibid 77.

¹⁰³ Ibid 77.

¹⁰⁴ Ibid 77.

¹⁰⁵ Georgetown University Law School < www.law.georgetown.edu/gls/ > 29 March 2011.

and, significantly, ‘a willingness to change traditional academic culture’.¹⁰⁶ 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.¹⁰⁷

A-Khavari noted in 2006 that this is the most common approach by Australian law schools to internationalise their curriculum.¹⁰⁸ 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’.¹⁰⁹ 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’.¹¹⁰

A-Khavari¹¹¹ 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.¹¹²

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’.¹¹³ 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’.¹¹⁴ 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.¹¹⁵

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’.¹¹⁶ Therefore, the expense is not in creating new programs or altering existing programs to incorporate international elements, but in

¹⁰⁶ Backer, above n 92, 83.

¹⁰⁷ Ibid 83.

¹⁰⁸ A-Khavari, above n 81, 96.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ A-Khavari, above n 81.

¹¹² 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> at 10 July 2010.

¹¹³ Backer, above n 92, 83.

¹¹⁴ Ibid 83.

¹¹⁵ Ibid 83.

¹¹⁶ 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.¹¹⁷

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.¹¹⁸ 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.¹¹⁹

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.¹²⁰

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.¹²¹

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.

¹¹⁷ Ibid 84.

¹¹⁸ Ibid 84.

¹¹⁹ 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> 29 March 2011.

¹²⁰ Backer, above n 92, 85.

¹²¹ 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.¹²² 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'¹²³ 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'.¹²⁴ 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.¹²⁵

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'.¹²⁶ 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.¹²⁷ Of relevance, the ALRC Report commented on the 'Priestley Committee's

¹²² 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)

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

¹²⁴ Pearce, above n 122, 149.

¹²⁵ Ibid.

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

¹²⁷ 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'.¹²⁸ 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'.¹²⁹ 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'.¹³⁰ 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'.¹³¹ 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'.¹³²

The challenge of reforming legal education and internationalising the law curriculum was also the subject of a 2004 study undertaken by ILSAC¹³³ 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'¹³⁴ and that 'many Australian (and overseas) law schools give only a nodding response to the need for an international approach to legal education'.¹³⁵ 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'.¹³⁶ 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

¹²⁸ Ibid.

¹²⁹ Australia Law Commission, above n 126, 2.89.

¹³⁰ Ibid 2.85.

¹³¹ Richard Johnstone & Sumitra Vignaendra, above n 9, 206.

¹³² Ibid.

¹³³ 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.

¹³⁴ Ibid 3.

¹³⁵ Ibid 6.

¹³⁶ Ibid.

provision of legal services in a global market'.¹³⁷ 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:¹³⁸

- 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 Report¹³⁹ 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.¹⁴⁰

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*.¹⁴¹ 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.

¹³⁷ Ibid 3.

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ See <http://sydney.edu.au/law/>.

¹⁴¹ 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).¹⁴² 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.

¹⁴² Council of Australian Law Deans, *The CALD Standards for Australian Law Schools* (17 November 2009) <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'¹⁴³ 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).¹⁴⁴

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.

¹⁴³ A-Khavari, above n 81, 97.

¹⁴⁴ 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 Report¹⁴⁵ and applied in the extensive integrated skills curriculum project at Bond University Law School.¹⁴⁶ 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.¹⁴⁷ 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

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

¹⁴⁶ 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>.

¹⁴⁷ 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 21st century'.¹⁴⁸ 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'.¹⁴⁹ 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'.¹⁵⁰

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

¹⁴⁸ Steve Mark, 'Legal Education and the 21st 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 >.

¹⁴⁹ Ibid 4.

¹⁵⁰ 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.